

# Best Practices

## for Rental Housing Inspection Ordinances

October 27, 2009

Interfaith Housing Center of the Northern Suburbs

Sargent Shriver National Center on Poverty Law



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## **ACKNOWLEDGEMENTS**

The Interfaith Housing Center of the Northern Suburbs would like to thank The Chicago Community Trust under its Immigrant Integration Initiative and the Woods Fund of Chicago for their support of this project's concept: to strengthen a municipality's ability to provide for decent and safe rental housing in its jurisdiction while honoring the fair housing and due process rights of tenants.

We would also like to thank John Bartlett, Kathy Clark, Sharon Legenza, Jeffrey Taren, and Daniel Klaff for their review of this document.

The authors are solely responsible for the accuracy of the statements and the interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the agencies' funders.

### **Project Managers**

#### **Interfaith Housing Center of the Northern Suburbs**

Gail Schechter, Executive Director

Andrea Juracek, Director of Fair Housing

Alicia De La Cruz, Project Director, Immigrant Integration Initiative

#### **Sargent Shriver National Center on Poverty Law**

Kate Walz, Senior Attorney

Sam Tuttle, Staff Attorney

Rachel Rohlfig, Housing & Economic Opportunity Specialist

### **Project Assistance**

Brendan Saunders, Director of Organizing & Advocacy, Interfaith Housing Center of the Northern Suburbs

Sasha Tuzel, Northwestern University, Intern

Alexis Hamilton, AmeriCorps VISTA, Sargent Shriver National Center on Poverty Law

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## RECOMMENDATIONS FOR A RENTAL HOUSING INSPECTION ORDINANCE

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### INTRODUCTION & PURPOSES

In 2003, the City of Highwood, Illinois used its Rental Property Safety Ordinance to deem four apartment complexes uninhabitable and consequently evicted approximately 70 residents, most of whom were low-income and Hispanic. Eviction notices were addressed only to the building landlords and listed minor and major violations alike, ranging from missing insect screens to electrical system hazards. Adding to the confusion, Highwood gave some residents 14 days to move while granting others only 48 hours to leave the premises. Those residents given 48 hours were escorted out of the building at 11:00 p.m. by police and were provided no relocation assistance, other than a list of homeless shelters and motels. The city simultaneously cut off water to each building.

The treatment of Highwood residents demonstrates the substantial risks of poorly principled and executed rental ordinances. Indeed, poorly drafted or executed local ordinances may disparately impact certain populations, effectively denying those populations fair and equal access to housing. Consequently, any local ordinance should be rooted in principles of fair housing while promoting and protecting public health, safety, and welfare of residents.

The purpose of the following recommendations is to provide a model rental housing inspection ordinance that establishes the rights and obligations of city code officials, landlords, and tenants in rental housing, and encourages cities, landlords, and tenants to maintain and improve the quality of housing. This document provides best practices and sample language that balance the needs of the community and the rights of tenants and landlords. Model ordinance language is displayed in the boxes below. A complete copy of the model ordinance language is included as an addendum to this document.

#### **Preamble**

This ordinance shall be known and may be cited as the “Rental Housing Inspection Ordinance”, and shall be liberally construed and applied to promote its purposes and policies.<sup>1</sup>

It is the purpose of this ordinance and the policy of this municipality, in order to protect and promote the public health, safety, and welfare of its citizens, to establish the rights and obligations of the landlord and the tenant in the rental of housing units, and to encourage the landlord and the tenant to maintain and improve the quality of housing.<sup>2</sup>

It is the policy of this ordinance to assure full and equal opportunity to all residents of the municipality to obtain fair and adequate housing for themselves and their families without discrimination based on race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status.<sup>3</sup>

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<sup>1</sup> Municipal Code of Chicago 5-12-010 Title, purpose and scope

<sup>2</sup> Id.

<sup>3</sup> Chicago Fair Housing Ordinance 5-8-020 Discrimination prohibited

This ordinance applies to, regulates and determines rights, obligations and remedies under every agreement for a rental unit located within this municipality, regardless of where the agreement is made. This ordinance applies to rental agreements under subsidy programs of agencies of the United States and/or the State to the extent that this ordinance is not in direct conflict with statutory or regulatory provisions governing such programs.<sup>4</sup>

## **TENANT AND LANDLORD RIGHTS & RESPONSIBILITIES**

Any rental housing inspection ordinance should clearly identify landlord and tenant rights and responsibilities, addressing: condition of the unit, habitability standards, access to the unit, and safety inspections of the unit. We suggest the following language, taken in part from Chicago's Residential Landlord Tenant Ordinance:

### **Tenant and Landlord Rights & Responsibilities**

**“Landlord” means the owner, agent, lessor, or sublessor, or the successor in interest of any of them, of a rental unit or the building of which it is part.<sup>5</sup>**

**“Owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.<sup>6</sup>**

**“Premises” means the rental unit and the structure of which it is part, and facilities and appurtenances therein, and grounds, areas, and facilities held out for the use of tenants.<sup>7</sup>**

**“Tenant” means a person entitled by a written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a rental unit to the exclusion of others.<sup>8</sup>**

Every landlord shall:

