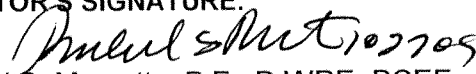


SUBJECT: Ordinance adding a new Article IV to Chapter 10 of the Code of Ordinances, relating to the habitability of multi-family rental buildings		Category #	Page 1 of 1	Agenda Item # 18
FROM (Department or other point of origin): Department of Public Works and Engineering		Origination Date 10-28-09		Agenda Date NOV 4 2009
DIRECTOR'S SIGNATURE:  Michael S. Marcotte, P.E., D.WRE, BCEE		Council District affected: All		
For additional information contact: Andy Icken Phone: 713 837-0510		Date and identification of prior authorizing Council action: N/A		

RECOMMENDATION: Approve an ordinance adding a new Article IV to Chapter 10 of the Code of Ordinances relating to the habitability of multi-family rental buildings.

Amount and Source of Funding: N/A

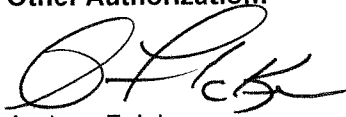
House Bill 1819, passed by the 81st Texas Legislature, requires the adoption of an ordinance establishing minimum habitability standards for multi-family rental buildings (three or more units) and a program for the inspection of multi-family rental buildings to determine if the buildings meet these required habitability standards.

Many City Departments conduct inspections at multi-family rental buildings, but today these are reactive to a complaint or other triggering incident. Structural issues are not always readily apparent to the general population and so can go unreported. Also, tenants are sometimes hesitant to report problems, for fear of reprisal. Early intervention with a pro-active inspection program for basic life safety compliance can identify problems early, and initiate corrective action preventing the need for more significant corrective actions. While this new program will not replace or delay those types of re-active inspections, it will assure that all properties are inspected periodically to meet city codes.

Owners of multi-family residential buildings who are not required to register under Section 28-283 (the Security Ordinance) must register their properties for this program. Those already registered for the Security Ordinance, must update that information with the newly required Habitability data. From that registration and property data from other sources on non-registered properties, a prioritized inspection list will be compiled. The priority for inspection will be first those who fail to register, second those which do not have a required Certificate of Occupancy (CO) or Life Safety Compliance Certificate (LSCC), third those to which a citation was issued for a Building Code Violation in 2009, and finally all others. (All groups will be sub ordered by the age of the property or its CO or LSCC issuance date.)

Forty-five days before inspection period begins, owners and managers will receive a letter notifying them of the inspection period and the fee applicable. The fee is \$4.00 per unit, with a \$100 minimum. This fee is due prior to the inspection, but failure to pay will not delay the inspection. The multi-discipline inspection teams will utilize a checklist of existing codes, for which violations could constitute a material risk to the physical safety or health of the building's tenants. They will also check for the applicable permits and other Chapter 10 violations. The completed report will be provided to the manager and the owner. Violations will be "red-tagged" and will be tracked to compliance through Code Enforcement's permitting and inspection processes. The Fire Department will have full access to the Habitability report and will conduct their specialized inspection within thirty days of that inspection to further improve coordination. Registration will begin on December 1, 2009; the prioritized list will be available to the public on February 15, 2010; and the pro-active inspections will begin on April 1, 2010.

The Houston Apartment Association has been a participating stakeholder in the development of this program at both the state and local level and supports this ordinance.

REQUIRED AUTHORIZATION		CUIC #20AFI48
Other Authorization:  Andrew F. Icken Deputy Director		Other Authorization:

City of Houston, Texas, Ordinance No. 2009-_____

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE HABITABILITY OF MULTI-FAMILY RENTAL BUILDINGS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the 81st Texas Legislature (Regular Session) passed House Bill 1819 ("HB 1819"), which bill became law on June 19, 2009; and

WHEREAS, HB 1819 added Section 214.219 ("Section 214.219") to the Texas Local Government Code; and

WHEREAS, Section 214.219 requires a municipality with a population of 1.7 million or more to "adopt an ordinance to establish minimum habitability standards for multi-family rental buildings, including requiring maintenance of proper operating conditions" and to "establish a program for the inspection of multi-family rental buildings to determine if the buildings meet the minimum required habitability standards"; and

WHEREAS, HB 1819 requires a municipality subject to Section 214.219 to enact the said ordinance and to establish the said program not later than December 31, 2010; and

WHEREAS, the City is a municipality subject to Section 214.219; and

WHEREAS, the City Council finds that Article V and Divisions 3 and 4 of Article IX of Chapter 10 of the Code of Ordinances, City of Houston, Texas (the "Code of Ordinances") constitute habitability standards for multi-family rental buildings, which standards should be supplemented and strengthened as provided herein; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as a part of this Ordinance.

