

38. HOUSING CODE. REGISTRATION OF RENTAL UNITS

38.01. Registration Certificate Required. Subdivision 1. This subdivision repealed by Ordinance #3984 on November 1, 2010. (3963, 5/3/10; 3984, 11/1/10)

Subdivision 1a. Except as permitted in subdivision 1b, no owner shall allow another person to occupy, nor shall any person rent or offer to rent to another for occupancy, any dwelling, or any apartment or rooming unit in any dwelling, without first obtaining a registration certificate as provided in this chapter. This registration certificate is also referred to within this chapter as a “rental license” or “license.” Any registration certificate obtained pursuant to this section shall be issued in the name of the owner. In the case of a multiple unit dwelling, a registration certificate issued pursuant to this section includes and applies to both the entire dwelling as well as each individual rental unit within the dwelling. Any suspension or revocation of the registration certificate or the right to receive a registration certificate may involve the entire dwelling or an individual unit or units within the dwelling.

Subd. 1b. The offer to rent to another may be extended prior to issuance of a registration certificate provided an application for a registration certificate has been properly filed with the director. An application may be classified as pending for up to 90 days without payment of all fees. All applicable fees must be paid before an inspection can be scheduled. (3984, 11/1/10)

Subd. 2. The occupancy or rental of any dwelling, or any apartment or rooming unit in any dwelling for which a registration certificate is required, need not be interrupted or suspended for lack of a registration certificate if the same is due to the inability of the Director to process the application in a timely manner, or if the owner is in the process of complying with a notice of deficiencies from the Director within the period of time authorized by the Director.

Subd. 3. For purposes of this chapter, the term “Director” shall mean the Director of the Building Safety Department or the Director’s designee.

Subd. 4. When the owner of the dwelling is not a resident or does not maintain a corporate office in the state of Minnesota, the owner must appoint a resident agent residing in the state of Minnesota to accept service of process or any other document in any action or proceeding related to the dwelling. In addition, when the owner of the dwelling is not a resident of Houston, Winona, Fillmore, Olmsted, Goodhue, Dodge, Mower or Wabasha County, the owner must appoint a property manager residing in one of the above counties to act as the owner’s agent in managing and supervising the dwelling. The resident agent and the property manager may be the same person. The resident agent and the property manager must sign the application for the registration certificate. The owner may not change the identity or the location of the resident agent or property manager without first obtaining an amended registration certificate reflecting the changed information. (3876, 7/7/08)

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Subd. 5. Notwithstanding any provision of this section to the contrary, an owner who allows a person to occupy a vacant dwelling that is on the real estate market for sale in order to provide Property Maintenance Services is not required to obtain a registration certificate. The term "Property Maintenance Services" means dwelling caretaking and maintenance duties including, but not limited to, yard maintenance, snow removal, turning on necessary utility services, turning off unnecessary utility services, and the prevention of intruders, vandals and trespassers. (4032, 10/3/11)

Subd. 6. An owner seeking to rely on subdivision 5 in order to be exempted from the registration certificate requirement must comply with all of the following conditions:

- A. The owner must list the vacant dwelling for sale in the Multiple Listing Service real estate market.
- B. The owner must contract with a licensed real estate company registered to do business in Minnesota that performs "Property Maintenance Services" for dwellings listed for sale.
- C. The owner and the real estate company performing "Property Maintenance Services" must register with, and obtain an exemption from registration from, the Building Safety Department. The registration and exemption is valid for six months and may be renewed.
- D. The dwelling must be a single family dwelling , or a single unit of condominium or townhouse.
- E. An owner, other than a lending institution selling foreclosed properties, is permitted one exemption.

(4032, 10/3/11)

38.02. Application for Registration Certificate. An application for a registration certification shall be filed by the owner or the owner's agent with the Director. An application for any dwelling to be converted to a use requiring a registration certificate shall be made and filed with the Director at least 30 days prior to such conversion.

38.03. Application Forms. The Director must supply applications forms for registration certificates.

38.04. Applications. Each application for registration certificate shall contain the following information:

- (1) Name, residence address, telephone number, date of birth and signature of the owner of the dwelling. In lieu of the owner's signature, the owner may

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provide a certification authorizing the property manager to execute documents on the owner's behalf. If the owner is a partnership, the name of the partnership, and the name, residence address, telephone number, and date of birth of the managing partner. If the owner is a corporation, the name and address of the corporation, and the name, address, telephone number, and date of birth of the Chief Operating Officer. If the dwelling is being sold on a contract for deed, the name and address of the contract vendee must appear. Where the word "owner" is used in any part of the city housing code, it shall include all persons as outlined in this section.

