

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE NO. 713-2014

AN ORDINANCE AMENDING CHAPTER 22 (HOUSING AND RENTALS) OF THE
AVALON BOROUGH CODE

WHEREAS, Chapter 22, entitled "Housing and Rentals" of the Avalon Borough Code establishes procedures for the licensing and regulations of rental properties in the Borough of Avalon; and

WHEREAS, Borough Council desires to amend Articles 1, 2, 3 and 4 of Chapter 22 as set forth herein.

BE IT ORDAINED by the Borough Council, in the Borough of Avalon, County of Cape May and State of New Jersey, as follows:

SECTION 1: Chapter 22, Article 1, entitled "Registration, Inspection and Licensing of Rental Properties" is amended to read as follows:

Article 1 Registration, Inspection and Licensing of Rental Properties

22-1 RENTAL PROPERTIES.

22-1.1 Definitions.

Unless the context clearly indicates a different meaning, the following words or phrases when used in this chapter shall have the following meaning:

Agent or Managing Agent shall mean the individual or individuals designated by the owner as the person(s) authorized by the owner to perform any duty imposed upon the owner by this chapter, provided that in order to be an Agent or Managing Agent the individual designated must reside in Cape May County, New Jersey as set forth in N.J.S.A. 46:8-28(c). The term does not include a licensed real estate broker or salesman of the State of New Jersey as those terms are defined by N.J.S.A. 45:15-3; unless such broker or salesperson shall affirmatively consent to act as such agent or managing agent.

Apartment or Dwelling shall mean any apartment, cottage, bungalow or other dwelling unit consisting of one (1) or more rooms occupying all or part of a floor or floors in a building of one (1) or more floors or stories, but not the entire building, whether designed with or without house-keeping facilities for dwelling purposes and notwithstanding whether the apartment be designed for residence, for office, or the operation of any industry or business, or for any other type of independent use.

Building shall mean any building or structure, or part thereof, used for human habitation, use or occupancy and includes any accessory buildings and appurtenance belonging thereto or usually enjoyed therewith. Consistent with the definitions contained in the Uniform Construction Code (UCC) and the Uniform Fire Code (UFC), "Building" shall also mean "A structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind. When used herein, building and structure shall be interchangeable except where the context clearly indicates otherwise."

Dwelling Unit shall mean any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one (1) or more persons, including but not limited to the owner thereof, or any of his servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities, and improvements connected with use or occupancy thereof. This definition applies only to those Dwelling Units, including single family residences, which are available for lease or rental purposes. Consistent with the definitions contained in The Uniform Construction Code (UCC) and the Uniform Fire Code (UFC) the definition shall also mean "A single unit providing complete, independent living facilities for one or more persons living as a single, housekeeping unit, including permanent provisions for living, sleeping, eating, cooking and sanitation."

Guests See definition of "Visitors".

Landlord See definition of "Owner."

License or Rental License shall mean the license issued by the Borough attesting that the Rental Unit has been properly inspected and licensed at required intervals in accordance with this chapter.

License Year shall be for a maximum term of 12 months as defined in Section 22-1.8.1 of this chapter.

Licensee shall mean the person to whom the license is issued pursuant to this chapter. The term "Licensee" includes within its definition the term "Agent" or "Managing Agent", where applicable.

Licensing Clerk shall mean the municipal official or employee designated to receive Rental License applications and registrations and to issue licenses pursuant to this chapter.

Managing agent See definition of "Agent."

Occupant shall mean person who resides in a Rental Unit including, but not limited to, the named Tenant(s). The term shall include residents, overnight visitors and children. The term shall not include those visitors or guests who are not residing therein.

Owner shall mean the person who owns, purports to own or exercises control over any building. Consistent with the definitions contained in The Uniform Construction Code (UCC) and the Uniform Fire Code (UFC) "Owner" shall also mean: "The owner or owners in fee of the property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation, directly or indirectly in control of a building, structure or real property and shall include any subdivision thereof of the State."

Person shall mean an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Realtor shall mean an individual who is licensed by the State of New Jersey as a real estate salesperson, a real estate broker-salesperson, and/or a real estate referral agent, as those terms are defined in the New Jersey Real Estate Brokers and Salesmen Act ("Brokers Act"), N.J.S.A. 45:15-1 to -29.5.

Rental agent shall mean the person who negotiates for the lease of the Rental Unit on behalf of the Owner. Such person shall be the holder of the required license mandated by the State of New Jersey. The Rental Agent is not the Managing Agent under the terms of this chapter unless the Rental Agent should expressly consent to assume such duties or obligations.

Rental Property shall mean a building or structure which contains one or more Rental Units including, but not limited to, Resort Houses. The term "Rental Property" shall not include any property covered by the New Jersey Hotel and Multiple Dwelling Law. N.J.S.A. 55:13A-1, et seq.

Rental Unit shall mean, collectively the term Apartment or Dwelling, Building, Dwelling Unit, as defined by this chapter. This definition shall not apply to any single-family home which is not available for rental purposes.

Resort House shall mean a residentially styled structure that is used, maintained, marketed, promoted and/or advertised as a destination location available for rent, lease or sub-lease for a gathering of invited guests for functions and special events, including, but not limited to, weddings, retreats, family reunions, parties and meetings. A Resort House is a commercial use appropriate only in areas zoned for hotel/motel use and never has been permitted as a legal use under existing ordinance standards. A Resort House is a commercial use and is not a traditional single-family residence and requires more off-street parking in order to accommodate the number of guests. Traditional seasonal rentals as defined in Chapter 22 or bed and breakfast establishments, licensed by the Borough and intended to accommodate not more than 18 persons shall not be considered to be Resort Houses.

Seasonal Rental shall have the same meaning as that of "Short Term Rental" but, in addition thereto, shall encompass any rental between May 1 through September 30.

Short Term Rental shall mean any lease or tenancy, whether written or oral for any term of less than 175 consecutive days where the tenant(s) has/have a permanent place of residence elsewhere, and shall include any tenancy between May 1 and September 30.

Tenant shall mean any person who occupies any Rental Unit, as a named lessee, pursuant to the terms of a lease agreement, whether written or oral, or who occupies a Rental Unit pursuant to permission or license of any kind granted by an Owner or Owner's Agent. The term shall be construed liberally to include not only tenants but guests and occupants. The term shall also include sub-tenants.

Visitor(s) shall mean a person or persons who, on a temporary or occasional basis, visit(s) a Rental Unit at the express or implied invitation of the Tenant(s) but who does/do not reside there or sleep there. The term is the same as "Guests".

22-1.2 Short Title; Scope and Applicability.

This article shall be known as the "Rental License Regulations" of the Borough.

a. Introduction

All Rental Properties, or properties containing Rental Units, including but not limited to Resort Houses, are subject to licensing and inspection by the Borough. All such properties, in addition to the requirement of being licensed and inspected by the Borough, are also required to be registered pursuant to the Landlord Registration Act. Registration applies to all Rental Properties except those containing one (1) or two (2) Rental Units which are owner-occupied. Multiple dwellings containing three (3) or more units, regardless of whether or not any of the units are rentals, must be registered with the State of New Jersey.

b. License Requirements.

This chapter is applicable to each and every Rental Unit or Rental Property which shall include:

1. A property with one or more Rental Units including owner-occupied properties with one or more Rental Units; and including duplex and triplex properties;
2. Each condominium unit which is rented but excluding condominium motels.
3. Resort Houses.

c. Registration Requirements.