Section 2. That Chapter 10 of the Code of Ordinances, Houston, Texas, is amended by adding a new Article IV that reads as follows:

"ARTICLE IV. HOUSTON MULTI-FAMILY HABITABILITY CODE

Sec. 10-151. Title; purpose; conflict with other municipal laws.

This article is, and may be cited as, the 'Houston Multi-Family Habitability Code.' One purpose of this Habitability Code is to comply with Section 214.219 of the Texas Local Government Code. The provisions of this Habitability Code are cumulative of all other laws and regulations of the city, as well as all applicable state and federal laws and regulations. In the event of a conflict between this Habitability Code and another law or regulation of the city, the provisions of this Habitability Code shall control.

Sec. 10-152. Definitions.

In addition to definitions appearing elsewhere in this article, the following words and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means the building official and all persons designated in writing by the building official to act on his or her behalf to construe and to enforce this article.

Habitability refers to the character of a multi-family rental building free of any condition constituting a material risk to the physical safety or health of the building's ordinary tenants. A multi-family rental building substantially free of such conditions is *habitable*.

Multi-family rental building or *MFRB* means a building that has three or more units. Only for the purposes of the Inspection Program established by this article, *multi-family rental building* or *MFRB* includes all MFRBs and all accessory buildings (such as a boiler room, laundry room, club house, or garage) on the same tract.

Owner means the current owner (or, collectively, the current owners) of the real property on which a multi-family rental building is located. For the purposes of this article, records available for public view at an official website maintained by the appraisal district in which the MFRB is located are presumed to be accurate with regard to the ownership of real property, but the presumption of ownership may be rebutted by documents properly recorded in the real property records of the county in which the MFRB is located.

Tract means the parcel or parcels of real property on which a

multi-family rental building is located.

Unit means one or more rooms rented for use as a permanent residence under a lease to one or more tenants, except that none of the following shall constitute a *unit*:

- (a) A room or rooms rented primarily for the purpose of receiving services regulated by a department or agency of the federal government or of the State of Texas (including, but not limited to, the Texas Department of State Health Services);
- (b) A room or rooms owned or operated by a public or private college or university accredited by a recognized accrediting agency within the meaning of Section 61.003, Texas Education Code;
- (c) An 'apartment' in a 'condominium' within the meaning of Chapter 81, Texas Property Code; or
- (d) A 'unit' in a 'condominium' within the meaning of Chapter 82, Texas Property Code.

Sec. 10-153. Construction of this Habitability Code.

This article shall not be construed to alter the terms of any lease or other agreement between an owner and a tenant relating to an MFRB, except that no provision of any such lease or other agreement shall be construed to excuse compliance with this article or with any other law or regulation of the city. It is not the purpose of this article to prescribe legal rights or liabilities as between an owner and a tenant.

Sec. 10-154. MFRB Registration.

(a) The building official shall promulgate a form for the registration of MFRBs, which form shall require disclosure of:

- (1) The physical address of the MFRB;
- (2) The account number(s) assigned to the tract by the appraisal district in which the MFRB is located;
- (3) The number of buildings on the tract;
- (4) The number of units in each building on the tract;

- (5) A brief description of the intended use of each building on the tract (residential building, boiler room, laundry room, club house, garage, etc.);
- (6) The Project Number(s) appearing on the face of either the Certificate of Occupancy or the Life Safety Compliance Certificate issued by the city for each building on the tract; and
- (7) The name, mailing address, physical address, telephone number, and e-mail address (if available) of at least one owner of the MFRB.

(b) The form promulgated by the building official shall provide a physical address and a mailing address for filing completed MFRB Registration Forms. In addition, the building official shall establish a means by which MFRB Registration Forms may be completed and filed electronically.

(c) An owner of an MFRB shall register the MFRB by completing and filing an MFRB Registration Form with the building official.

(d) An owner of an MFRB shall post a hard copy of the current, completed MFRB Registration Form in or on the MFRB.

(e) If an MFRB was not in existence on January 1, 2010, the owner of the MFRB shall register the MFRB by completing and filing the MFRB Registration Form with the building official no later than 30 days after the MFRB receives a Certificate of Occupancy.

(f) Registration of an MFRB as required by this section shall constitute:

- (1) Registration of the MFRB under section 28-283 of the Code of Ordinances; and
- (2) Compliance with sections 250.003 and 250.004 of the Texas Local Government Code.