- (2) Name, residence address, telephone number, date of birth and signature of any agent appointed by the owner to accept service of process and to receive or give receipt for notices.
- (3) Name, residence address, telephone number, date of birth and signature of any property manager, operator or agent actively involved in maintenance or management of said dwelling.
- (4) Legal street address of the dwelling.
- (5) Complete details of the number and kind of units offered for rent, classified as to the type of unit on the application, and the facilities incorporated in such rental units.
- (6) Any person making application for a rental registration certificate must provide proof of identification by the use of a driver's license, state issued identification card, military identification card, or such other identification as is acceptable to the Director. The identification provided must set forth the full name and date of birth of the person making the application.
- (7) An acknowledgment that the applicant has reviewed and understands the provisions of this chapter, intends to abide by the provisions and will include reference to this chapter in any written lease used in renting the property.
- (8) A current site plan of suitable scale showing the lot lines, vehicle access to the property including curb cut, location of structures, and the location, dimensions, surface material, and number of all parking spaces. Multi-family residential complexes approved as a part of a public review process may not be required to submit a current site plan, unless site improvements have been made in the previous year.

(3876, 7/7/08)

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38.045. Registration Certificate Standards. Subdivision 1. No person may be issued a registration certificate unless they satisfy the standards provided in this section. Failure to comply with any of these standards at any time shall be adequate ground for the denial, refusal to renew, suspension or revocation of a registration certificate, or the imposition of a fine upon the licensee or applicant consistent with section 38.153, subd. 3(c). Except where specifically noted, it is not necessary for a criminal conviction to exist in order to support a determination that a violation of a standard has occurred. Any suspension or revocation sanction imposed pursuant to this section must be limited to the licensee's or applicant's registration certificate, or the licensee's or applicant's right to obtain a registration certificate, for the non-compliant property.

Subd. 2. As used in this chapter, the term "licensee or applicant" means: (a) an owner of property who possesses or applies for a registration certificate; (b) an owner of property seeking to renew a registration certificate; and (c) either of those person's agents, employees or representatives.

Subd. 3. The licensee's or applicant's application form contains facts that permit issuance of the certificate in compliance with all applicable state laws and city ordinances.

Subd. 4. The licensee or applicant has paid the required license or reinspection fee.

Subd. 5. The licensee or applicant has not intentionally made inaccurate or incorrect representations of material facts on the application form. The licensee or applicant has not intentionally made inaccurate or incorrect oral or written representations to a city official regarding the rental dwelling unit or the ownership of the rental dwelling unit.

Subd. 6. Rental dwelling units do not exceed the maximum number of dwelling units permitted by the Code.

Subd. 7. No rental dwelling or rental dwelling unit is over occupied or illegally occupied in violation of the Code.

Subd. 8. The licensee or applicant has not allowed weeds, vegetation, junk, debris or rubbish to accumulate repeatedly on the exterior of the dwelling so as to create a nuisance condition under chapter 40. The term "repeatedly" shall refer to those situations when the City was required to abate such nuisance under chapter 40 more than two times during a 12 month period.

Subd. 9. The dwelling complies with all federal, state and city laws and ordinances.

Subd. 10. The licensee or applicant allows the City to perform a rental inspection.

Subd. 11. The licensee or applicant maintains a current register of all tenants and other persons with a lawful right of occupancy to a dwelling unit and the corresponding floor number,

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and unit number and/or letter and/or designation of such unit within the building. The register is kept current at all times. The licensee has designated the person who has possession of the register and shall inform the director of the location at which the register is kept. The register is available for review by the director or his or her authorized representatives at all times.

Subd. 12. The licensee or applicant has no delinquent property taxes or assessments on the rental dwelling, and is not delinquent on any financial obligations owing to the city unless reasonable payment arrangement has been reached.

Subd. 13. The licensee or applicant is not the subject of a pending administrative or criminal proceeding initiated pursuant to this chapter.

Subd. 14. The licensee or applicant has no direct personal or financial interest in a registration certificate that is currently suspended pursuant to this chapter.

Subd. 15. The licensee or applicant has no legal or equitable interest in a person whose right to apply and receive a registration certificate is currently suspended or revoked pursuant to this chapter.

Subd. 16. The licensee or applicant has no legal or equitable interest in two or more registration certificates revoked, suspended or any combination thereof, pursuant to this chapter, during the past five years.

Subd. 17. The licensee or applicant has not had within the past two years four violations of section 38.01, subd. 1 (allowing a dwelling to be occupied or rented without first obtaining a registration certificate).