- (a) Maintain the premises in compliance with all local, state, and federal codes and shall promptly make any and all repairs necessary to fulfill this obligation.<sup>9</sup>
- (b) Disclose to the tenant in writing at or before the commencement of the tenancy the name, address, and telephone number of:
  - (1) The owner or person authorized to manage the premises; and
  - (2) A person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.<sup>10</sup>
- (c) Disclose to the tenant in writing conditions affecting habitability, including:
  - (1) Any code violations in the previous 12 months for the unit and common areas and provide notice of any pending code enforcement litigation. The notice should provide any case numbers and/or identification numbers of proceedings.<sup>11</sup>
  - (2) Any notice of intent by a city or any utility provider to terminate water, gas, electrical, or other utility service to the rental unit or common areas. The disclosure must state the type of service being terminated, dates of termination, and whether the termination affects the unit, common areas, or both. A landlord is obligated to provide disclosure of all utility termination information throughout a tenancy.<sup>12</sup>

<sup>4</sup> Municipal Code of Chicago 5-12-010 Title, purpose and scope

<sup>5</sup> Municipal Code of Chicago 5-12-030(b) Definitions

<sup>6</sup> Municipal Code of Chicago 5-12-030(c) Definitions

<sup>7</sup> Municipal Code of Chicago 5-12-030(e) Definitions

<sup>8</sup> Municipal Code of Chicago 5-12-030(h) Definitions

<sup>9</sup> Municipal Code of Chicago 5-12-070 Landlord's responsibility to maintain

<sup>10</sup> Municipal Code of Chicago 5-12-090 Identification of owner and agents

<sup>11</sup> Municipal Code of Chicago 5-12-100(a) Notice of conditions affecting habitability

<sup>12</sup> Municipal Code of Chicago 5-12-100(b) Notice of conditions affecting habitability

A person who enters into a rental agreement and fails to comply with the identification of owners and agents becomes a designated agent for the purpose of (i) service of process and receiving and receipting for notices and demands and (ii) performing the obligations of the landlord under the city rental inspection ordinance and the rental agreement.<sup>13</sup>

If the landlord fails to comply with his or her disclosure responsibilities in section (c), a tenant may deliver a written notice to the landlord specifying the conditions that were not disclosed pursuant to section (c) and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of written notice by the landlord if the code violations or utility terminations not disclosed pursuant to section (c) are not remedied within the time period specified in the notice. The tenant shall deliver possession of the unit to the landlord within 30 days after the expiration of the time period specified in the notice. If the tenant fails to deliver possession, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect. If the rental agreement does terminate, the landlord shall return all prepaid rent, security deposit, and interest legally recoverable by the tenant.<sup>14</sup>

During or after a foreclosure action a receiver, mortgagee in possession, or successor in interest shall maintain the unit in a condition that is safe, healthful, and fit for occupancy and in compliance with the terms of any lease until the rights of possession of all occupants have been terminated.

Every tenant shall:

- (a) Keep that part of the premises that he or she occupies and uses as safe as the condition of the premises permits;
- (b) Dispose of all ashes, rubbish, garbage and other waste from his or her rental unit in a clean and safe manner;
- (c) Keep all plumbing fixtures in the rental unit or used by the tenant as clean as their condition permits;
- (d) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises;
- (e) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person on the premises with his or her consent to do so; and
- (f) Conduct his or herself and require other persons on the premises with his or her consent to conduct themselves in a manner that will not disturb peaceful enjoyment of the premises of other residents.<sup>15</sup>

## **RIGHT OF ACCESS**

When a landlord or city code official requires access to a unit for a repair, inspection, or other safety reason, they should provide the tenant with a written notification no less than 48 hours before access. In emergency situations, written notice should be given within 24 hours of accessing the unit and to the extent practicable, prior to entering the unit. These notices should be provided directly to each rental unit by mail and to the maximum practical extent possible, written in a tenant's native language. In cases where access is required because of repair work for common facilities or other apartments, a general notice should be given by the landlord to all potentially affected tenants stating that entry may be required. A landlord or city code official should only enter a unit during normal business hours, except in emergency situations or upon a tenant's request. A tenant should not unreasonably withhold consent to allow a landlord or city code official to enter his or her rental unit when proper notification was given. The following model language is taken in part from the City of Evanston Municipal Code:

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<sup>13</sup> Municipal Code of Chicago 5-12-090 Identification of owner and agents

<sup>14</sup> Municipal Code of Chicago 5-12-110(a), (b) Tenant remedies

<sup>15</sup> Municipal Code of Chicago 5-12-040 Tenant responsibilities

### **Access to Rental Unit**

**“Emergency” means a serious health and safety condition that is determined by a landlord or city code official to be of immediate harm or danger to any person or the public.**

- (a) The landlord or city code official may enter the rental unit in order to inspect the premises, make necessary or agreed repairs, alternations or improvements, or supply necessary or agreed services. The landlord and city code official shall not abuse the right of access or use it to harass the tenant.<sup>16</sup>
- (b) The landlord and city code official shall give the tenant at least 48 hours written notice of his or her intent to enter and may enter only between 8:00 a.m. and 8:00 p.m. or at any other time expressly requested by the tenant. A written notification shall:
  - (1) Provide the date and time the landlord or city code official will require access to the unit.
  - (2) Include a name, address, and telephone number of the individual or entity the tenant may contact with concerns or to reschedule unit access.
  - (3) Be in the tenant’s native language to the maximum practical extent possible.
  - (4) Be served by delivering a copy to the tenant, or by leaving it with someone 13 years of age or older residing in the unit; or by sending a copy of the notice to the occupant by registered mail, return receipt requested.
- (c) The landlord and city code official shall provide a general written notice to all tenants who may be potentially affected by entry during repair work of common facilities or other apartments. Such notice shall be served upon potentially affected tenants 48 hours in advance of entry and include information required in section (b).
- (d) In case of emergency, a landlord or city code official may enter a rental unit without notifying a tenant if necessary.<sup>17</sup> Within 24 hours of accessing a unit, however, a landlord or city code official shall provide written notification, according to section (b). A landlord or city code official should make best efforts to notify tenants prior to entry, even if it is less than 48 hours.
- (e) The tenant shall not unreasonably withhold consent to the landlord or city code official to enter the rental unit in order to inspect the premises, make necessary or agreed repairs, alternations or improvements, or supply necessary or agreed services.<sup>18</sup>