In addition to the licensing requirements imposed by this chapter, certain properties must also be registered with either the Borough or the State of New Jersey pursuant to the Landlord Registration Act, N.J.S.A. 46:8-27 to 46:8-37. That law requires:

1. Registration of all Rental Properties, except for owner-occupied properties which contain one or two Rental Units in accordance with the following:
 - a. Properties containing less than three (3) Rental Units, except for owner-occupied properties containing one or two unit(s), must be registered with the Borough Clerk or the designee of the Borough Clerk.
 - b. Those properties containing three (3) or more Rental Units must be registered with the State of New Jersey.
 - c. All multiple dwellings containing three (3) or more units, regardless of whether or not any of the units are rentals, must be registered with the State.

This requirement is addressed further in Section 22-1.3.1 of this Chapter.

d. Inspection Requirements.

In addition to the licensing and registration requirements applicable to Rental Properties, certain other properties, even though they are not subject to the licensing requirements of Chapter 22, are nonetheless subject to periodic inspection by the Borough pursuant to Chapter 21 of the Avalon Borough Code. The frequency of such inspections is determined by New Jersey State Law.

22-1.3 Policy Statement.

It is the stated policy of the Borough that every property containing Rental Unit(s) within the Borough shall be required to submit to inspection and be licensed in order to be leased or occupied.

It is the opinion of the Borough Council, the legislative body of the Borough, that such licensing is necessary for the protection of the public; to establish the location of all such Rental Units in order to protect and promote the enforcement of Land Use Ordinances, such as zoning, site plan, subdivision, and other similar ordinances of the Borough; to provide emergency response teams with adequate knowledge of the location of such units within the Borough in order to assist in timely, efficient and appropriate response in event of an emergency affecting such property or the occupants thereof; for the purpose of assisting in the periodic review and updating of the Municipal Master Plan; in order to assist the Borough in providing adequate facilities involving sewer, water, fire protection, solid waste disposal and the disposal of recyclable items and materials and related services; and otherwise to promote the public health, safety and welfare.

Moreover, as recognized by the New Jersey State Legislature in enacting N.J.S.A. 40:48-2.12n many municipalities in this State, and the residents thereof, have experienced disturbances, damages and public expense resulting from carelessly granted and inadequately supervised rentals to irresponsible tenants by inept or indifferent landlords. The stated purpose of N.J.S.A. 40:48-2.12(n) was to enable municipal governing bodies to take effective action to assure that excesses, when they occur, shall not be repeated, and that landlords be held to sufficient standards of responsibility. Therefore, to preserve the peace and tranquility of such communities, including Avalon, for permanent residents, and for other owner-occupants as well as other tenants and vacationers, and to maintain viability as vacation spots for citizens of New Jersey as well as other States and Counties it is necessary and desirable that those communities have adequate means to curb and discourage those occasional excesses arising from irresponsible rentals, including seasonal rentals. The New Jersey Legislature, pursuant to N.J.S.A. 40:52-1(n) specifically authorized municipalities to license and regulate the "rental of real property for a term of less than one hundred seventy-five (175) consecutive days for residential purposes by a person having a permanent place of residence elsewhere."

Furthermore, most, if not all, such Rental Units are located within residential neighborhoods in the Borough and abut owner-occupied homes and residences and many such Rental Units have an immediate and harmful negative impact upon the immediate neighbors and interfere with the peace and tranquility that such neighbors have every right to expect. Past experience indicates that such problems are especially associated with "short-term rentals" that is, rentals of less than one-hundred and seventy five (175) days.

22-1.3.1 Dual Responsibilities of Owners of Rentals Units.

The Owner of Rental Unit(s) has a dual responsibility as follows:

1. Each Rental Property containing one or more Rental Units must be licensed and inspected, at least annually, by the Borough in accordance with this chapter; and
2. Each property containing one or more Rental Units must, in addition, be registered in accordance with the Landlord Registration Act, N.J.S.A. 46:8-27 to 46:8-37 as follows:
 - a. Owner occupied one or two Rental Units: No registration is required.
 - b. Non-owner occupied one or two Rental Units: Must be registered (in addition to being licensed and inspected) with the Municipal Clerk or designee.
 - c. Properties containing three or more Rental Units must be registered with the State of New Jersey.
3. As an accommodation to Borough Owners, and to the extent permitted by law, the application for a Rental License shall contain the information required by the Landlord Registration Act and, when completed and filed by the Owner, shall be indexed and made available for public inspection as required by said law. This dual filing accommodation shall not, however, relieve the Owner of any other duty or responsibility imposed by the Landlord Registration Act as the same may be amended or supplemented.

22-1.4 License Requirements for All Rental Properties

- a. All Rental Properties located within the Borough shall be required to be inspected and licensed annually by the Borough. In addition, all such Rental Properties shall also be registered with either the Borough Clerk (or designee) or the State of New Jersey as required in Section 22-1.3.1. No Rental Property or Rental Unit shall be leased or occupied unless a Rental License has been issued for the Property or Rental Unit as provided in this chapter. This provision does not apply to hotels, motels, or condominium motels.
- b. All Rental Units shall be licensed by the Borough. Application for a Rental License shall be made on forms which shall be provided for that purpose by the Borough Licensing Clerk. Such licensing shall be required on an annual basis; that is, at least once in every consecutive twelve (12) month period or term as provided herein. An application form shall be required for each Rental Unit and a Rental License shall be required for each individual Rental Unit.

22-1.5 Procedure for Obtaining License.

The Owner of a Rental Unit shall submit a License application together with the required fee to the Licensing Clerk. Such application shall be on forms supplied by the Borough. No inspection of the Rental Unit shall be conducted by the Borough until such time as the Application is deemed complete by the Borough and the Owner pays all required fees.

Upon the filing of an initial application for a Rental License, the Rental Unit shall be inspected prior or the issuance of the Rental License and such License shall be issued only in the event that the Rental Unit passes such inspection in accordance with procedures set forth in Section 22-1.8 of this chapter.

22-1.6 Conditions for Obtaining License.

In order to qualify for a Rental License, the following requirements shall be met by the applicant or applicant's agent:

- a. An application on a form supplied by the Borough shall be completed and shall contain all of the information, including any attachments which may be required.
- b. All municipal taxes, water and sewer charges and any other municipal assessments are paid on a current basis.
- c. Prior to the issuance of a Rental License, on either an initial application or on any renewal application, the Rental Unit must first be inspected by the Borough and pass such inspection. The procedure for the scheduling of such inspections shall be in accord with the procedure set forth in Section 22-1.8 of this chapter.
- d. If the address of the record Owner of the Property for which a Rental License is sought is not located in Cape May County, New Jersey, the Owner shall designate in writing an Agent or Managing Agent who resides in Cape May County who is authorized to accept notices from a tenant and to issue receipts therefore and to accept service of process on behalf of the record Owner.

22-1.7 Denial of Issuance or Renewal of Rental License.

The Borough may deny the issuance of a License or may refuse to renew a Rental License in accordance with the provisions of this chapter.

A Rental License shall not be issued for any Property for which a Rental License has been suspended or revoked until the period of suspension or revocation has expired, regardless of any change in ownership of the Property.

22-1.7.1 Grounds for Denial of Rental License or Any Renewal.

Any application for a Rental License, including any renewal thereof, may be denied and any Rental License that has been issued pursuant to this chapter may be revoked or suspended for any of the following causes:

- a. Any fraud, material misrepresentation, or false statement contained in the application for license.
- b. Any fraud, material misrepresentation, or false statement made in connection with the leasing of any Rental Unit.
- c. Any violation of this Chapter.
- d. Conviction of the Licensee of any felony or of a misdemeanor involving moral turpitude.
- e. Conducting the licensed Rental Unit(s) business in any unlawful manner or so as to constitute a breach of the peace or a menace to the health, safety, or welfare of the public, including such conduct when engaged in by the licensee's agents, servants or employees.
- f. Failure of the applicant or Licensee to comply with the conditions required for the issuance of a Rental License as set forth in this Chapter.
- g. Any grounds which would justify the revocation or suspension of a Rental License as specified in Article 3 of this Chapter shall also be cause for the denial or any renewal of a Rental License.