Subd. 18. The licensee's or applicant's actions have not created a threat or danger to the public's health, safety or welfare as it relates to the property.

Subd. 19. The licensee or applicant has not allowed the dwelling to be used in such a manner as to constitute a breach of the peace, a menace to the public's health, safety or welfare, or an unreasonable disturbance to the peace and comfort of the City's residents as it relates to the property.

Subd. 20. The licensee or applicant has not intimidated or retaliated, or made any threat of eviction or retaliation, against a tenant solely and exclusively because the tenant made or filed, or threatened to make or file, a complaint with the Building Safety, Police or Fire Departments regarding the rental dwelling unit and any matter within either of the Department's jurisdiction.

Subd. 21. The licensee or applicant has completed either the Landlord Public Safety Seminar or the Phase I of the Crime Free Multi-Housing Program, or has submitted a comparable certificate from a crime free multi housing program from another jurisdiction. A

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licensee or applicant satisfies this requirement by proof that its management company has completed this Program. Existing licensee holders must satisfy this requirement by October 31, 2011. (3984, 11/1/10; 3998, 1/19/11; 4008, 4/4/11)

38.05. Compliance with the Zoning. A certificate issued by the zoning administrator indicating that the dwelling's proposed use is in compliance with all city zoning requirements must accompany every application for a registration certificate.

38.06. Investigation. The Director shall investigate all applications for the registration certificate to verify that the dwellings, apartments, or rooming units that are non-owner occupied comply with the provisions of this code, including any provision of the zoning, building, fire safety, or health ordinances applicable in Sections 32.03 and 32.05.

38.07. Issuance and Posting of Registration Certificate. The Director must issue a registration certificate whenever the investigation of an application indicates that the dwellings, apartments, or rooming units offered for rent comply with all provisions of this code, including any provisions of the zoning, building, fire safety, or health ordinances applicable in Sections 32.03 and 32.05. Every registrant of a dwelling, apartment or rooming unit offered for rent shall post the registration certificate in a conspicuous place.

38.08. Notice of Violation. The Director must serve notice to the applicant, as required by Section 32.11, whenever the Director's investigation of an application for registration certificate indicates that the dwelling, apartment or rooming unit that is non-owner occupied does not comply with the provisions of this code. Additionally, owners of rental property must give notice of outstanding violations under Section 38.153 to purchasers of such property.

38.09. Rejection of Application. Whenever the investigation of an application for registration certificate indicates that the dwelling, apartment or rooming unit does not comply with the provisions of this code, and from the nature of the violations, the dwelling, apartment or rooming unit cannot be brought up to meet the minimum requirements, the Director shall return the application to the applicant stating the reasons for the rejection of the application.

38.091. Temporary Rental Registration Certificates. The Director of Building Safety may issue a temporary rental registration certificate when corrections required following inspection do not constitute a fire, safety or health hazard to the occupants or the general public, and the repairs are not practically feasible as a result of factors beyond the rental property owner's control. Such factors may include climatic conditions or the unavailability of contractors, supplies or materials needed to make the corrections. A temporary rental registration certificate shall be conditioned upon the rental property owner's making the needed corrections with timelines determined by the Director and identified on the temporary certificate. The temporary certificate shall expire if the work is not completed, inspected and approved by the Director by the date listed thereon.

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38.10. Appeals. Any applicant whose application for registration certificate has been rejected by the Director, may request and shall be granted a hearing in the matter before the Board of Appeals under the procedures found in Chapter 33 of this Code.

(3984, 11/1/10; 4357, 10/1/18)

38.11. Failure to Register. Every person required to register a dwelling, apartment, or rooming unit under the provisions of this chapter and who fails to do so, or who allows the property to be occupied when the registration certificate or right to receive such registration certificate is revoked or suspended, shall be guilty of a violation of this code. Each day that a property is rented out without a valid rental registration certificate on file for that property is a separate violation. A violation of this section shall be a misdemeanor punishable by up to a \$1000 fine, 90 days in jail, or both.

38.12. Certificate Renewal and Transferability. Subdivision 1. All registration certificates shall expire two years after date of issuance and must be renewed biennially. All information required by Section 38.04 must be submitted at the time of renewal. The Director may issue one year rental certificates to equalize the biennial inspection workload.

Subd. 2. Every person who transfers title to property registered under this chapter shall provide the Director with the name, residence address, telephone number, and date of the transfer of title to the new owner within 10 days of the date of such transfer. Within 30 days of the date of such transfer, the new owner or their agent shall make application to transfer the registration certificate to the new owner. A rental certificate transfer fee of \$20.00 must be paid at the time that the application for transfer is submitted to the Director. In the case of an option contract where the holder of the option is collecting rents and/or is paying on the mortgage to the property while the option remains unexercised, the holder of the option shall be deemed to be the owner of the property for purposes of this section and shall be required to apply for a rental registration certificate in his/her name. The date the option contract is created shall be deemed to be the date the holder of the option becomes the "owner" for purposes of this section.