## **INSPECTIONS**

The purpose of a rental unit inspection should be to protect tenants from safety hazards and substandard housing. To the extent practicable for a municipality, any inspection for compliance with a city code should be driven by complaints to the city about a condition or on a clear, periodic basis. Periodic inspections should occur no more than once a year unless precipitated by a tenant complaint. Any rental housing inspection ordinance should define inspector qualifications. Limiting the scope of the inspection is also necessary in order to avoid discriminatory practices. A city may impose a reasonable annual fee on the owner or landlord for an inspection. A property owner’s failure to pay should not be grounds for a vacate order. Annual fees should be calculated on a reasonable scale but not used to fully support the inspection program. We suggest the following model inspection language:

### **Inspection of Rental Unit**

**“City Code Official” means a qualified individual employed by a city to inspect a rental unit or building for compliance with local maintenance codes, statutes, regulations, and ordinances. A code official must, at a**

<sup>16</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(A) Access

<sup>17</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(C) Access

<sup>18</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(A) Access

**minimum, meet any equivalent combination of education and experience which provides him or her with the knowledge, skills, and abilities required to perform the job, as established by the city.**

**“Rental Agreement” means all written or oral agreements embodying the terms and conditions concerning the use and occupancy of a rental unit by a tenant.<sup>19</sup>**

**“Rental Unit” means a unit in a structure or part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household and a member or members of that household make payments to the landlord for the unit under a rental agreement.<sup>20</sup>**

A rental unit may be inspected by a city code official for the purpose of determining whether the unit is in compliance with all applicable maintenance codes, statutes, regulations, and ordinances.

- (a) An inspection by a city code official shall occur no more than once a year except in the event that a complaint about the premises is made to the city as prescribed in section (c).
- (b) Any annual inspection shall be coordinated as closely as possible with the inspection and enforcement procedures of city agencies, including the Fire Department, Police Department, and Building Department.
- (c) A city code official may inspect a rental unit following a complaint if:
  - (1) The complaint is made by a tenant living in the rental unit to be inspected; or
  - (2) The complaint is made by someone other than the tenant and alleges a condition that (i) threatens health and safety and (ii) violates a specific maintenance law, ordinance, or regulation.
- (d) Upon entering any rental unit, a city code official shall be required to exhibit adequate identification that documents his or her employment and position as a city employee and includes photo identification.
- (e) During an inspection, a city code official shall limit the scope of the inspection to only those items that pertain to the property maintenance codes, statutes, ordinances, and regulations applicable to the unit being inspected.
- (f) A city may assess an annual fee to the owner for a unit or building inspection that does not exceed more than \$150 per structure for one to six unit buildings or \$350 per structure for buildings with over six units.
- (g) An owner or landlord’s failure to pay the annual fee shall not be just cause for a city to issue a vacate order.

## **CODE VIOLATIONS**

If after an inspection a city code official finds conditions that violate a municipal code, he or she should outline the violations and the appropriate remedy of those violations and distribute the findings to affected tenants and the property owner. The city should then re-inspect the unit or building. Both the notification of violations and re-inspection should be completed within a reasonable time period.

A city should impose reasonable noncompliance fees but not depend on these fees to fully fund the inspection program. We recommend municipalities use a graduated scale for violation fees and remedial time frames that reflect the severity of the violation. Ranking violations encourages compliance through clear expectations and reduces the chance that tenants will be unfairly evicted for minor violations or that landlords and owners will be disproportionately punished. Ranking violations also empowers tenants in seeking prompt municipal action to repair the most urgent health and safety hazards.

For properties in a condition that threatens the health and safety of tenants or the basic habitability of the premises, city-run receivership programs allow the court to order necessary repairs, maintain property management in neglected buildings, and appoint receivers to commit

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<sup>19</sup> Municipal Code of Chicago 5-12-030(g) Definitions

<sup>20</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

to this work until the property is in material compliance with applicable codes, statutes, regulations, and ordinances. A city may also establish occupancy standards but they should not be more restrictive than those provided in the International Property Maintenance Code. We recommend incorporating and implementing the following language into a rental inspection ordinance:

**Code Violations**

- (a) If a city code official finds violations of city code during an inspection of a rental unit or building, the city code official shall issue a written notice within seven days and by registered mail, return receipt requested, to the building owner and any tenants living in the affected rental units. A notice shall be in the tenant’s native language to the maximum practical extent possible and shall include:
  - (1) A list of the deficiencies;
  - (2) The necessary conditions that shall be made;
  - (3) A reasonable time period, not to exceed 30 days from issuance of the written notice, to correct the deficiencies; and
  - (4) The date of the follow-up inspection.
- (b) If, after an initial and follow-up inspection, a city code official conducts a third or subsequent inspection of a rental unit or building to verify its compliance with city codes, a city may assess a fee of no more than \$100.00 for each violation in a unit against the building owner for continued violations, except when a subsequent inspection is necessary due to an error made by the city.