(g) No later than 30 days after an owner of an MFRB knows or reasonably should know that a statement on the MFRB Registration Form was incomplete or inaccurate when filed, or has become incomplete or inaccurate since filed, the owner must complete and file an amended MFRB Registration Form.

Sec. 10-155. Habitability standards.

In addition to the habitability standards established by article V and by divisions 3 and 4 of article IX of chapter 10 of this Code:

- (1) An owner of an MFRB violates this article if the MFRB does not comply with:
 - a. All applicable provisions of the Fire Code;
 - b. Sections L102 through L108 of appendix L of the Building Code (which provisions are part of the Building Code's 'Life Safety Appendix');
 - c. Sections 10-211 through 10-215 of this Code (which provisions pertain to the numbering of buildings);
 - d. Sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools); and
 - e. Sections 92.153 through 92.162 of the Texas Property Code (which provisions pertain to security devices).
- (2) An owner of an MFRB at all times must post in or on the MFRB:
 - a. A valid Certificate of Occupancy or a valid Life Safety Compliance Certificate; and
 - b. A 'NOTICE TO ALL RESIDENTS' legibly typed or printed in a font 28 points or larger, in both English and Spanish, the substance of which Notice is as follows: 'IF ANY CONDITION of this building CREATES A HAZARD to human safety or health, REPORT THE CONDITION to the building's manager or owner. You also may report the condition to the City of Houston by calling the City's Service Helpline at 311.'
- (3) Any document required by this article to be posted in or on an MFRB must be posted either (a) as provided by the Building Code or (b) by posting an accurate copy of the document in a manner reasonably protected from weather and in a place conspicuous to ordinary tenants no more than five feet from each mailbox facility at which the United States Postal Service delivers mail to tenants or, if no such facility exists, in some

other place equally conspicuous to ordinary tenants of the MFRB.

Sec. 10-156. Powers and duties of building official.

(a) Except for applicable provisions of the Fire Code incorporated herein by reference, the building official has primary responsibility for the enforcement of this Habitability Code.

(b) With regard to MFRBs only, the terms 'director' and 'neighborhood protection official' as used in article V and in divisions 3 and 4 of article IX of chapter 10 of this Code refer to the building official.

(c) With regard to MFRBs only, the building official has powers and duties equal to and concurrent with the health officer for the enforcement of sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools).

Sec. 10-157. MFRB Inspection Program.

(a) The building official shall inspect MFRBs pursuant to an inspection program (the 'Multi-Family Rental Building Inspection Program' or the 'MFRB Inspection Program'), as provided in this section.

(b) The building official shall promulgate a checklist (the 'Multi-Family Rental Building Checklist' or the 'MFRB Checklist') of criteria by which the building official shall determine the habitability of MFRBs.

(1) The MFRB Checklist shall have no force or effect until ninety days after copies of City of Houston Ordinance No. 2009-_____¹ and the MFRB Checklist have been available for public view in the office of the city secretary and at a website maintained by the city.

(2) The building official may amend the MFRB Checklist; however, an amendment of the MFRB Checklist shall have no force or effect until ninety days after the MFRB Checklist has been available for public view in the office of the city secretary and at a website maintained by the city.

(c) No MFRB shall be inspected under the MFRB Inspection Program until at least forty-five days after the building official has mailed to

¹ The City Secretary shall insert the number of this Ordinance.

the owner a letter stating:

- (1) The first day of thirty consecutive days during which the building may be inspected under the MFRB Inspection Program;
- (2) The physical address of the office of the city secretary and the internet address of the website at which copies of the MFRB Checklist are available for public view;
- (3) The amount of the fee (the 'MFRB Inspection Fee') to be paid to the city prior to the first day of the said thirty consecutive days during which the building may be inspected; and
- (4) The mailing and physical addresses at which the MFRB Inspection Fee may be paid.

(d) The building official shall mail by first-class mail duplicate originals of the letter required by subsection (c) of this section to the owner of the MFRB at the respective addresses:

- (1) Of the owner, according to MFRB Registration Form filed with the building official, or, if the MFRB has not been registered with the building official, according to records available for public view at an official website maintained by the appraisal district in which the MFRB is located; and
- (2) Of the MFRB.

(e) No inspection of an MFRB under the MFRB Inspection Program shall be delayed solely because the owner did not receive or did not understand a letter prepared and sent as required by subsections (c) and (d) of this section.

(f) Notwithstanding anything to the contrary in this article, no employee of the city inspecting an MFRB under the MFRB Inspection Program shall enter a unit without the written permission of a person who has a legal right to occupy the unit.

Sec. 10-158. Fees.