38.125. Suspension or Revocation of Registration Certificate. Subdivision 1. This section is repealed by Ordinance #3984 on November 1, 2010. (3876, 7/7/08; 3984, 11/1/10)

Subdivision 1a. Any registration certificate issued by the City may be denied, allowed to expire without renewal, suspended or revoked, or the licensee or applicant may be fined consistent with section 38.153, subd. 3(c), upon a finding, based upon a preponderance of the evidence presented at a public hearing, that the certificate holder, during the term of the certificate, failed to comply with any provision of Chapter 32 (Housing Code), Chapter 34 (Minimum Housing Standards), Chapter 35 (Housing Code- Dwellings and Apartments), Chapter 38 (Registration of Rental Units), or Chapter 55 (Fire Prevention) of the Rochester Code of Ordinances, any applicable federal or state statute or administrative rule, or any other city or county ordinance. The failure to obtain an amended registration certificate showing the changed name or location of a resident agent or property manager, as required by section 38.01, subd. 4 and the failure to comply with any of the Registration Certificate Standards provided in section

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38.045 are also a basis for any of the actions provided for in this section.

Subd. 1b. The Council may postpone or discontinue an action to deny, not renew, revoke or suspend a registration certificate, or to fine a licensee or applicant, if it appears the licensee or applicant has taken appropriate measures, including a failed eviction process, which will correct the violation.

Subd. 1c. This section applies to individual units within buildings or complexes containing multiple units when the non-compliance occurs within a unit. This section applies to a public area covered by a registration certificate when the non-compliance occurs within a public area. For purposes of this chapter, a “public area” shall have the meaning provided in section 35.11 and “applicable federal or state statute or administrative rule, or any other city or county ordinance” shall mean any such law or ordinance that involves the protection and security of the public’s health, welfare or safety. (3984, 11/1/10)

Subd. 2. A person’s right to apply and receive a registration certificate may be suspended or revoked upon a finding, based upon a preponderance of the evidence presented at a public hearing, that the applicant has allowed a person to occupy, or has rented or has offered to rent to another for occupancy, any dwelling, or any apartment or rooming unit in any dwelling, without first obtaining a registration certificate as required by this chapter. The Council may postpone or discontinue an action to deny, not renew, revoke or suspend a registration certificate, or to fine a licensee or applicant, if it appears the licensee or applicant has taken appropriate measures, including a failed eviction process, which will correct the violation. (3876, 7/7/08; 3963, 5/3/10; 3984, 11/1/10)

Subd. 3. Upon the Building Safety Director’s determination that a reasonable basis exists to seek the suspension or revocation of a registration certificate, or right to obtain a certificate, or to seek the imposition of a fine or other sanction, the Director shall cause a hearing to be held before the Rental Housing Complaint Board. This Board consists of the Common Council member representing the ward in which the non-compliance occurred, the Common Council President and the Mayor. All parties must be given an opportunity to appear at the hearing after receiving reasonable notice. The notice must state the time, place and issues involved. At the hearing, the certificate holder may present evidence of mitigating circumstances showing the absence of any need for a public hearing before the Common Council to consider the revocation or suspension of the certificate, or the right to obtain a certificate, or the imposition of fines or other sanctions. The Board must in good faith hear and consider this evidence in making its recommendation as to the need for a public hearing.

Subd. 4. At the conclusion of the hearing, the Board must make a recommendation to the Common Council as to whether there is a need for a public hearing to consider the suspension or revocation of the certificate, or the right to obtain a certificate. The Board’s recommendation must be submitted to the Council for its consideration. If the Council determines there is a need for the Council to hold a public hearing to consider the suspension or revocation of a certificate, or the right to obtain a certificate, or the imposition of a fine or other sanction, the Council must follow



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the procedure provided in subdivision 5.

Subd. 5. No such suspension or revocation shall be effective until the certificate holder has been afforded an opportunity for a hearing under sections 14.57 to 14.70 of the Minnesota Administrative Procedure Act. All parties must be given an opportunity to appear at the hearing after receiving reasonable notice. The notice must state the time, place and issues involved. The certificate holder may present evidence of mitigating circumstances that would allow the certificate holder to retain the certificate or the right to obtain a certificate. The Common Council must in good faith hear and consider this evidence in arriving at its final order.