**DISPLACEMENT**

Any rental inspection ordinance should include tenant relocation assistance when a tenant is required to vacate and actually vacates a housing unit as a result of an emergency vacate order. A city should only issue a vacate order when a building or unit violates applicable codes, statutes, regulations, or ordinances that make it uninhabitable. An owner or landlord’s failure to pay any inspection fee or late fee should not be just cause for a vacate order. When a building or unit is found to be uninhabitable, the owner should not receive rental payments. A vacate order should come solely from a court of law and require that the property owner immediately return prepaid rent, the security deposit, and any accrued interest. A court may require an owner to pay tenant relocation expenses. A city may also pay relocation expenses upfront and require a property owner to reimburse these expenses, along with reasonable attorney fees. We suggest the following language:

**Tenant Displacement**

**“Uninhabitable” means a rental unit or building which has an immediately hazardous, life-threatening defect which affects a tenant’s health or safety insomuch as it makes the unit unfit for occupancy.**

- (a) If a city code official determines that a rental unit or building is uninhabitable, and the deficiency has not been corrected after 48 hours of the most recent official inspection, a city may seek a court order requiring that the tenants vacate the property.
- (b) The vacate order shall require all affected tenants to vacate the premises within a specified period of time, not less than 48 hours from date of service of notification.
- (c) A city shall provide all affected tenants and the owner written notification of the vacate order. The written notice shall:
  - (1) Provide the date and time a tenant is required to vacate the unit and property.
  - (2) Include a name, address, and telephone number of the individual or entity at the city that the tenant may contact with questions or concerns about the order.
  - (3) Be in the tenant’s native language to the maximum practical extent possible.

- (4) Be served by hand delivering a copy to the tenant, or by leaving it with someone 13 years of age or older residing in the unit; or by sending a copy of the notice to the occupant via overnight mail service.
- (5) Provide a list of local social service agencies that address housing and a list of nearby shelters and motels.
- (6) Provide information about how and when a tenant can receive relocation assistance and reimbursement for relocation expenses.
- (d) The property owner shall be liable to the City if, after the Court has ordered a property vacated, the City paid the costs of relocation for the tenants. If a tenant has paid the cost of relocation, the property owner shall be liable to the tenant for costs. Relocation costs shall include a tenant's shelter, moving, and storage until the unit can be reoccupied or until the end of the lease term, whichever is shorter.
- (e) The landlord shall immediately return all affected tenant's prepaid rent, security deposit, and accrued interest.

## COMPLAINT PROCESS FOR ABUSIVE PRACTICES

A rental inspection ordinance should outline a clear complaint process for abusive practices by both the landlord and tenant. Tenants and landlords should have the right to recover damages and injunctive relief in the event of such unlawful actions. If a lease agreement is terminated due to material noncompliance by the landlord, the landlord should return to the tenant any prepaid rent, the security deposit, and all accrued interest. When establishing material noncompliance, a landlord or tenant should provide written notice of the violations and give a reasonable period of time for the other party to remedy the action before the tenant or landlord take further action. Material noncompliance should be interpreted to mean a material breach of the lease. We propose adopting the following complaint process taken in part from Chicago's Residential Landlord and Tenant Ordinance:

### Complaints for Abusive Practices

**“Material Noncompliance” means a failure to comply with laws or regulations when that failure increases risk to landlord or tenant, or adversely affects the rights and welfare of the landlord or tenant. This may include only a single instance of non-compliance, if substantial, or repeated minor violations.**<sup>21</sup>

#### **Landlord Remedies – Failure to Allow Access:**

If a tenant refuses a landlord or city code official to allow a lawful access, the landlord may seek injunctive relief and recover damages to compel access or terminate the rental agreement.<sup>22</sup>

#### **Tenant Remedies – Unlawful Access:**

If a landlord or city code official makes an unlawful entry in an unreasonable manner or makes unreasonable demands for entry otherwise lawful, but which harass the tenant, the tenant may obtain injunctive relief and damages to prevent the recurrence of the conduct or terminate the rental agreement.<sup>23</sup>

#### **Landlord Material Noncompliance:**

If there is material noncompliance by the landlord with a rental agreement or city, state, and federal law, that renders the property and premises unfit and uninhabitable, a tenant may deliver a written notice to the landlord specifying the acts and/or omissions establishing the material noncompliance and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of written notice by the landlord if material noncompliance is not remedied within the time period specified in the notice. If the material noncompliance is not remedied within the time period specified in the notice, the rental agreement shall terminate, and the tenant shall deliver possession of

<sup>21</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

<sup>22</sup> Municipal Code of Chicago 5-12-060 Remedies for improper denial of access

<sup>23</sup> Id.

the unit to the landlord within 30 days after the expiration of the time period specified in the notice. If the tenant fails to deliver possession, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect. If the rental agreement does terminate, the landlord shall return all prepaid rent, security deposit, and interest legally recoverable by the tenant.<sup>24</sup>

**Tenant Material Noncompliance:**

The landlord may enter a rental unit and have the necessary work done in the manner required by law if there is material noncompliance by the tenant in regard to safety and habitability of a rental unit, and the tenant fails to comply as quickly as conditions allow in a case of emergency or in cases other than emergencies within 14 days of receipt of written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time. The landlord shall be entitled to reimbursement from the tenant of the costs of repairs.<sup>25</sup>

**RIGHT TO A HEARING**

If a tenant or landlord establishes a violation of any of the aforementioned rights or responsibilities, a tenant or landlord should be entitled to a hearing. A defendant party should be given a written notice of the hearing specifying all violations, and state the date, time, place, and purpose of the hearing. Hearings should take place within a reasonable time period. We recommend tenants and landlords are made aware that legal representation for both parties is permitted but not provided at a hearing.