22-1.7.2 Appeal.

Any Person who is denied the issuance of a Rental License or any renewal thereof, or who has had a Rental License revoked or suspended may appeal such determination administratively to a Hearing Officer appointed by the Borough in accordance with the procedures set forth in Article 4 of this chapter. Such appeal shall be filed not later than 45 days following notification of Borough action.

Such appeal shall be in writing, with the original filed with the Borough Clerk, and a copy filed at the same time with the Licensing Clerk. Upon receipt of such appeal, the Borough Clerk shall notify the Business Administrator and the Borough Solicitor of such filing and the Borough Clerk shall forward a copy of the appeal notice to the Hearing Officer who shall schedule a hearing on such appeal not sooner than 10 nor later than 30 business days following filing. Following a hearing, the Hearing Officer shall submit his/her findings and determination to the Borough Council following the same general procedures outlined in Article 4 of this Chapter. The Hearing Officer shall transmit his findings of fact and conclusions of law to the Borough Council within fifteen (15) days of the conclusion of the hearing. Borough Council shall make the final determination by resolution and may, in its discretion, accept, reject, or modify the findings and recommendations of the Hearing Officer.

The Municipal Prosecutor or his designee shall represent the Borough at the hearing of the appeal.

22-1.7.3 Notice of Appeal; Contents.

The notice of appeal to be filed with the Borough Clerk shall be in writing and shall contain the following:

- a. Name, address, telephone number and email address of the person(s) filing the appeal;
- b. Name, address, telephone number and email address of the Managing Agent, if any;
- c. Location of the Rental Property specifying Block, Lot number and street address;
- d. Number of Rental Units at that location licensed or intended to be licensed;
- e. Specifying the specific grounds for the appeal.

22-1.8 License Term; Scheduling of Inspections.**22-1.8.1 Term.**

- a. The Rental License term shall commence on the day that the Property passes inspection required by this chapter and shall expire the following year on the last day of the month in which the Initial Scheduled Inspection was scheduled. For example, if the Initial Scheduled Inspection occurred on February 10 of a given year, the Rental License shall expire at the end of February of the following year. The initial license term may be for less than 12 months depending upon the date of submission of a completed application, the payment of all fees and other charges and a passing inspection of the Rental Property by the Borough.
- b. Initial Application – When the Licensing Clerk deems an application for a Rental License complete, the Rental Unit shall be inspected and the Owner shall be informed of the scheduled date for inspection, which shall be the “Initial Scheduled Inspection Date”.
- c. If the Rental Property passes such inspection, the Rental License shall be issued and dated as of the date the Rental Unit passes inspection but shall expire the following year on the last day of the month in which the Initial Scheduled Inspection occurred as provided in subparagraph b, above.

- d. If the Rental Unit fails inspection, a re-inspection will be scheduled. Additional re-inspections may be scheduled as circumstances at the Rental Unit may require. A Rental License shall be issued and dated as of the date the Rental Unit passes the required inspection but will nevertheless expire the following year on the last day of the month in which the Initial Scheduled Inspection occurred.
- e. Rental Properties are located in geographical zones which are determined administratively by the Licensing Clerk. Depending on the geographical location of the Rental Property, the License Year shall expire one year after the last day of the month in which such property was initially scheduled for inspection ("Initial Scheduled Inspection Date"). All Rental Properties within a certain geographical zone shall expire during the same month regardless of the date an Owner submits an application for a Rental License.
- f. Renewal Application – The License Clerk shall schedule renewal inspections generally during the first 4 months of the succeeding year. Inspections are scheduled based on the geographic location of the subject Rental Property and in the same month that the current Rental License is scheduled to expire.
1. Owners will be notified by mail the date scheduled for inspection of their Rental Property. This shall be the "Initial Scheduled Inspection Date for Renewal of Rental License" and shall be prior to the scheduled expiration of the current Rental License. When issued, which is the date when the Rental Unit or Property passes inspection, the Rental License shall remain in effect until the last day of the month in which the subsequent "Initial Scheduled Inspection Date for Renewal of Rental License" is scheduled to occur in the next succeeding License Year unless sooner revoked or suspended in accordance with this chapter.
 2. No renewal inspection shall be conducted, however, and no Rental License will be issued, until the owner pays all required fees, and otherwise complies with all conditions imposed by the Borough for the issuance of a Rental License.
- g. By way of illustration, if an Owner is scheduled to have a Rental Unit inspected in February but a Rental License is not issued until sometime after the end of February as a result of an initial inspection failure or the Owner's failure to comply with the provisions of this Ordinance, the Rental License shall thereafter be issued and dated as of the date the Property passes inspection and the Owner complies with the provisions of this ordinance and expire the last day of February of the following year.
- h. Reinspection. Should the Rental Property fail inspection, either on an initial application for licensing or upon a renewal application, the Owner shall be required to address to the Borough's satisfaction the reasons for the failed inspection and the Rental Property will be re-inspected before a Rental License is issued by the Borough and delivered to the Owner or Owner's Agent.
- i. Possession of License Required. No Rental Unit shall be occupied (other than by the Owner) until such time as a valid Rental License is issued by the Borough and in the possession of the Owner or the Owner's Agent. On an initial application for a Rental License, or pending any renewal application an Owner, Agent, or Realtor may offer the Rental Unit for lease and may negotiate for the lease thereof but the Owner, Agent or Realtor must condition all such negotiations and any lease agreement, whether oral or written, on the Owner's possession of a valid Rental License for the subject premises before any actual occupancy of the Rental Unit may occur. If a Rental Unit fails the initial inspection and does not pass a re-inspection before the License expires, such Rental Unit may not be occupied until such time as it passes inspection and the Owner is actually in possession of a valid, current Rental License.
- j. Expiration of Rental Licenses. All Rental Licenses shall expire on the last day of the month of the Initial Scheduled Inspection Date for Renewal of Rental License.

22-1.8.2 Transferability.

In the event that a property containing one or more licensed Rental Units is sold, assigned or transferred during the License Year the Rental License shall be transferable to the new owner.

22-1.9 Property Inspection; Nature Thereof; Frequency.

22-1.9.1 Inspection; Frequency. Each Rental Unit shall be inspected at least once in each License Year.

22-1.9.2 Nature of Inspection. Such inspection shall be carried out in accordance with the following:

- a. All Rental Units, except for those units inspected by the State of New Jersey pursuant to the New Jersey Hotel and Multiple Dwellings Act shall be inspected by the Borough to determine compliance with the Uniform Fire Safety Act of the State of New Jersey and the International Property Maintenance Code (IPMC) to the extent that same has been adopted by the Borough, as well as any other code or codes in effect and applicable at the time of any inspection.
- b. Condominium Units. Each condominium unit constitutes a separate Rental Unit within the meaning of this chapter. Individual condominium units shall be inspected in accordance with paragraph a. above.

22-1.10 Property Failing Inspection; Effect; Reinspection; Suspension of License.**22-1.10.1 Unoccupied Unit(s).**

In the event that a Rental Unit fails to pass inspection, such unit or units shall not thereafter be occupied and the Owner of the Property, the Managing Agent or Rental Agent shall not rent or lease such Rental Unit, nor permit any Tenant to occupy such Rental Unit until the unit has passed inspection.