Subd. 6. Upon a finding that the certificate holder, licensee or applicant has violated any such statute, rule or ordinance, the Common Council may impose any of the following sanctions:

- A. Suspend the registration certificate, or the right to obtain a certificate, for a period of time not to exceed two years. From the time the suspension expires until the time the certificate is scheduled to expire, if applicable, the certificate holder will be on probation subject to compliance with all federal, state and local laws and ordinances. If the certificate holder violates any such law or ordinance during the time of probation, the Council must hold another hearing to consider the revocation of the certificate.
- B. Revoke the rental registration certificate, or the right to obtain a certificate, and establish a time after which the certificate holder or applicant may apply for a new certificate for the premises in question. The revocation period may not exceed five years.
- C. Impose a civil fine not to exceed \$1,000 for each violation that occurred.
- D. Place the certificate holder or applicant on probation for a time period not to exceed one year. During the probation, the certificate holder or applicant must comply with all federal, state and local laws and ordinances as well as any other reasonable condition imposed by the Council designed to gain compliance with applicable laws. If the certificate holder or applicant violates any of the terms of probation, the Council must hold a hearing to consider the suspension or revocation of the certificate or the right to obtain a certificate.

(3984, 11/1/10)

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Subd. 7. Upon expiration of a suspension or probation time period, a certificate holder must pay to the City a re-instatement fee of \$100 for the first unit or public area to be re-inspected and re-licensed and \$20 for each additional unit or public area to be re-inspected and re-licensed. (3650; 7/7/04)

38.13. Fees. Subdivision 1. In addition to such other fees as may be imposed by this code, a non-refundable fee of \$90 for each building and \$30 for each apartment unit and the first four rooming units not occupied by the owner shall be paid when an application for a registration certificate or renewal is filed with the Director as required by this chapter. A non-refundable fee of \$45 for each building and \$15 for each apartment unit and the first four rooming units will be charged for a one year rental certificate issued in accordance with Section 38.12.

Subd. 2. If a rental registration renewal fee is not received by the Director prior to the expiration of the certificate, an additional fee of 10% of the renewal due, up to a maximum of \$30 for one to 30 days past due; or 25% of the renewal fee due, up to a maximum of \$50 after 30 days past due shall be paid.

Subd. 3. In addition to any other fee provided by this section, an owner shall pay an additional fee of \$45 if, without reasonable cause, the owner fails to keep a scheduled appointment.

Subd. 4. There shall be no additional fee charged for an initial inspection to determine the existence of a housing code violation, nor any fee for the first reinspection to determine compliance with an order to correct a housing code violation. An additional \$45 fee shall be charged for each subsequent reinspection occurring after the due date for compliance with an order. The Director or the Director's designee may waive the reinspection fee in case of an error or other reasonable cause, including an extension of time granted for compliance, an unclear or incorrect correction order, or a change of ownership during the time allotted for compliance. All fees collected under this chapter shall be paid to the city director of finance.

Subd. 5. An administration fee of \$90 will be charged for all contract work arranged by the Department of Building Safety for the abatement of a public health or safety hazard, including but not limited to Sections 35.21 and 35.22. The administration fee will be charged to the violator in addition to all other costs incurred by the Department abating the public health and safety hazard.

38.150. Legislative Intent. It is declared to be the purpose and intent of Sections 38.151 through 38.153 to protect and preserve this city's neighborhoods and the public health, safety, welfare and morals of those who live there. The Rochester Common Council determined that:

- (1) there are persons residing in rental property in Rochester engaging in disorderly conduct which results in a hostile environment for other Rochester citizens living close to the rental property;

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- (2) there is currently no city ordinance which provides a formal procedure by which the City can notify a rental property owner or manager of the disorderly conduct occurring on the property;
- (3) there is currently no procedure by which the City can require a rental property owner or manager to respond to and resolve the occurrences of disorderly conduct occurring on his or her rental property and to take administrative action against his or her rental registration certificate or right to obtain a rental registration certificate should he or she fail to do so.

Accordingly, it is the intent of Sections 38.151 through 38.153 to address the serious and, at times, life threatening problems posed by the occurrence of disorderly conduct to the health and safety of all Rochester residents in all portions of this city. At the same time, the Common Council recognizes, acknowledges, and complies with all due process and property rights enjoyed by those who own or manage rental property as well as those who reside in such property. This ordinance represents the City's good faith effort to balance those competing and legitimate interests.

38.151. Definitions. For purposes of Sections 38.151 through 38.153, the following terms shall have the meanings ascribed to them.