**Right to a Hearing**

In the event of a violation of this code, a landlord or tenant shall have the right to a hearing. The affected party shall be notified of their right to a hearing, shall have the right to examine all documents regarding violations before the hearing, and shall have the right to representation at the hearing. The hearing shall be scheduled no less than ten days and no more than 30 days after receipt of notice. The written notice shall be sent to both parties by registered mail, return receipt requested and shall:

- (a) Specify all code violations;
- (b) State the date, time, place, and purpose of the hearing; and
- (c) Inform parties of their right to legal representation at the hearing.

**Definitions**

**“City Code Official” means a qualified individual employed by a city to inspect a rental unit or building for compliance with local maintenance codes, statutes, regulations, and ordinances. A code official must, at a minimum, meet any equivalent combination of education and experience which provides him or her with the knowledge, skills, and abilities required to perform the job, as established by the city.**

**“Emergency” means a serious health and safety condition that is determined by a landlord or city code official to be of immediate harm or danger to any person or the public.**

**“Landlord” means the owner, agent, lessor, or sublessor, or the successor in interest of any of them, of a rental unit or the building of which it is part.<sup>26</sup>**

**“Material Noncompliance” means a failure to comply with laws or regulations when that failure increases risk to landlord or tenant, or adversely affects the rights and welfare of the landlord or tenant. This may include only a single instance of non-compliance, if substantial, or repeated minor violations.<sup>27</sup>**

<sup>24</sup> Municipal Code of Chicago 5-12-110(a), (b) Tenant remedies

<sup>25</sup> Municipal Code of Chicago 5-12-130(c) Landlord remedies

<sup>26</sup> Municipal Code of Chicago 5-12-030(b) Definitions

<sup>27</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

**“Owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.<sup>28</sup>**

**“Premises” means the rental unit and the structure of which it is part, and facilities and appurtenances therein, and grounds, areas, and facilities held out for the use of tenants.<sup>29</sup>**

**“Rental Agreement” means all written or oral agreements embodying the terms and conditions concerning the use and occupancy of a rental unit by a tenant.<sup>30</sup>**

**“Rental Unit” means a unit in a structure or part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household and a member or members of that household make payments to the landlord for the unit under a rental agreement.<sup>31</sup>**

**“Tenant” means a person entitled by a written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a rental unit to the exclusion of others.<sup>32</sup>**

**“Uninhabitable” means a rental unit or building which has an immediately hazardous, life-threatening defect which affects a tenant’s health or safety insomuch as it makes the unit unfit for occupancy.**

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<sup>28</sup> Municipal Code of Chicago 5-12-030(c) Definitions

<sup>29</sup> Municipal Code of Chicago 5-12-030(e) Definitions

<sup>30</sup> Municipal Code of Chicago 5-12-030(g) Definitions

<sup>31</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

<sup>32</sup> Municipal Code of Chicago 5-12-030(h) Definitions

## **Preamble**

This ordinance shall be known and may be cited as the “Rental Housing Inspection Ordinance”, and shall be liberally construed and applied to promote its purposes and policies.<sup>33</sup>

It is the purpose of this ordinance and the policy of this municipality, in order to protect and promote the public health, safety, and welfare of its citizens, to establish the rights and obligations of the landlord and the tenant in the rental of housing units, and to encourage the landlord and the tenant to maintain and improve the quality of housing.<sup>34</sup>

It is the policy of this ordinance to assure full and equal opportunity to all residents of the municipality to obtain fair and adequate housing for themselves and their families without discrimination based on race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status.<sup>35</sup>

This ordinance applies to, regulates and determines rights, obligations and remedies under every agreement for a rental unit located within this municipality, regardless of where the agreement is made. This ordinance applies to rental agreements under subsidy programs of agencies of the United States and/or the State to the extent that this ordinance is not in direct conflict with statutory or regulatory provisions governing such programs.<sup>36</sup>

## **Tenant and Landlord Rights & Responsibilities**

**“Landlord” means the owner, agent, lessor, or sublessor, or the successor in interest of any of them, of a rental unit or the building of which it is part.<sup>37</sup>**

**“Owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.<sup>38</sup>**

**“Premises” means the rental unit and the structure of which it is part, and facilities and appurtenances therein, and grounds, areas, and facilities held out for the use of tenants.<sup>39</sup>**

**“Tenant” means a person entitled by a written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a rental unit to the exclusion of others.<sup>40</sup>**

Every landlord shall:

- (a) Maintain the premises in compliance with all local, state, and federal codes and shall promptly make any and all repairs necessary to fulfill this obligation.<sup>41</sup>

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<sup>33</sup> Municipal Code of Chicago 5-12-010 Title, purpose and scope

<sup>34</sup> Id.