22-1.10.2 Occupied Unit(s).

Whenever a Rental Unit is occupied by a Tenant at the time of the inspection and the Rental Unit does not pass inspection, said unit may continue to be occupied provided that all such repairs or corrections are made within thirty (30) days of the original inspection. If the nature of the deficiency is such that continued occupancy poses an imminent threat to the safety of the occupants or others, then the appropriate officials may preclude further occupancy of the Rental Unit until such time as the repairs are satisfactorily made, or the officials may, in the exercise of their sound discretion, reduce the time for making necessary repairs from thirty (30) days to a lesser time depending on the nature and extent of repairs to be made and the nature of the threat. In the event that the necessary repairs are not made within the time period specified herein, then the Owner and any Tenant occupying the unit thereafter shall be deemed in violation of this article and subject to the penalty provisions hereof. Each and every day that the violation continues shall constitute a separate offense.

22-1.10.3 Reinspection.

Any Rental Unit that does not pass inspection shall be subject to re-inspection at the expiration of thirty (30) days, or upon the expiration of such shorter time, if applicable. For good cause, the thirty (30) day period may be extended by the Fire Inspector, with the consent of the Fire Official, for an additional five (5) working days on application of the Owner.

22-1.10.4 License Suspended Pending Repairs.

Upon reinspection of a Rental Unit, if it is determined that the necessary repairs have not been made within the time period specified in paragraph 22-1.10.3, above, then in such event, the Rental License shall be suspended and remain suspended until the necessary repairs have been made and the property reinspected.

22-1.11 Evidence of License; Decal to Be Affixed to Each Rental Unit.

In addition to the issuance of a Rental License each Licensee shall be issued a decal, which shall be permanently affixed to the main door through which access is gained to the Rental Unit, or in a window in the Rental Unit, in such a way that the decal is visible from the exterior of the premises in which the Rental Unit is located. The failure to affix the decal as required by this section shall constitute a violation thereof. The absence of a decal shall constitute prima facie evidence that the Rental Unit has not been issued a Rental License.

22-1.12 Prohibitions on Occupancy.**22-1.12.1 Occupancy Prohibited.**

No person, other than the Owner, shall hereafter occupy, or attempt to occupy, any Rental Unit, nor shall the Owner, Managing Agent or Rental Agent permit occupancy or attempted occupancy of any Rental Unit within the Borough unless the same has been registered, inspected and licensed in accordance with this chapter

22-1.12.2 Landlord Prohibited From Leasing Unlicensed Rental Unit.

Any Landlord who leases a Rental Unit while such unit is unlicensed or who represents to any Person, including any Tenant realtor, attorney or other agent that such unit is properly licensed, shall be deemed in violation of this Article and subject to the fines and penalties herein. Each day that a Tenant shall remain in occupancy of such unlicensed Rental Unit shall be considered a separate and distinct violation of this chapter for which the Landlord shall be responsible.

22-1.12.3 Occupancy by Tenant When Unit Unlicensed.

Any Tenant who knowingly leases and/or occupies an unlicensed Rental Unit shall be deemed in violation of this chapter and subject to the fines and penalties included herein. Each day such Tenant shall remain in occupancy of such unlicensed premises shall be considered a separate and distinct violation of this chapter.

22-1.12.4 Agent Prohibited From Renting Unlicensed Rental Unit

Any realtor, attorney or other Person who knowingly acts as a representative of the Landlord, Tenant or both in order to effectuate the leasing and/or occupancy of an unlicensed Rental Unit, shall be deemed in violation of this chapter and subject to the fines and penalties herein provided. The Borough will, on request and without charge, provide to each real estate office a list of all Rental Units which have been licensed.

22-1.13 Limitations on Occupancy.

Each Owner granted a License pursuant to this section shall be permitted to lease or rent the Rental Unit to a maximum specified number of tenants and occupants, including minor children, which number shall not exceed the number which has been computed in accordance with the following:

- a. Every room occupied for sleeping purposes by one (1) occupant shall contain at least the minimum square footage as calculated by the Borough officials using either the International Building Code 2009, New Jersey Edition, Table 1004.1.1 or the standards heretofore established by the BOCA National Building Code, 1996 Edition (Building Officials Code Administrators International, whichever is more restrictive, except that any such room in any building or structure which is in existence and for which a certificate of occupancy has been issued as of March 31, 1988 shall be deemed to accommodate two (2) people notwithstanding the fact that such room does not have the minimum square footage as required by this section.

- b. Rental Units shall not be occupied by more than the maximum number of occupants as determined in accordance with subparagraph a, above, but subject to the provisions of Section 22-1.13.1.
- c. Prohibited occupancy: Kitchens, non-habitable spaces and interior public areas shall not be occupied for sleeping purposes.

22-1.13.1 Maximum Number of Occupants Not to Exceed 24

Notwithstanding any other provision of this chapter, or any other law or ordinance, or any other rule, regulation or code to the contrary, and notwithstanding any method of calculating occupancy authorized by this chapter, no Rental Property, inclusive of all Rental Units contained therein, shall have an authorized aggregate maximum permitted occupancy greater than twenty-four (24) occupants, as provided in the Hotel/Motel Dwelling Law N.J.S.A. 55:13A-1, et seq.

For purposes of calculating occupancy capacity, each Rental Unit within a condominium form of ownership is considered a separate Rental Property. (New Jersey Condominium Act, N.J.S.A. 46:8B-1, et seq.)

22-1.14 Maximum Number of Occupants; Posting.

The maximum number of occupants shall be posted in each Rental Unit in a location visible to any occupant of the Rental Unit. It shall be unlawful for any Person or Persons to occupy the Rental Unit in excess of the maximum number permitted. Any Person violating this provision shall be subject to the penalty provisions hereof.

22-1.15. Owner Responsibilities; State and Municipal Registration; Maintain Tenant Register; Responsibility Form.

Every Owner of a Rental Property or Rental Unit shall:

- a. Comply with the registration requirements of the Landlord Registration Act, N.J.S.A. 46:8-27, et seq., as the same may be amended and supplemented. A completed License Application under this Chapter shall also serve as a registration pursuant to the New Jersey Landlord Registration Act and the Borough shall index and file a copy of such license application as required by law. The Owner must, however, fully comply with any other requirements of the New Jersey Landlord Registration Act as the same may be amended or supplemented.
- b. Comply with New Jersey State law which requires that owners of Rental Units register such units with either the Municipal Clerk or with the State of New Jersey as follows:
 - 1. Owners of one and two Rental Units which are owner occupied are exempt from registration under the "Landlord Registration Act" (N.J.S.A. 46:8-27 et seq.) but shall be required to be licensed by the Borough pursuant to this Chapter.
 - 2. Owners of one and two Rental Units which are not owner occupied are required to register such Rental Units with the Borough Clerk or the Clerk's designee under the "Landlord Registration Act" (N.J.S.A. 46:8-27 et seq.) and shall, in addition, be required to be licensed by the Borough pursuant to this Chapter
 - 3. Owners of three or more Rental Units shall be required to register such units with the State of New Jersey, Department of Community Affairs, Bureau of Housing Inspection, or such other or additional Department, Division or agency as may hereafter be designated by the State of New Jersey. In addition, owners of Rental Properties containing three or more Rental Units shall also apply for a Rental License from the Borough in accordance with this Chapter.

