

**BOROUGH OF WEST PATERSON
ORDINANCE NO. 06-05**

ILLEGAL DWELLING ORDINANCE

§ 1. Definitions:

As used herein, the following words shall have the following meanings:

ATTIC — The open, non-habitable space between the ceiling beams of the top habitable story and the roof rafters in any building. Habitable and non-habitable space is determined through use of State floor-to-ceiling height regulations.

BASEMENT — A story partly underground and having more than half (1/2) of its clear height below the finished grade. A basement shall not be considered a story for purposes of height measurement in determining the permissible number of stories when used solely for incidental or accessory storage or for the housing of mechanical equipment, to include a hot-water heater and furnace, for a washer, dryer, recreation room and a bathroom, either partial or full.

BATHROOM (FULL) — Any enclosed space which contains a bathtub and/or shower, a lavatory and/or a sink or fixtures serving similar purposes.

BATHROOM (PARTIAL) — Any enclosed space which contains a lavatory and a sink or fixtures serving a similar purpose.

DWELLING INSPECTION — An inspection conducted to determine a unit's compliance with the housing standards of the Borough West Paterson.

DWELLING UNIT — Any room or group of rooms located within a building or portion thereof, forming a single habitable unit with facilities that are used, designed or arranged to be used for living, sleeping, cooking and sanitary facilities.

IMPERMISSIBLE DWELLING UNIT — A dwelling unit:

- (1) for which no certificate of occupancy has been issued;
- (2) which is in excess of the number of such units for a particular building or zone according to the zoning code; or
- (3) that was created without the required plumbing-electrical or building permits.

KITCHEN — Any space containing plumbing fixtures, in conjunction with other facilities, for the storage and preparation of food.

OWNER — The holder or holders of the title to the premises in fee simple or having charge, care or control of the premises, as owner, agent of the owner or

as executor or mortgagee in possession, regardless of how such possession was obtained.

TENANT — Any person residing with the consent of the owner in an apartment or unit of housing space.

§ 2. Illegal apartment or dwelling unit:

- A. Any one of the following shall constitute an “illegal” apartment or dwelling unit:
 - (1) an apartment or dwelling unit which exceeds the legal dwelling/occupancy units that are on record with the Borough’s Code enforcement official;
 - (2) an apartment or dwelling unit which would exceed the number of units permitted under the Zoning Ordinance or any approvals granted by a land use agency of the Borough of West Paterson;
 - (3) an apartment or dwelling unit which fails to meet the requirements of any regulation affecting health, safety or welfare of the general public;
 - (4) an apartment or dwelling unit which the owner has permitted occupancy thereof without obtaining the required plumbing, electrical and building permits.

- B. No person shall rent, or allow to be occupied, an “illegal” apartment or dwelling unit, or permit same to be occupied by any tenant or other person, in:
 - (1) a building which such person owns or otherwise controls;
 - (2) a dwelling unit which such person rents or otherwise controls.

§ 3. Attic restrictions:

- A. Unapproved occupancies of attics are prohibited.

- B. Any residential attic used for any purpose other than incidental storage must meet the following criteria:
 - (1) under no circumstances shall a bathroom be permitted in the attic, whether partial or full, after enactment of this ordinance;
 - (2) there shall be no kitchen or any semblance of same (i.e. hotplate, refrigerator, food cabinets, sink ...);
 - (3) except for required fire exits, access to the attic or basement shall be through the dwelling unit;
 - (4) under no circumstances shall the attic be offered as a separate dwelling unit, rooming unit or independent rooming unit;
 - (5) an attic must be an integral part of the dwelling unit and shall not be leased to any party that does not have full access and rights to the dwelling unit.

§ 4. Cellar and basement restrictions:

- A. Any residential cellar or basement used for living space must meet the following criteria:
 - (1) except for required fire exits, access to the cellar or basement shall be through the dwelling unit;
 - (2) a cellar or basement must be an integral part of the dwelling unit and shall not be leased to any party that does not have full access and rights to the dwelling unit;
 - (3) a full or partial bathroom shall be permitted, provided the only access to same is through the existing dwelling unit.

§ 5. Eviction and relocation:

- A. Any tenant who receives a notice of eviction resulting from zoning or code enforcement activity for an illegal occupancy, shall be considered a displaced person and shall be entitled to relocation assistance paid by the landlord in an amount equal to six (6) times the monthly rent.
- B. The owner of the structure shall be liable for the payment of relocation assistance pursuant to this section, and shall make payments for assistance directly to the displaced tenant.
- C. In addition to paying damages, as set forth in this section, the owner of the real property shall also return to the displaced person any security deposit, together with interest, plus any rental payment required to be apportioned upon notification by the enforcement official that the illegal apartment or dwelling unit must be vacated.

§ 6. Violations:

- A. In addition to eviction and relocation expenses, as outlined in Paragraph 5 of this Ordinance, any person who violates this Chapter shall be subject to the following fines:
 - (1) for the first offense, a mandatory fine of \$1,500.00 shall be imposed;
 - (2) for the second offense, a mandatory fine of \$5,000.00 shall be imposed;
 - (3) for the third offense and all subsequent offenses, a mandatory fine of \$8,000.00 shall be imposed or imprisonment for a term not to exceed ninety (90) days, or both.
- B. For purposes of determining violations under this chapter, each and every day of continued rental or occupancy shall be deemed a separate and distinct violation.
- C. The provisions of this Chapter shall be enforced by all members of the Borough of West Paterson Police Department, the Construction Code

Official, the Code Enforcement Official and/or the Housing Officer of the Borough of West Paterson.

§ 7. Severability:

If any action, subsection, paragraph, sentence, clause, provision or portion of this chapter shall be invalidated for any reason, such action, subsection, paragraph, sentence, clause, provision or portion shall be deemed separate, distinct and independent from the rest of this chapter; and such holding shall not affect the validity of the remaining chapter hereof, which shall remain in full force and effect.

Introduced: June 7, 2006

Adopted: June 21, 2006