<sup>35</sup> Chicago Fair Housing Ordinance 5-8-020 Discrimination prohibited

<sup>36</sup> Municipal Code of Chicago 5-12-010 Title, purpose and scope

<sup>37</sup> Municipal Code of Chicago 5-12-030(b) Definitions

<sup>38</sup> Municipal Code of Chicago 5-12-030(c) Definitions

<sup>39</sup> Municipal Code of Chicago 5-12-030(e) Definitions

<sup>40</sup> Municipal Code of Chicago 5-12-030(h) Definitions

- (b) Disclose to the tenant in writing at or before the commencement of the tenancy the name, address, and telephone number of:
  - (1) The owner or person authorized to manage the premises; and
  - (2) A person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.<sup>42</sup>
- (c) Disclose to the tenant in writing conditions affecting habitability, including:
  - (1) Any code violations in the previous 12 months for the unit and common areas and provide notice of any pending code enforcement litigation. The notice should provide any case numbers and/or identification numbers of proceedings.<sup>43</sup>
  - (2) Any notice of intent by a city or any utility provider to terminate water, gas, electrical, or other utility service to the rental unit or common areas. The disclosure must state the type of service being terminated, dates of termination, and whether the termination affects the unit, common areas, or both. A landlord is obligated to provide disclosure of all utility termination information throughout a tenancy.<sup>44</sup>

A person who enters into a rental agreement and fails to comply with the identification of owners and agents becomes a designated agent for the purpose of (i) service of process and receiving and receipting for notices and demands and (ii) performing the obligations of the landlord under the city rental inspection ordinance and the rental agreement.<sup>45</sup>

If the landlord fails to comply with his or her disclosure responsibilities in section (c), a tenant may deliver a written notice to the landlord specifying the conditions that were not disclosed pursuant to section (c) and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of written notice by the landlord if the code violations or utility terminations not disclosed pursuant to section (c) are not remedied within the time period specified in the notice. The tenant shall deliver possession of the unit to the landlord within 30 days after the expiration of the time period specified in the notice. If the tenant fails to deliver possession, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect. If the rental agreement does terminate, the landlord shall return all prepaid rent, security deposit, and interest legally recoverable by the tenant.<sup>46</sup>

During or after a foreclosure action a receiver, mortgagee in possession, or successor in interest shall maintain the unit in a condition that is safe, healthful, and fit for occupancy and in compliance with the terms of any lease until the rights of possession of all occupants have been terminated.

Every tenant shall:

- (a) Keep that part of the premises that he or she occupies and uses as safe as the condition of the premises permits;
- (b) Dispose of all ashes, rubbish, garbage and other waste from his or her rental unit in a clean and safe manner;
- (c) Keep all plumbing fixtures in the rental unit or used by the tenant as clean as their condition permits;
- (d) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises;
- (e) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person on the premises with his or her consent to do so; and

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<sup>41</sup> Municipal Code of Chicago 5-12-070 Landlord's responsibility to maintain

<sup>42</sup> Municipal Code of Chicago 5-12-090 Identification of owner and agents

<sup>43</sup> Municipal Code of Chicago 5-12-100(a) Notice of conditions affecting habitability

<sup>44</sup> Municipal Code of Chicago 5-12-100(b) Notice of conditions affecting habitability

<sup>45</sup> Municipal Code of Chicago 5-12-090 Identification of owner and agents

<sup>46</sup> Municipal Code of Chicago 5-12-110(a), (b) Tenant remedies

- (f) Conduct his or herself and require other persons on the premises with his or her consent to conduct themselves in a manner that will not disturb peaceful enjoyment of the premises of other residents.<sup>47</sup>

### **Access to Rental Unit**

**“Emergency” means a serious health and safety condition that is determined by a landlord or city code official to be of immediate harm or danger to any person or the public.**

- (a) The landlord or city code official may enter the rental unit in order to inspect the premises, make necessary or agreed repairs, alternations or improvements, or supply necessary or agreed services. The landlord and city code official shall not abuse the right of access or use it to harass the tenant.<sup>48</sup>
- (b) The landlord and city code official shall give the tenant at least 48 hours written notice of his or her intent to enter and may enter only between 8:00 a.m. and 8:00 p.m. or at any other time expressly requested by the tenant. A written notification shall:
  - (1) Provide the date and time the landlord or city code official will require access to the unit.
  - (2) Include a name, address, and telephone number of the individual or entity the tenant may contact with concerns or to reschedule unit access.
  - (3) Be in the tenant’s native language to the maximum practical extent possible.
  - (4) Be served by delivering a copy to the tenant, or by leaving it with someone 13 years of age or older residing in the unit; or by sending a copy of the notice to the occupant by registered mail, return receipt requested.
- (c) The landlord and city code official shall provide a general written notice to all tenants who may be potentially affected by entry during repair work of common facilities or other apartments. Such notice shall be served upon potentially affected tenants 48 hours in advance of entry and include information required in section (b).
- (d) In case of emergency, a landlord or city code official may enter a rental unit without notifying a tenant if necessary.<sup>49</sup> Within 24 hours of accessing a unit, however, a landlord or city code official shall provide written notification, according to section (b). A landlord or city code official should make best efforts to notify tenants prior to entry, even if it is less than 48 hours.
- (e) The tenant shall not unreasonably withhold consent to the landlord or city code official to enter the rental unit in order to inspect the premises, make necessary or agreed repairs, alternations or improvements, or supply necessary or agreed services.<sup>50</sup>

### **Inspection of Rental Unit**

**“City Code Official” means a qualified individual employed by a city to inspect a rental unit or building for compliance with local maintenance codes, statutes, regulations, and ordinances. A code official must, at a minimum, meet any equivalent combination of education and experience which provides him or her with the knowledge, skills, and abilities required to perform the job, as established by the city.**

**“Rental Agreement” means all written or oral agreements embodying the terms and conditions concerning the use and occupancy of a rental unit by a tenant.<sup>51</sup>**

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<sup>47</sup> Municipal Code of Chicago 5-12-040 Tenant responsibilities

<sup>48</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(A) Access

<sup>49</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(C) Access

<sup>50</sup> City of Evanston, Illinois Municipal Code 5-3-4-3(A) Access

<sup>51</sup> Municipal Code of Chicago 5-12-030(g) Definitions

**“Rental Unit” means a unit in a structure or part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household and a member or members of that household make payments to the landlord for the unit under a rental agreement.** <sup>52</sup>

A rental unit may be inspected by a city code official for the purpose of determining whether the unit is in compliance with all applicable maintenance codes, statutes, regulations, and ordinances.

