

ORDINANCE NO. 2009-7

**ORDINANCE OF THE BOROUGH OF RED BANK,
COUNTY OF MONMOUTH, NEW JERSEY
AMENDING AND SUPPLEMENTING
CHAPTER XIII, "PROPERTY MAINTENANCE,"
SECTION 13-7.6, "DEFERRED PROSECUTION AGREEMENTS"**

BE IT ORDAINED by the Governing Body of the Borough of Red Bank that Chapter XIII of the Revised General Ordinances of the Borough of Red Bank, Monmouth County, "Property Maintenance," is hereby amended and supplemented by the addition of new Section 13-7, "Deferred Prosecution Agreements", as follows:

SECTION ONE:

- a. New Section 13-7, "Deferred Prosecution Agreements," is hereby added:

13-7.1 DEFERRED PROSECUTION AGREEMENTS.

13-7.1 Purpose. In order to provide incentives to landlords to provide safe and decent housing and to provide reasonable supervision and maintenance of their properties by avoiding criminal liability in the Municipal Court and such other tribunals that may have jurisdiction, the Borough seeks to institute a deferred prosecution program which shall afford landlords with an opportunity to remediate overcrowding and other unsafe and unfit housing conditions within the Borough without undue waste of enforcement and Court resources.

13-7.2 Deferred Prosecution Agreements

- a. *General Eligibility.* Notwithstanding any other provision of the Revised General Ordinances of the Borough of Red Bank, the code enforcement officer may elect to offer a deferred prosecution agreement to any property owner charged, or chargeable, with a violation of any Borough ordinance or property maintenance code under the terms and conditions set forth herein. Circumstances under which a deferred prosecution agreement will not be offered include, but are not limited to, cases in which there is evidence that a property owner knew, condoned, encouraged, assisted, or conspired with another person to violate any building, fire, property rental or property maintenance code; where imminent hazards to persons or property exist pursuant to the Uniform Fire Code and/or unsafe conditions exist pursuant to the Uniform Construction Code; where a pattern of repeated or persistent violations exists; or a failure to demonstrate reasonable efforts to inspect and maintain said property in compliance with all applicable codes or standards. In the absence of the foregoing negative criteria, eligibility for a deferred prosecution agreement shall not be unreasonably denied.
- b. *Appeal.* Any person denied a deferred prosecution agreement by a code enforcement officer may appeal that denial to the Construction Official within fifteen (15) days of the denial. The Construction Official's determination shall be final and shall not be appealable.
- c. *Property Owner's Obligations.* Should the Borough choose to enter into a deferred prosecution agreement, the property owner shall be provided with written notice of all violations and shall sign an agreement waiving all applicable statutes of limitations and further promising to remediate all such violations within ten (10) days.
- d. *Violation of a Deferred Prosecution Agreement.* Such written agreement shall further provide that any failure to remediate any violations covered by the deferred prosecution agreement shall result in the imposition of a separate fine upon the property owner, as set forth herein. A deferred prosecution agreement shall not constitute a waiver on the Borough's part of any authority, powers or remedies available to it, other than the promises made in the deferred prosecution agreement.

- e. *Extension of Time.* A property owner may apply for no more than a total of two (2) additional ten (10) day extensions of the time to remediate all violations upon a showing to the Construction Official and/or the Fire Marshal of demonstrable efforts to remediate any violations set forth in a deferred prosecution agreement.
- f. *Self-Reported Violations.* A property owner who self-reports any violation at any of his or her properties to the Borough shall have forty-five (45) days to remediate any violations. In the event a property owner fails to remediate all self-reported conditions within such forty-five (45) day period, he or she shall not be liable for the fine for failure to remediate set forth in sub-section 13-7.4, *below*. A self-reporting property owner shall however remain liable for any unremediated violations after expiration of such forty-five day period, together with such extensions of time that may be granted.
- g. *Effect of Remediation of Violations.* Upon inspection of the premises and the submission of such other satisfactory proofs as may be necessary to demonstrate that all violations listed in a deferred prosecution agreement have been remediated, no subsequent penalty notices, complaints or Court proceedings shall be issued, served or maintained against the property owner by the Borough for the specific transaction or occurrence covered by that deferred prosecution agreement.
- h. *No Applicability to Uniform Construction Code and Uniform Fire Code.* Any time period for remediation under this Section shall be inapplicable to any Notice of Imminent Hazard issued pursuant to the Uniform Fire Code and/or any Notice of Unsafe Structure issued pursuant to the Uniform Construction Code.

13-7.3 Eligibility for a Deferred Prosecution Agreement

- a. To qualify for a Deferred Prosecution Agreement, in addition to the general criteria set forth in sub-section 13-7.2, *above*, a landlord must demonstrate that he or she has exercised reasonable supervision of the premises, which must include, at minimum:
 - 1. Maintenance a written log evincing the date of inspections and a description of the areas inspected on at least a quarterly basis and signed and sworn to by the owner, or his or her agent, who conducted the inspection;
 - 2. The existence of a written lease, or rider thereto, in both English and Spanish, which must contain the following information or provisions:
 - (a) Specification of the maximum occupancy of the unit in accordance with RBC §11-6.14(a);
 - (b) That every tenant must be identified on the lease and registered with the Borough;
 - (c) That there may be no change in tenancy without amending the lease, the tenant registration form filed with the Borough and the Certificate of Occupancy, as applicable;
 - (d) That somebody residing within the unit for more than thirty (30) days, or who pays any amount of rent to any person in order to reside therein, shall be considered a tenant;
 - (e) That no person shall interfere with, or disable any fire protection equipment;
 - (f) That there shall be no occupancy of any attic or basement areas unless they have been inspected and approved for occupancy; and
 - (g) That any violation of any of the above shall constitute a lease violation and a violation of the law which may subject a tenant to fines or imprisonment.
 - 3. Prominent display within the dwelling space of a placard, which shall be

supplied by the Borough at the time of the issuance of the Certificate of Occupancy, which placard shall bear the serial number of that Certificate of Occupancy, as well as all of the information set forth in subsection 2, *above*, in both English and Spanish;

4. Compliance with the Borough's Tenant Registration Ordinance and possession of a valid certificate of occupancy both of which shall reflect the tenants listed on the written lease.
5. The Borough shall cooperate with any property owner who enters into a deferred prosecution agreement by making its employees available to provide truthful testimony upon reasonable notice in any legal proceedings related to the violations covered by a deferred prosecution agreement.

13-7.4 Penalties.

- a. Should the property owner fail to remediate the violations listed in the deferred prosecution agreement within the applicable time period, such violation shall be punishable by a fine of \$500.00 to \$2,000.00 per week for every week that the violations remain unremediated. Such fine shall be separate from, and in addition to, any other violations that may have occurred at the premises.
- b. Failure to conspicuously post the placard described in Section 13-7.3(a)(3), shall continue to be a separate violation in and of itself, as set forth in RBC §11-6.14(a).

SECTION TWO: Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

SECTION THREE: If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION FOUR: This Ordinance shall take effect immediately upon its passage and adoption according to law.

First Reading: February 23, 2009

Final Reading: March 9, 2009