Every Owner of a Rental Property or unit shall have the following further duty and responsibility:

- c. It shall be the responsibility of the Owner or the Owner's agent or Managing Agent to register all Tenants in the Tenant Register and to give a copy of the Tenant register to the tenant(s) and to advise the tenant(s) of the requirement that the Tenant register be maintained on the rental or leased premises at all times.
- d. The duty of the Owner or Managing Agent under Section 22--1.15 may be discharged through a Realtor or other Rental Agent provided that such Realtor or Rental Agent agrees, in writing, to discharge that responsibility.
- e. All owners of licensed Rental Units and Managing Agents thereof will be provided with an Owner/Tenant/Agent "Notification of Responsibilities Form", produced and made available by the Borough, at the time of submission of the License application form and which shall otherwise be available through the Borough and online. Such notice shall indicate the obligations of the Owner, Managing Agent, Tenant and Rental Agency under this Chapter. A copy of such notice shall be affixed to each copy of each lease of a Rental Unit and a copy shall also be posted and remain posted in each Rental Unit.
- f. The Owner/Tenant/Agent Notification of Responsibilities Form referred to herein shall be provided to each Tenant appearing on any lease by the Landlord if a direct rental between Landlord and Tenant, or by the Managing Agent, Realtor, Rental Agent, attorney or other agent if the services of an agent are employed.

22-1.16. Tenant Responsibilities.

Each Tenant shall:

- a. Complete and sign the Tenant Register in accordance with this chapter and maintain and safeguard such Tenant Register in the Rental Unit at all times;
- b. Immediately produce the Tenant Register, at all times, upon the request of Borough Officials or employees including the Director of Public Safety or his designee, The Chief of Police or any officer of the Avalon Police Department or any representative of the licensing, inspection or Code Enforcement departments or divisions of the Borough of Avalon or a representative of the Cape May County Department of Health;
- c. Be responsible for maintaining the Rental Unit in such manner so as to avoid and prevent said premises from becoming loud or disorderly or a nuisance so as to interfere with the peace and tranquility and quality of life of other nearby residents and visitors. Loud, offensive and disorderly conduct may include excessive noise, unruly behavior, obscene language, fighting, littering, parking of vehicles on lawns and on neighboring property, public urination, poor maintenance of the property and grounds and violation of trash collection and recycling ordinances.
- d. Be responsible for the proper storage and disposal of solid waste and recyclable materials and to do so in accordance with applicable Borough Ordinances;
- e. Comply strictly with the maximum occupancy limits established for each Rental Unit and shall prevent occupancy by more than the maximum number of occupants permitted.

22-1.17 Fees.

22-1.17.1 Types of Fees.

The Borough shall charge a License Fee and a separate Fire Inspection Fee. There is no separate fee for registration of a Rental Unit pursuant to the New Jersey Landlord Registration Act, N.J.S.A. 46:8-27, et seq. For administrative purposes, bills for License fees and Fire Inspection fees may be issued in the year preceding the effective date of a fee but shall nevertheless reflect the amount of the fee to be charged for the year designated. For example, a bill for a Fire Inspection sent toward the end of 2015 for 2016 shall be in the amount of \$75.00, not \$50.00.

22-1.17.2 License Fees.

License fees shall be charged for each Rental Unit as follows:

- | | |
|------------------------------|----------|
| a. Beginning January 1, 2015 | \$150.00 |
| b. Beginning January 1, 2016 | \$250.00 |
| c. Beginning January 1, 2017 | \$300.00 |

22-1.17.3 Fire Inspection Fees.

- a. Fire Inspection fees, except as indicated below shall be charged as follows:

Each Rental Unit in a property:

Through December 31, 2015	\$50.00
Beginning January 1, 2016	\$75.00
Re-inspection Fee	\$25.00 each re-inspection

- b. Such fees for duplex and triplex structures, which are defined as two or three units, whether or not the same are owner-occupied, and provided that the units are under single ownership and are not condominiums shall be charged as follows:

First Rental Unit in a Duplex or Triplex:

Through December 31, 2015	\$50.00
Beginning January 1, 2016	\$75.00
Each Additional Unit – Through December 31, 2015	\$15.00
Each Additional Unit – Effective January 1, 2015	\$25.00
Reinspection Fee	\$25.00 for each reinspection

22-1.17.4. Time For Payment of Fees; Late Payments; Refunds Prohibited.

- a. All license and inspection fees shall be payable to the Borough as follows:
1. Initial License Application: All fees shall be payable at the time the initial license application is submitted.
 2. Renewal Applications: A renewal application and invoice will be mailed to each current License holder during the last 3 months of the calendar year preceding renewal. Such application together with all fees must be paid not later than December 31 of the year preceding expiration of the License. No inspection of the Rental Unit(s) will be conducted, however, until the completed renewal application is returned to and all required fees are paid to the Licensing Clerk.
 3. Late Payment: If all fees are not paid by December 31, an additional late payment fee of \$50.00 shall be due and payable together with all other fees.

22-1.18 Enforcement.

The provisions of Article 1 of this Chapter shall be enforced by any one or more of the following: the Director of Public Safety, the Chief and members of the Avalon Police Department, the Construction Code Official, the Licensing Clerk and Code Enforcement officials of the Borough, and the Cape May County Department of Health.

22-1.19 Rules and Regulations

Borough Council is authorized to adopt, by resolution, rules and regulations pertaining to the enforcement of this Chapter.

22-1.20 Reserved**22-1.21 Violations; Penalties****22-1.21.1 Penalty**

Any Person violating any of the provisions of this Article shall, upon conviction, be subject to one (1) or more of the following:

a. For a First Offense:

1. A fine not to exceed the sum of One Thousand (\$1,000.00) Dollars; and/or
2. Incarceration for a term not to exceed Ninety (90) Days; and/or
3. A period of community service for a period not exceeding Ninety (90) Days.

b. For a Second or Subsequent Offense:

1. A fine in the minimum amount of \$100.00 and not to exceed the sum of Two Thousand (\$2,000.00) Dollars; and/or
2. Incarceration for a term not to exceed Ninety (90) Days; and/or
3. By a period of community service for a period not exceeding Ninety (90) Days.

22-1.21.2 Violations Occurring Within One Year

Any Person convicted of violating this Ordinance within One (1) Year of the date of a previous violation and who was fined for the previous violation, shall be sentenced by the Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a Person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the Ordinance, but shall be calculated separately from the fine imposed for the violation of the Ordinance. (See N.J.S.A. 40:49-5)

22-1.21.3 Additional Penalties

The foregoing penalties shall be exclusive of, and in addition to, any other penalty or penalties provided in this Chapter and the penalties set forth in N.J.S.A. 46:8-35, of the "Landlord Registration Act"; including but not limited to:

Any Administrative Penalties contained in:

- a. The Uniform Fire Safety Act; or
- b. The Uniform Construction Code (UCC), The International Property Maintenance Code (IPMC) or any other code now in force in the Borough or which may hereinafter be adopted by the Borough.

SECTION 2: Chapter 22, Article 2, entitled "Suspension or Revocation of Rental Licenses", as amended herein, shall be retitled as Chapter 22, Article 3; and Article 2 shall be entitled "Special Provisions Applicable to Short Term Tenancies or Occupancies of Less Than 175 Consecutive Days" and shall be "RESERVED".

SECTION 3: Chapter 22, Article 3, entitled "Registration and License Fees", as amended herein, shall be retitled as Chapter 22, Article 4; and Article 3 shall be entitled "Suspension or Revocation of Rental Licenses" and is amended to read as follows:

ARTICLE 3 SUSPENSION OR REVOCATION OF RENTAL LICENSES

22-3 REVOCATION OR SUSPENSION; OTHER DISCIPLINARY ACTION; PROCEDURE; CONDITIONAL RENEWALS.

22-3.1 Grounds for Revocation, Suspension or Probation.