- (a) An inspection by a city code official shall occur no more than once a year except in the event that a complaint about the premises is made to the city as prescribed in section (c).
- (b) Any annual inspection shall be coordinated as closely as possible with the inspection and enforcement procedures of city agencies, including the Fire Department, Police Department, and Building Department.
- (c) A city code official may inspect a rental unit following a complaint if:
  - (1) The complaint is made by a tenant living in the rental unit to be inspected; or
  - (2) The complaint is made by someone other than the tenant and alleges a condition that (i) threatens health and safety and (ii) violates a specific maintenance law, ordinance, or regulation.
- (d) Upon entering any rental unit, a city code official shall be required to exhibit adequate identification that documents his or her employment and position as a city employee and includes photo identification.
- (e) During an inspection, a city code official shall limit the scope of the inspection to only those items that pertain to the property maintenance codes, statutes, ordinances, and regulations applicable to the unit being inspected.
- (f) A city may assess an annual fee to the owner for a unit or building inspection that does not exceed more than \$150 per structure for one to six unit buildings or \$350 per structure for buildings with over six units.
- (g) An owner or landlord’s failure to pay the annual fee shall not be just cause for a city to issue a vacate order.

### **Code Violations**

- (a) If a city code official finds violations of city code during an inspection of a rental unit or building, the city code official shall issue a written notice within seven days and by registered mail, return receipt requested, to the building owner and any tenants living in the affected rental units. A notice shall be in the tenant’s native language to the maximum practical extent possible and shall include:
  - (1) A list of the deficiencies;
  - (2) The necessary conditions that shall be made;
  - (3) A reasonable time period, not to exceed 30 days from issuance of the written notice, to correct the deficiencies; and
  - (4) The date of the follow-up inspection.
- (b) If, after an initial and follow-up inspection, a city code official conducts a third or subsequent inspection of a rental unit or building to verify its compliance with city codes, a city may assess a fee of no more than \$100.00 for each violation in a unit against the building owner for continued violations, except when a subsequent inspection is necessary due to an error made by the city.

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<sup>52</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

## **Tenant Displacement**

**“Uninhabitable” means a rental unit or building which has an immediately hazardous, life-threatening defect which affects a tenant’s health or safety insomuch as it makes the unit unfit for occupancy.**

- (a) If a city code official determines that a rental unit or building is uninhabitable, and the deficiency has not been corrected after 48 hours of the most recent official inspection, a city may seek a court order requiring that the tenants vacate the property.
- (b) The vacate order shall require all affected tenants to vacate the premises within a specified period of time, not less than 48 hours from date of service of notification.
- (c) A city shall provide all affected tenants and the owner written notification of the vacate order. The written notice shall:
  - (1) Provide the date and time a tenant is required to vacate the unit and property.
  - (2) Include a name, address, and telephone number of the individual or entity at the city that the tenant may contact with questions or concerns about the order.
  - (3) Be in the tenant’s native language to the maximum practical extent possible.
  - (4) Be served by hand delivering a copy to the tenant, or by leaving it with someone 13 years of age or older residing in the unit; or by sending a copy of the notice to the occupant via overnight mail service.
  - (5) Provide a list of local social service agencies that address housing and a list of nearby shelters and motels.
  - (6) Provide information about how and when a tenant can receive relocation assistance and reimbursement for relocation expenses.
- (d) The property owner shall be liable to the City if, after the Court has ordered a property vacated, the City paid the costs of relocation for the tenants. If a tenant has paid the cost of relocation, the property owner shall be liable to the tenant for costs. Relocation costs shall include a tenant’s shelter, moving, and storage until the unit can be reoccupied or until the end of the lease term, whichever is shorter.
- (e) The landlord shall immediately return all affected tenant’s prepaid rent, security deposit, and accrued interest.

## **Complaints for Abusive Practices**

**“Material Noncompliance” means a failure to comply with laws or regulations when that failure increases risk to landlord or tenant, or adversely affects the rights and welfare of the landlord or tenant. This may include only a single instance of non-compliance, if substantial, or repeated minor violations.<sup>53</sup>**

### **Landlord Remedies – Failure to Allow Access:**

If a tenant refuses a landlord or city code official to allow a lawful access, the landlord may seek injunctive relief and recover damages to compel access or terminate the rental agreement.<sup>54</sup>

### **Tenant Remedies – Unlawful Access:**

If a landlord or city code official makes an unlawful entry in an unreasonable manner or makes unreasonable demands for entry otherwise lawful, but which harass the tenant, the tenant may obtain

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<sup>53</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

<sup>54</sup> Municipal Code of Chicago 5-12-060 Remedies for improper denial of access

injunctive relief and damages to prevent the recurrence of the conduct or terminate the rental agreement.<sup>55</sup>