"Appropriate action" shall mean that action which a reasonable rental property owner would take based upon the facts and circumstances of each case so as to prevent a reoccurrence of the disorderly use.

"License" shall mean a registration certificate or the right to receive a registration certificate as required by this chapter.

"Rental property owner" shall mean one who holds the license or who is otherwise obligated to obtain and maintain the license as required by this chapter.

"Licensed Premises" or "Premises" shall mean the property owned, operated, or managed by a rental property owner and shall refer to an individual unit within a multi-unit complex when applicable.

"Disorderly" or "Disorderly Use" shall mean that conduct occurring on the "Licensed Premises" or "Premises" which violates a provision of Section 38.152(2).

38.152. Conduct on Licensed Premises. Subdivision 1. Any rental property owner shall be responsible to take appropriate action against persons occupying specific units in the licensed

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premises or premises who conduct themselves in such a manner as to cause the premises to be disorderly in violation of the statutes or ordinances listed in Subdivision 2. For purposes of this Chapter, the term “persons occupying the premises” shall include tenants as defined by Minn. Stat. § 566.18, and those persons on the licensed premises whose presence the tenant has invited or to which the tenant has acquiesced. Violations of this section apply to individual units within buildings or complexes containing multiple units when the conduct occurs within a unit. Violations of this section by persons occupying specific units that occur within a common area of the licensed premises shall apply both to the individual unit and to the common area of the licensed premises.

Subd. 2. The following ordinances and statutes are applicable to this section:

- a) Section 85.01 of the Rochester Code of Ordinances prohibiting prostitution;
- b) Section 85.02 of the Rochester Code of Ordinances prohibiting indecent conduct;
- c) Section 85.04 of the Rochester Code of Ordinances prohibiting participation in a disorderly house;
- d) Minnesota Statutes Sections 617.23 through 617.299 prohibiting obscenity;
- e) Section 85.10 of the Rochester Code of Ordinances prohibiting loud parties or gatherings or other unnecessary loud noises;
- f) Section 34.20-34.27 of the Rochester Code of Ordinances prohibiting overcrowding;
- g) Minnesota Statutes Sections 609.75 through 609.76 which prohibit gambling;
- h) Minnesota Statutes Sections 152.01 through 152.025 and Section 152.027, Subdivisions 1 and 2, which prohibit the unlawful sale or possession of controlled substances;
- i) Minnesota Statutes Chapter 340A which prohibits the unlawful sale, use or possession of alcoholic beverages;
- j) Minnesota Statutes Section 97B.021, 97B.045, 609.66 through 609.67 and 624.712 through 624.716, which prohibit the unlawful possession, transportation, sale, or use of a weapon;

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- k) Minnesota Statutes Section 609.72 which prohibits disorderly conduct; or,
- l) Minnesota Statutes Sections 609.221, 609.222, 609.223, 609.2231, and 609.224 which prohibit assaults, except that domestic assaults, as the same are defined by state law, are not included herein.

Subd. 3. The police or Director shall be charged with the responsibility of enforcing Subdivision 2.

Subd. 4. Upon determination by the police or housing inspector that the licensed premises were involved in a disorderly use, the police shall notify the license holder by regular mail of such violation and direct the license holder to take appropriate action to prevent further violations. Notice shall be effective if mailed to the license holder at that person's last known address. This and subsequent notices are collectively referred to as disorderly use notices.

Subd. 5. If another instance of disorderly use on the premises occurs within 12 months of an incident for which a prior disorderly use notice was given, the license holder shall be notified of the instance of disorderly use and shall also be required to submit a written report of appropriate actions taken by the rental property owner to prevent further disorderly use of the premises. This written report shall be submitted to the police within five days of the notice of disorderly use of the premises and shall, in addition to the report of appropriate actions to be taken, detail all actions taken by the rental property owner in response to all notices of disorderly use of the premises within the preceding 12 months. Failure to submit the written report as required herein shall be a basis for the imposition of a fine and the revocation or suspension of the license or right to receive the license for the specific units or units located on the licensed premises as otherwise provided for in this chapter.

Subd. 6a. If another instance of disorderly use of the premises occurs within 12 months of two or more prior disorderly use notices, the license or right to obtain such license may be revoked or suspended for a specific unit or units located on the licensed premises. If the notice of violation has been issued with respect to a common area of a building or complex of buildings then the license or right to obtain such license as to all units in such building or complex may be suspended or revoked.

Subd. 6b. If another instance of disorderly use of the premises occurs within 12 months of the expiration of a prior suspension issued pursuant to the provisions of this chapter, the license or right to obtain such license may be revoked or suspended for the specific unit or units located on the licensed premises. If the notice of violation has been issued with respect to a common area of a building or complex of buildings then the license or right to obtain such license as to all units in such building or complex may be suspended or revoked.