- a. The Borough may, administratively, decline to issue or renew a Rental License in accordance with Section 22-1.7 hereof. An owner shall be entitled to appeal any such decision by the filing of an appeal within the time permitted and in accordance with the procedures set forth in Sections 22-1.7.2 and 22-1.7.3.
- b. The Borough may also revoke or suspend an issued and outstanding Rental License, or place such license in a probationary status. This action shall be in addition to any other penalty prescribed herein, in accordance with the provisions of N.J.S.A. 40:52-2 and N.J.S.A. 40:48-2, upon the happening of one or more of the following:
 1. Conviction of the Owner(s), or any of them if there is more than one, of a violation of this chapter in the municipal court or other court of competent jurisdiction.
 2. Following a determination by the Borough after a hearing that a violation of this chapter has occurred.
 3. If, in any twenty four (24) month period, there shall be four (4) or more complaints, on separate occasions, of conduct upon or in proximity to any rental premises, and attributable to the acts or incitements of any of the tenants of those premises, which have been substantiated by prosecution and conviction in any court of competent jurisdiction as a violation of any provision of Title 2C of the New Jersey Statutes or any municipal ordinance governing disorderly conduct.
 4. A pattern of permitting the Rental Unit(s) to be occupied by more than the maximum number of occupants as defined herein.
 5. Maintaining the Rental Unit or units or the property in which the Rental Unit is a part in a dangerous condition likely to result in injury to person or property.
 6. A false, misleading, or fraudulent statement made in connection with the registration, licensing or inspection of a Rental Unit or units, under this chapter.
 7. A pattern of conduct which results in creating, maintaining, permitting or suffering the existence of any of the following conditions at or about the Rental Unit:
 - a. A nuisance as that term is defined by N.J.S.A. 2C:33-12 provided, however, that a conviction of such person or persons under that statute shall not be required in order for the Borough to take action relating to the Rental License under this section;
 - b. The failure to comply with any directive of the Borough concerning the abatement of conduct prohibited by paragraph 7, a, above.
 - c. The failure to comply with Borough ordinances pertaining to the proper accumulation and disposal of solid waste (trash) and recyclable material or otherwise allowing such materials to accumulate in such a way as to be unsanitary or unsightly.

8. If the Licensee, who is an owner of the property affected by the License or upon which the licensed business or activity is conducted, has failed to pay the taxes due on the property for at least three (3) consecutive quarters.
9. Any other grounds that would be a basis for denial or non-renewal of a Rental License rental license shall also constitute grounds for the revocation or suspension of a Rental License or the placing of such license in a probationary status.

It shall be a defense to any proceeding for the revocation or suspension of a Rental License to demonstrate that the Owner has taken appropriate action and has made a good faith effort to abate the conditions or circumstances giving rise to the revocation or suspension proceeding including but not limited to the institution of legal action against the tenant(s), occupant(s) or guests for recovery of the premises; eviction of the tenant(s) or otherwise. Evidence of such actions on the part of the owner or managing agent, however, shall not preclude the Borough from placing the Rental License in probationary status as provided in this Chapter, nor shall it preclude the Borough from instituting action pursuant to Article 4 of this Chapter.

22-3.2 Procedure; Written Complaint; Notice; Hearing.

22-3.2.1 Complaints; Filing. A written complaint seeking the revocation or suspension of a Rental License may be filed by any of the following: the Mayor, Business Administrator, Director of Public Safety, Chief of Police or his designee, Construction Code Official, Fire Official, Code Enforcement Official, Zoning Enforcement Officer. The complaint shall be filed with the Borough Clerk and shall be sufficiently specific to inform Licensee of the charges pending and state the particulars of any substantiated violations underlying the charges. The complaint may be filed on the basis of information and belief and the complainant need not rely on personal knowledge or information.

22-3.2.2 Procedure Upon Filing. Upon the filing of such written complaint, the Borough Clerk shall immediately mail a copy of said complaint to the Licensee and the Managing Agent, if any, at the address indicated on the Rental License Application form and to the name and address appearing on the tax records if different from that on the Rental License Application. The complaint shall be accompanied by a notice informing the Licensee and Managing Agent that a hearing will be scheduled not sooner than ten (10) nor more than thirty (30) days after service of the complaint upon the Licensee or Managing Agent. The Borough Clerk shall simultaneously notify the Business Administrator and the Licensing Clerk, Borough Solicitor, Municipal Prosecutor and the Borough Hearing Officer as to the filing of such complaint and the date of service of said complaint upon the Licensee or the Managing Agent. The Hearing Officer shall fix the date for the hearing. The complaint and all notices shall be sent simultaneously by certified mail, return receipt requested and by regular first class mail to the individuals and to the addresses prescribed herein.

22-3.2.3 Hearing Officer; Recusal. The hearing required by this section shall be held before the Borough Hearing Officer, unless such Hearing Officer shall recuse him/herself, in which event the Borough Council shall appoint another independent hearing officer to preside in the matter.

22-3.2.4 Hearing. The Hearing Officer shall transmit his findings of fact and conclusions of law to the Borough Council within fifteen (15) days of the conclusion of the hearing. Borough Council shall then review the matter and may accept, reject, or modify the recommendations of the Hearing Officer based on the documentary evidence and written findings of fact and conclusion of law submitted by the Hearing Officer, and render a decision dismissing the complaint, revoking or suspending the Rental License, or determining that the Rental License shall not be renewed or reissued for one (1) or more subsequent license years. The Rental License may also be placed in probationary status as provided herein.

22-3.2.5 Record of Hearing and Proceedings. A verbatim record shall be made of the hearing. All witnesses shall be sworn prior to testifying. The strict rules of evidence shall not apply and the evidential rules and burden of proof shall be the same as those which generally govern and are applied in administrative hearings. Any person shall be entitled to obtain a transcript of such hearing at his sole cost and expense.

22-3.2.6 Appearance By Municipal Prosecutor. The Municipal Prosecutor shall appear and prosecute on behalf of the complainant in all hearings conducted pursuant to this section.

22-3.3 License in Probationary Status

22-3.3.1 Recommendations of Hearing Officer as to Probationary Status.

In lieu of a revocation or suspension of a Rental License, the Hearing Officer may recommend placing the Rental License in a probationary status. The Hearing Officer may also recommend specific terms of probation to be imposed, if any. Borough Council shall make the final determination by resolution and may, in its discretion, accept, reject, or modify the findings and recommendations of the Hearing Officer. Once imposed, the probationary status shall remain in effect for the remainder of that License term and may be made applicable to the succeeding renewal term.

22-3.3.2 Terms of Probationary Status of Rental License. The terms of the probationary status shall be specifically set forth in a resolution of Borough Council, a copy of which shall be served upon the Owner, Managing Agent, and Rental Agent. Such notice shall be served personally or by certified mail, return receipt requested, or both. If service is made by certified mail, return receipt requested, it shall also be sent simultaneously by first class mail. Mail to the Owner and Managing Agent shall be at the address indicated on the Rental License Application. Copies shall also be sent to the names and addresses appearing on the Borough's tax records if different from the names and addresses appearing on the Rental License Application. Copies shall also be provided to the Chief of Police, Code Enforcement Officer, Fire Official and Construction Code Official.

22-3.3.3 Modification of Probationary Conditions. The Borough Council may on its own initiative or at the request of an Owner, Managing Agent, Tenant or Occupant of the Rental Unit modify the terms of such probationary status at any time during the probationary term. If modified, it shall be by resolution, copies of which shall be served upon such persons and in such manner as specified in the preceding subsection.