**Landlord Material Noncompliance:**

If there is material noncompliance by the landlord with a rental agreement or city, state, and federal law, that renders the property and premises unfit and uninhabitable, a tenant may deliver a written notice to the landlord specifying the acts and/or omissions establishing the material noncompliance and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of written notice by the landlord if material noncompliance is not remedied within the time period specified in the notice. If the material noncompliance is not remedied within the time period specified in the notice, the rental agreement shall terminate, and the tenant shall deliver possession of the unit to the landlord within 30 days after the expiration of the time period specified in the notice. If the tenant fails to deliver possession, then the tenant’s notice shall be deemed withdrawn and the lease shall remain in full force and effect. If the rental agreement does terminate, the landlord shall return all prepaid rent, security deposit, and interest legally recoverable by the tenant.<sup>56</sup>

**Tenant Material Noncompliance:**

The landlord may enter a rental unit and have the necessary work done in the manner required by law if there is material noncompliance by the tenant in regard to safety and habitability of a rental unit, and the tenant fails to comply as quickly as conditions allow in a case of emergency or in cases other than emergencies within 14 days of receipt of written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time. The landlord shall be entitled to reimbursement from the tenant of the costs of repairs.<sup>57</sup>

**Right to a Hearing**

In the event of a violation of this code, a landlord or tenant shall have the right to a hearing. The affected party shall be notified of their right to a hearing, shall have the right to examine all documents regarding violations before the hearing, and shall have the right to representation at the hearing. The hearing shall be scheduled no less than ten days and no more than 30 days after receipt of notice. The written notice shall be sent to both parties by registered mail, return receipt requested and shall:

- (a) Specify all code violations;
- (b) State the date, time, place, and purpose of the hearing; and
- (c) Inform parties of their right to legal representation at the hearing.

**Definitions**

**“City Code Official” means a qualified individual employed by a city to inspect a rental unit or building for compliance with local maintenance codes, statutes, regulations, and ordinances. A code official must, at a minimum, meet any equivalent combination of education and experience which provides him or her with the knowledge, skills, and abilities required to perform the job, as established by the city.**

**“Emergency” means a serious health and safety condition that is determined by a landlord or city code official to be of immediate harm or danger to any person or the public.**

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<sup>55</sup> Id.

<sup>56</sup> Municipal Code of Chicago 5-12-110(a), (b) Tenant remedies

<sup>57</sup> Municipal Code of Chicago 5-12-130(c) Landlord remedies

**“Landlord” means the owner, agent, lessor, or sublessor, or the successor in interest of any of them, of a rental unit or the building of which it is part.<sup>58</sup>**

**“Material Noncompliance” means a failure to comply with laws or regulations when that failure increases risk to landlord or tenant, or adversely affects the rights and welfare of the landlord or tenant. This may include only a single instance of non-compliance, if substantial, or repeated minor violations.<sup>59</sup>**

**“Owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgage in possession.<sup>60</sup>**

**“Premises” means the rental unit and the structure of which it is part, and facilities and appurtenances therein, and grounds, areas, and facilities held out for the use of tenants.<sup>61</sup>**

**“Rental Agreement” means all written or oral agreements embodying the terms and conditions concerning the use and occupancy of a rental unit by a tenant.<sup>62</sup>**

**“Rental Unit” means a unit in a structure or part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household and a member or members of that household make payments to the landlord for the unit under a rental agreement.<sup>63</sup>**

**“Tenant” means a person entitled by a written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a rental unit to the exclusion of others.<sup>64</sup>**

**“Uninhabitable” means a rental unit or building which has an immediately hazardous, life-threatening defect which affects a tenant’s health or safety insomuch as it makes the unit unfit for occupancy.**

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<sup>58</sup> Municipal Code of Chicago 5-12-030(b) Definitions

<sup>59</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

<sup>60</sup> Municipal Code of Chicago 5-12-030(c) Definitions

<sup>61</sup> Municipal Code of Chicago 5-12-030(e) Definitions

<sup>62</sup> Municipal Code of Chicago 5-12-030(g) Definitions

<sup>63</sup> City of Evanston, Illinois Municipal Code 5-3-2(A) General definitions

<sup>64</sup> Municipal Code of Chicago 5-12-030(h) Definitions

## **About the Interfaith Housing Center of the Northern Suburbs**

The Interfaith Housing Center of the Northern Suburbs is a nonprofit, HUD-certified organization that advocates for fair and affordable housing in 16 northern suburbs of Chicago. It counts among its membership congregations and civic organizations throughout the region. Based in Winnetka, Illinois, it has been fulfilling its mission to foster a housing market open to people of all ages and income levels, regardless of race, religion, family composition, or any other legally protected classes, since 1972.

Contact Information:  
Interfaith Housing Center of the Northern Suburbs  
614 Lincoln Ave.  
Winnetka, IL 60093  
(847) 501-5760  
[www.interfaithhousingcenter.org](http://www.interfaithhousingcenter.org)

## **About the Sargent Shriver National Center on Poverty Law**

Shriver Center housing attorneys advocate to preserve low-income housing and protect residents of public and subsidized housing throughout Illinois. We play a pivotal role in overseeing and documenting the Chicago Housing Authority's (CHA's) Plan for Transformation, defending low-income renters through impact litigation, advancing innovating housing policies at the state and local levels, and providing professional support to housing advocates nationwide. The Shriver Center advances fair housing and serves as an integral player in the national housing rights arena.

Contact Information:  
Sargent Shriver National Center on Poverty Law  
50 E. Washington, Suite 500  
Chicago, IL 60602  
(312) 263-3830  
[www.povertylaw.org](http://www.povertylaw.org)

Thank you to First Bank & Trust, Evanston, IL for generously providing funds to publish this document.