Subd. 7. No suspension or revocation or other sanctions shall be imposed where one or more of the three required disorderly use notices were mailed or delivered to the landlord after the

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rental property owner has filed an unlawful detainer action with the district court for the particular unit or units identified in the disorderly use notice. Calls to police made by rental property owners shall not be considered incidents of disorderly use in the implementation of Section 38.152, subdivisions 4, 5, and 6. The initiation of an unlawful detainer action shall not be a bar to sanctions, however, unless the action is diligently pursued by the rental property owner. Notice of and a copy of the unlawful detainer action shall be delivered to the police department. A determination that the licensed premises have been involved in a disorderly use as described in Subdivision 2 shall be made upon a preponderance of the evidence. It shall not be necessary that criminal charges be brought to support a determination of disorderly use, nor shall the fact of dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this section.

Subd. 8. This section applies to all leases, whether written or oral, and a landlord may consider any tenant's conduct listed in Section 38.152(2) to be both a material breach of the lease and grounds for termination in any unlawful detainer action. Additionally, all written leases executed after August 31, 1995 shall contain a clause providing that conduct that violates Subdivision 2 constitutes both a material breach of the lease and grounds for termination of such lease.

Subd. 9. This ordinance is not intended to supersede criminal sanctions that may be applied to the individual who violates the statutes and ordinances listed in Subdivision 2.

Subd. 10. A purchaser of rental property against which there is an outstanding first or second disorderly use notice takes the property subject to that notice. The purchaser may petition the Common Council to have one or both of those notices stricken. In considering the petition the Common Council shall consider the recommendations of the Crime Prevention Unit and Building Safety Department, and shall strike one or both of the previous disorderly use notices if such action promotes the public's health, welfare and safety interests. Examples of actions that promote the public's health, welfare and safety include, but are not limited to: (a) The need for a change in ownership of rental property that has a history of ordinance or state law violations; (b) The implementation of new and positive rental practices, operations or policies; (c) The attendance at the Crime Free Multi-Housing Program; and (d) The use of beneficial lease agreement terms (such as requiring background checks and allowing for eviction upon the occurrence of a disorderly use). (3991, 11/1/10)

Subd. 11. Consistent with Minnesota Statutes, Section 504B.205, subd. 3, nothing in this section:

- A. Requires an eviction after a specified number of calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct; or
- B. Provides that calls by a residential tenant for police or emergency assistance in response to domestic abuse or any

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other conduct may be used to penalize or assess a fine to a landlord. (4207, 8/17/15)

38.153. License Suspension and Revocation. Subdivision 1. This section is repealed by Ordinance #3990 on November 1, 2010.

Subdivision 1a. Upon a determination that a license or right to obtain such a license may be suspended or revoked, or that a fine or other sanctions may be imposed, a public hearing shall be held before a body to be known as the Rental Housing Complaint Board. The Rental Housing Complaint Board shall consist of the Common Council member from the ward in which the licensed premises is located, the Common Council President, and the Mayor. All parties shall be afforded an opportunity to appear at such hearing after receiving reasonable notice. The notice shall state the time, place, and issues involved. At this hearing, rental property owners may present evidence of mitigating circumstances showing the absence of any need for a public hearing before the Council to consider the revocation or suspension of the license or right to receive such a license, or the imposition of fines or other sanctions. (3990, 11/1/10)

Subd. 1b. Mitigating circumstances may include, but are not limited to, the following:

- A. The license holder has initiated action to remove or evict the tenant;
- B. The license holder has participated in the Rochester Police Department's Crime Free Multi-Housing Program;
- C. The license holder was not the property owner at the time the disorderly use notices were issued;
- D. The license holder has taken action to update the lease consistent with this chapter's requirements;
- E. The license holder has initiated background checks of potential tenants; or
- F. The license holder has taken other action to monitor or positively impact the tenant's conduct. (3990, 11/1/10)

Subd. 1c. The Board shall in good faith hear and consider this evidence in making a determination to hold a public hearing. At the conclusion of the hearing, the Board shall make a recommendation to the Common Council regarding whether a need exists for a public hearing. The Board's recommendation must be submitted to the Common Council for its consideration. If the Council determines to call for a public hearing to consider the issue of suspension or revocation, or the imposition of a fine, the Council shall follow the procedures described in subdivision 2. (3990, 11/1/10)

Subd. 2. No suspension or revocation shall be effective until the rental property owner has been afforded an opportunity for a hearing under Sections 14.57 to 14.70 of the Minnesota