22-3.3.4 Violation of Conditions of Probationary Status. The violation of any term or condition of the probation by the Owner, Managing Agent, Tenant or Occupant, shall be cause for the immediate suspension or revocation of the Rental License. Prior to suspension or revocation, the Licensee shall be entitled to a hearing conducted in accordance with the provisions of Section 22-3.2.

22-3.3.5 Change In Tenants During Probationary Status; Notification to Borough. An owner of a Rental Unit shall forthwith notify the Chief of Police and the Borough Licensing Clerk of any change in Tenants during the period of probation. New Tenants shall be notified in accordance with paragraph b. above.

22-3.4 Conditional Renewal of Rental License.

22-3.4.1 Renewal of License In Probationary Status. Any Rental License which is in probationary status may be renewed for the succeeding license term conditioned upon compliance by the Owner, Managing Agent, Tenant and Occupants with the terms and conditions of probation.

22-3.4.2 Failure to Comply. The failure to comply with the terms and conditions of probation by the Owner, Managing Agent, Tenant or Occupants shall be cause for the immediate suspension, revocation, or non-renewal of the Rental License. Prior to suspension, revocation, or non-renewal, the Licensee shall be entitled to a hearing conducted in accordance with the provisions of Section 22-3.2.

22-3.5 Rental License Deemed Severable for Disciplinary Action.

A Rental License shall be deemed severable with respect to the revocation, suspension or disciplinary actions instituted pursuant to this chapter. Accordingly, the revocation or suspension or other disciplinary action involving a Rental License may be limited to one or more Rental Units or may apply to all Rental Units in a Property. If limited to less than all of the Rental Units, such License shall remain in full force and effect as to any and all Rental Units not involved in the revocation, suspension or disciplinary proceedings.

22-3.6 Time For Instituting Revocation or Suspension Proceedings.**22-3.6.1 Proceedings for Revocation or Suspension.**

Any complaint seeking the suspension or revocation of a Rental License shall be filed by the Borough and served upon the Owner or Managing Agent by October 30th in order to have any effect on the current license year and the rental season immediately following. If such a complaint is filed after said date and if the charges are sustained, the revocation or suspension of the Rental License shall not impact upon the rental season immediately following but shall affect the next ensuing rental season.

(By way of illustration, a complaint filed and served on or before October 30, 1997, if sustained, may affect the rental season occurring May 1, 1998 through October 1, 1998. Should such complaint be filed and served after October 30, 1997, such complaint, if sustained by the evidence, will not affect the 1998 rental season but will be applicable to the next ensuing rental season, that is May 1, 1999 through October 1, 1999.)

22-3.7 Violations; Penalties.

22-3.7.1 Fines and Penalties. Any person, firm, association or corporation violating any of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions set forth in Sections 22-1.21.1 and 22-2.7, including those additional enhanced penalties for repeat violations as specified in said Sections.

22-3.7.2 Penal and Administrative Penalty. The foregoing penalties shall be in addition to any other penalty provided in this chapter and shall be in addition to those penalties set forth in N.J.S.A. 46:8-35. Specifically, the penal penalties shall be in addition to the administrative penalties set forth in this Article and shall not be in place thereof.

SECTION 4: Chapter 22, Article 4, entitled "RESERVED", is retitled "Bond Requirements For Certain Rental Properties and Forfeiture Provisions" and is amended to read as follows:

**ARTICLE 4 BOND REQUIREMENTS FOR CERTAIN RENTAL
PROPERTIES AND FORFEITURE PROVISIONS**

22-4 POSTING OF BOND AGAINST CONSEQUENCES OF TENANTS BEHAVIOR.**22-4.1 Findings.**

N.J.S.A. 40:48-2.12n authorizes municipalities to enact an ordinance holding Landlords of rentals to standards of responsibility in the selection of Tenants and supervision of the rental premises. The Borough Council has determined that there is a need for such an ordinance in the Borough of Avalon.

22-4.2 Definitions.

As used in this article of this chapter:

Hearing Officer shall mean a person designated pursuant to this section to hear and determine proceedings pursuant to this section and its enabling legislation N.J.S.A. 40:48-2.12n, et seq. As required by State Statute, said Hearing Officer shall be a licensed New Jersey attorney who shall not be an owner or lessee of any real property within the Borough of Avalon, nor hold any interest in the assets of or profits arising from the ownership or lease of such property.

Landlord shall mean the person or persons who own or purport to own any building in which there is rented or offered for rent housing space for living or dwelling under either a written or oral lease, which building contains no more than four (4) dwelling units. In the case of a mobile home park, "Landlord" shall mean the owner of an individual dwelling unit within the mobile home park. The limitation of not more than four dwelling units is limited solely to the provisions of this Article 4 pertaining to the requirement for posting of a bond by landlords under certain circumstances.

Seasonal Rental shall mean any rental of residential accommodations for a term of less than one (1) year and including any part of the period extending from May 1 to September 30. It shall also mean and include any tenancy, whether written or oral, for a term of less than 175 consecutive days for residential purposes by a person having a permanent place of residence elsewhere.

Substantiated complaint shall mean a complaint which may form the basis for proceedings in accordance with the authority conferred by N.J.S.A. 40:48-2.12(q). A substantiated complaint shall be one in which there was prosecution and conviction in any Court of competent jurisdiction.

22-4.3 Duty and Responsibility of Landlord.

Landlords of rentals shall be held to standards of responsibility in the selection of tenants and supervision of the Rental Premises. Under certain circumstances, a Landlord shall be required to post an adequate bond against the consequences of disorderly behavior of their tenants as hereinafter provided; and in the case of subsequent violations forfeit such bond, in whole or in part, in consequences of such behavior.

22-4.4.1 Substantiated Complaints; Number Required; Procedure.

- a. *Action for Proceedings.* If in any twenty four (24) month period there shall be four (4) or more complaints, on separate occasions, of conduct upon or in proximity to any rental premises and attributable to the acts or incitements of any of the tenants of those premises, and such complaints have been substantiated by prosecution and conviction in any Court of competent jurisdiction, the Borough Council as the Municipal Governing Body, the Mayor, Business Administrator Director of Public Safety, Chief of Police or the designee of the Chief of Police, Construction Code Official, Fire Official or Zoning Officer may institute proceedings to require the landlord of those premises to post a bond against the consequences of future incidents of the same character.
- b. In the event a tenant is convicted of any of the conduct described in subsection (a) of this section, the Borough Council or any of the officers or employees designated in that subsection shall cause notice advising that the conduct specified has occurred to be served on the landlord, in person or by registered or certified mail, at the address appearing on the tax records of the Borough. Such notice shall also be served on the managing agent and copies shall also be served, in the manner prescribed, on the owner at the address appearing on the Rental License Application if that address is different than the address appearing on the tax records of the Borough.

22-4.4.2 Procedure Upon Filing of Complaint. Notice of the institution of such proceedings shall be served upon the Landlord, in person or by registered or certified mail, to the address appearing on the tax records of the municipality advising the landlord of the institution of such proceedings together with particulars of the substantiated complaints upon which the proceedings are based, and of the time and place at which a hearing will be held. Such hearing shall be held in the Municipal Building, Municipal Court or other public place within the Borough of Avalon. Said hearing shall be held no sooner than thirty (30) days from the date upon which the notice is served or mailed. Such notice shall also be served on the managing agent and copies shall also be served, in the manner prescribed, on the owner at the address appearing on the Rental License Application if that address is different than the address appearing on the tax records of the Borough.