For the inspection of an MFRB under the MFRB Inspection Program the owner shall pay to the city the MFRB Inspection Fee, which fee shall be in the amount of either \$4.00 per unit or \$100.00 (total), whichever amount is greater, plus an administrative fee in the amount of \$10.00.

Sec. 10-159. Remedies.

An owner who violates, or whose MFRB is in violation of, any provision of this article shall be guilty of a misdemeanor punishable upon conviction by a fine of not less than \$500 nor more than \$2,000. Each violation, and each day that a violation continues, shall constitute and be punishable as a separate offense."

Section 3. That nothing in this Ordinance shall delay or otherwise hamper a timely inspection of a multi-family rental building ("MFRB") by the City in response and relating to credible complaints by tenants or other members of the public, such inspections ("reactive inspections"), although not part of the Multi-Family Residential Building Inspection Program ("MFRB Inspection Program") established by this Ordinance, being essential to the public welfare.

Section 4. That, except as otherwise provided by this Ordinance, an owner of an MFRB shall register the MFRB by filing a completed registration form (the "the MFRB Registration Form") with the building official no later than January 31, 2010.

Section 5. That the building official shall use appropriate public and non-public databases to compile a list (the "MFRB List") of the City's MFRBs in numerical order, according to the following priorities:

First, MFRBs not registered with the building official as required by this Ordinance;

Second, MFRBs whose owners have not obtained Certificates of Occupancy or Life Safety Compliance Certificates as required by the Building Code;

Third, MFRBs that were subjects of one or more citations issued during 2009 for violations of the Building Code; and

Fourth, all other MFRBs.

Within the four groups described immediately above, MFRBs shall be ordered in a manner reasonably consistent with their respective dates of construction, older MFRBs first. For the purposes of this Ordinance, the date of an MFRB's construction is the most recent of (a) the date of construction according to the registration required by this Ordinance, unless the building official reasonably concludes that such information is not reliable; or (b) the date of construction according to an official website maintained by the appraisal district in which the MFRB is located; or (c) the date on which the building official issued a Certificate of Occupancy or a Life Safety Compliance Certificate for the MFRB.

Section 6. That the MFRB List shall be available for public view in the office of the City Secretary and at a website maintained by the City at least forty-five days before the building official conducts an inspection pursuant to the MFRB Inspection Program. The office of the City Secretary and said website both shall provide a mailing address for the submission of additional buildings that members of the public believe should be included on the MFRB List. Any building so added to the MFRB List shall be assigned the next consecutive number. In addition:

- (1) A newly constructed or rehabilitated multi-family rental building shall be added to the MFRB List four years after the date on which a Certificate of Occupancy is issued for the building;
- (2) For the purposes of subsection (1) immediately above, a Life Safety Compliance Certificate is not a substitute for a Certificate of Occupancy;
- (3) The building official may add a building to, or delete a building from, the MFRB List as long as the addition or deletion is consistent with the purposes and requirements of this Ordinance; and
- (4) If the building official deletes a building from the MFRB List, the number to which the building had been assigned shall be marked "Deleted," and the building official shall make a reasonable effort to avoid reassigning numbers to buildings on the MFRB List.

Section 7. That the building official's enforcement of the MFRB Inspection Program shall include inspections conducted in the order the buildings appear on the MFRB List, except that, with regard to buildings to whose owners the building official properly has sent letters stating that the buildings will be inspected during the same thirty-day period, the building official may inspect the said buildings in any order during the said period.

Section 8. That, as soon as reasonably possible, the building official shall schedule for a reactive inspection any building added to the MFRB List after February 15, 2010, for which neither a Certificate of Occupancy nor a Life Safety Compliance Certificate has been issued.

Section 9. That, when all buildings on the MFRB List have been inspected under the MFRB Inspection Program, the building official shall reinspect the buildings in the order the buildings appear on the MFRB List, repeating the inspection cycle *ad infinitum*, except that the building official shall omit from the then-current reinspection cycle any building that during the preceding four years:

- (1) Has been inspected at least once pursuant to the MFRB Inspection Program;
- (2) Has not been the subject of a "notice of violation" within the meaning of the Building Code; and
- (3) Has not been the subject of a citation alleging a violation of the Building Code or of Division 3 or Division 4 of Article IX of Chapter 10 of the Code of Ordinances.

Section 10. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not

be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 11. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the ninetieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this ____ day of _____, 2009.

Mayor of the City of Houston

Requested by Michael S. Marcotte, P.E., Director
Department of Public Works & Engineering

Prepared by Legal Dept. 
First Assistant City Attorney