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Administrative Procedure Act. Should the Common Council hold a public hearing pursuant to the recommendation of the Rental Housing Complaint Board, all parties shall be afforded an opportunity to appear at such hearing after receiving reasonable notice. The notice shall state the time, place, and issues involved. At this hearing, license holders may present evidence of mitigating circumstances that would allow a rental property to retain his or her license or the right to obtain such a license. The Common Council shall in good faith hear and consider this evidence in making a determination to revoke or suspend the license or right to receive a license, impose civil penalties, or impose other reasonable conditions based upon violations of this chapter. The Common Council may postpone or discontinue such proceedings if it appears that the licensee has taken appropriate measures that will prevent further instances of disorderly use.

Subd. 3. The Common Council reserves the right to impose any of the following sanctions for violations of Section 38.152(2):

- a) suspend the license or right to receive a license for up to 60 days;  
or
- b) revoke the license or right to receive a license and establish the time period after which an application for a new certificate for the premises may be made; or
- c) impose a civil fine not to exceed an amount equal to one months' rent for each violation found as a result of the hearings; or
- d) impose other reasonable conditions intended to limit future incidents of disorderly use.

The council may also stay the suspension or revocation of a license or right to receive a license upon the license holder's compliance with the terms of the council's order. (3806, 3/5/07)

Subd. 4. Upon expiration of the suspension or revocation period, a license holder shall pay to the City a reinstatement fee equal to \$100 for the first unit re-licensed and \$20 for each additional unit.

Subd. 5. Upon the expiration of the suspension or revocation period and the license holder's compliance with such other sanctions imposed, the disorderly use notices that formed the basis for the sanctions shall be stricken and not considered in any subsequent proceeding under this chapter. (3991, 11/1/10)

38.154. Prospective Tenant Background Investigations. Subdivision 1. The Rochester Common Council has determined that there are persons residing in rental property in Rochester engaging in disorderly conduct which results in a hostile environment for other Rochester citizens living in or close to the rental property. It is the declared purpose and intent of this section to



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protect and preserve this city's neighborhoods and the public health, safety, welfare and morals of its citizens by providing a system at the local level for criminal history/background investigations prospective tenants.

Subd. 2. Any owner of rental property may request that the Rochester Police Department conduct a criminal history/background investigation of a prospective tenant as provided under Section 21.05, subd. 1. Such request shall be on a form approved or provided by the Rochester Police Department. The applicant shall pay an investigation fee as established by resolution of the Common Council.

38.155. Declaration of Nuisance. Subdivision 1. Minnesota Statutes, Section 412.221, subd. 23 states that a city council has the power by ordinance to define nuisances and to provide for their prevention or abatement. Minnesota Statutes, Section 410.33 extends this authority to a home rule city including the City of Rochester. In addition, Section 1.00, subd. 3 of the City of Rochester Home Rule Charter allows the City to utilize the authority found at Minnesota Statutes, Section 412.221, subd. 23.

Subd. 2. The Rochester Common Council invokes the authority described in subdivision 1 and hereby declares the repeated violation of chapters 32, 34, 35, 38 or 55 to be a nuisance.

Subd. 3. For purposes of this section, a "repeated violation" means three or more convictions for one property address, or six or more convictions for multiple property addresses, involving chapters 32, 34, 35, 38 or 55 occurring within a 24 month period.

Subd. 4. In addition to any other relief provided by this chapter, the city attorney may apply to a court of competent jurisdiction for injunctive relief to prohibit the continuation of any nuisance as declared by this section. Such application for relief may include seeking a temporary restraining order, temporary injunction or permanent injunction. (3992, 11/1/10)

(1406, 7/17/67; 1476, 12/16/68; 1739, 12/13/73; 1750, 2/19/74; 1816, 8/18/75; 2238, 3/16/82); 2315, 7/19/83; 2318, 8/1/83; 2318A, 8/9/83; 2765; 9/17/91; 2809, 4/20/92; 2812, 5/4/92; 2997, 8/8/95; 3000, 8/22/95; 3079, 3/4/97; 3174, 5/19/98; 3196, 10/6/98; 3298, 12/6/99; 3350, 8/22/00; 3362, 11/7/00; 3612, 1/21/04; 3631, 3/15/04; 3650, 7/7/04; 3806, 3/5/07; 3876, 7/7/08; 3963, 5/3/10; 3984, 11/1/10; 3990, 11/1/10; 3991, 11/1/10; 3992, 11/1/10; 3998, 1/19/11; 4008, 4/4/11; 4032, 10/3/11; 4207, 8/17/15; 4357, 10/1/18)