22-4.4.3 Hearing. At the hearing, the Hearing Officer shall give full hearing to both the complaint of the municipality and to any evidence in contradiction or mitigation that the landlord, if present or represented and offering such evidence, may present. The Hearing Officer may consider, to the extent deemed relevant by the Hearing Officer, prior complaints about the residents of the property, even if those complaints did not result in a conviction. At the conclusion of the hearing the Hearing Officer shall determine whether the Landlord shall be required to post a bond in accordance with the terms of this section.

22-4.4.4 Requirement For Bond. Any bond required to be posted shall be in accordance with the judgment of the Hearing Officer, in light of the nature and extent of the offenses indicated in the substantiated complaint upon which the proceedings are based. Such bond shall be adequate in the case of subsequent offenses to make reparation for: (1) damages likely to be caused to public or private property and damages consequent upon disruption of affected residents' rights of fair use and quiet possession of their premises; (2) securing the payment of fines and penalties likely to be levied for such offenses; and (3) compensating the municipality for the costs of repressing and prosecuting such incidents of disorderly behavior. In no shall the bond be in an amount less than five hundred (\$500.00) dollars or more than five thousand (\$5,000.00) dollars. The Borough may enforce the bond thus required by action in the Superior Court and the Borough shall be entitled to an injunction prohibiting the Landlord from making or renewing any lease of the affected premises for residential purposes until that bond or equivalent security, in satisfactory, form and amount, has been deposited with the Borough.

22-4.4.5 Duration of Bond Requirements; Discharge; Extension or Renewal of Bond.

The bond or other security deposited in compliance with this section shall remain in force for a period of three (3) years. Upon the lapse of the specified period, the landlord shall be entitled to the discharge thereof, unless prior thereto further proceedings leading to a forfeiture or partial forfeiture of the bond or other security shall have been had in which case the security shall be renewed, in an amount and for a period that shall be specified by the Hearing Officer.

22-4.5 Forfeiture, Extension of Period; Increase in Amount of Security; Proceedings.

22-4.5.1 Proceedings for Forfeiture. If during the period for which a Landlord is required to give security pursuant to this section, a substantiated complaint is recorded against the property in question, the Borough Council or any of the persons authorized in subsection 22-4.4.1 may institute proceedings against the Landlord for the forfeiture or partial forfeiture of the security, or for an extension for the period for which such security is required, or for an increase in the amount of security required, or for any or all of these purposes.

22-4.5.2 Proceedings Before Hearing Officer.

Any forfeiture or partial forfeiture of security shall be determined by the Hearing Officer solely in accordance with the amount deemed necessary to provide for the compensatory purposes set forth in subsection 22-4.4.4 above. Any decision by the Hearing Officer to increase the amount or extend the period of the required security shall be determined in light of the same factors set forth in section 22-4.4.4 and shall be taken only to the extent that the nature of the substantiated complaint or complaints out of which proceedings arise under this section indicates the appropriateness of such change in order to carry out the purposes of this section and the enabling legislation N.J.S.A. 40:48-2.12n, et seq. The decision of the Hearing Officer in such circumstances shall be enforceable in the same manner as provided in section 22-4.4.

22-4.5.3 Recovery By Landlord From Tenant.

In accordance with N.J.S.A. 40:48-2.12r 5(c.), a Landlord may recover from a Tenant any amounts of security actually forfeited pursuant to Section 22-4.5.1.

22-4.6 Hearing Officer; Qualifications; Appointment.

22-4.6.1 Qualifications. The Borough Council is hereby authorized to appoint a Hearing Officer who is qualified pursuant to the requirements of N.J.S.A. 40:48-2.12p, as amended and supplemented. Such Hearing Officer shall be a licensed attorney of New Jersey who shall not be an owner or lessee of any property within the Borough, nor hold any interest in the assets of or profits arising from the ownership or lease of such property.

22-4.6.2. Appointment; Termination. The appointment of the Hearing Officer shall be by resolution of the Borough Council. The appointment shall be for a term specified by the Borough Council, but in no event to exceed one (1) year. The Hearing Officer shall be eligible for reappointment. The services of the Hearing Officer may be terminated without cause upon the giving of thirty (30) days notice. The services of the Hearing Officer may be terminated for cause immediately.

22-4.6.3. Compensation. The Hearing Officer may be compensated by salary or a Professional Services Contract in the discretion of the Borough Council.

22-4.6.4. Recusal of Hearing Officer.

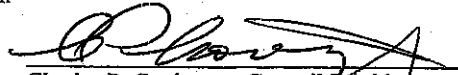
In the event that the Hearing Officer should deem it necessary to recuse him/herself, for whatever reason, the Borough Council shall, by resolution, appoint another independent hearing officer to preside in the matter. Any substitute Hearing Officer shall possess all of the qualifications specified in Section 22:4.6.1 and state statute.

SECTION 6: REPEALER: All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 7: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 8: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication and in the manner prescribed by law.

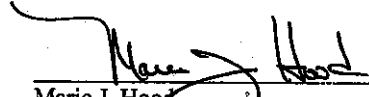
Motion: Council President Covington


Charles P. Covington, Council President

Seconded: Councilman McCorristin


Richard E. Dean, Council Vice President

Dated: November 12, 2014


Marie J. Hood
Borough Clerk


David B. Ellenberg, Councilman


Nancy M. Hudanich, Councilwoman


John M. McCorristin, Councilman

ROLL CALL VOTE:

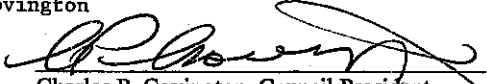
AYES-----	Dean, Ellenberg, Hudanich, McCorristin, Covington
NAYES-----	None
ABSTAINING-----	None
ABSENT-----	None

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE NO. 713-2014


AN ORDINANCE AMENDING CHAPTER 22 (HOUSING
AND RENTALS) OF THE AVALON BOROUGH CODE

Motion: Council President Covington

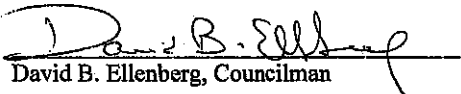

Charles P. Covington, Council President

Seconded: Councilman McCorristin

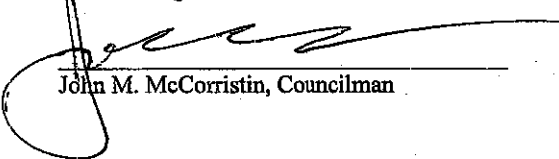
Dated: November 12, 2014


Richard E. Dean, Council Vice President


Marie J. Hood
Borough Clerk


David B. Ellenberg, Councilman


Nancy M. Rudanich, Councilwoman


John M. McCorristin, Councilman

ROLL CALL VOTE:

AYES----- Dean, Ellenberg, Rudanich, McCorristin, Covington
NAYES----- None
ABSTAINING----- None
ABSENT----- None

NOTICE OF ADOPTION


The aforementioned ordinance was duly passed by the Borough Council of the Borough of Avalon, Avalon, New Jersey, on first reading at a meeting of said Council held on the 22nd day of October, 2014 and was taken up for second reading, final passage and adopted at a meeting of said Council held on the 12th day of November in the Meeting Room of the Municipal Building, Avalon, New Jersey at 7:15 p.m. Said ordinances were approved by the Mayor on November 12, 2014.

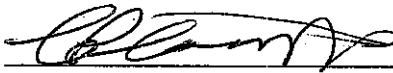
MARIE J. HOOD
Borough Clerk

ORDINANCE NO. 713-2014

Passed by Council of the Borough of Avalon, New Jersey


November 12, 2014

Attest:  Borough Clerk

Attest:  President of Council

Presented by me to the Mayor of the Borough of Avalon,

New Jersey November 12, 2014

 Borough Clerk

Approved and signed by me November 12, 2014

 Mayor
