

1 at the municipal level and provide additional clarity and protection for
2 Albuquerque residents.

3 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
4 ALBUQUERQUE:

5 SECTION 1. A new Article 27 under Chapter 14 of the Revised Ordinances
6 of Albuquerque, 1994 is adopted as follows:

7 §14-27-1 TITLE. This Chapter 14, Article 27 may be cited as the "Rental
8 Practices Ordinance."

9 §14-27-2 DEFINITIONS.

10 (A) "Applicant" means a person who submits an application to rent a
11 dwelling unit to the owner or who agrees to act as a guarantor or cosigner on
12 a rental agreement;

13 (B) "Deposit" means an amount of currency or instrument delivered to
14 the owner by the resident as a pledge to abide by terms and conditions of the
15 rental agreement;

16 (C) "Dwelling unit" means a structure, mobile home or the part of a
17 structure, including a hotel or motel, that is used as a home, residence or
18 sleeping place by one person who maintains a household or by two or more
19 persons who maintain a common household and includes a parcel of land
20 leased by its owner for use as a site for the parking of a mobile home;

21 (D) "Fair Rental Value" is that value that is comparable to the value
22 established in the market place;

23 (E) "Owner" means one or more persons, jointly or severally, in whom is
24 vested:

25 (1) all or part of the legal title to property, but shall not include the
26 limited partner in an association regulated pursuant to the Uniform Limited
27 Partnership Act; or

28 (2) all or part of the beneficial ownership and a right to present use and
29 enjoyment of the premises and agents thereof and includes a mortgagee in
30 possession and the lessors, but shall not include a person or persons, jointly
31 or severally, who as owner leases the entire premises to a lessee of vacant
32 land for apartment use.

33 (F) "Person" includes an individual, corporation, entity or organization;

1 (G) "Premises" means facilities, facilities and appurtenances, areas and
2 other facilities held out for use of the resident or whose use is promised to
3 the resident coincidental with occupancy of a dwelling unit;

4 (H) "Rent" means payments in currency or in-kind pursuant to terms and
5 conditions of the rental agreement for use of a dwelling unit or premises, to
6 be made to the owner by the resident, but does not include deposits;

7 (I) "Rental Agreement" means all agreements between an owner and
8 resident and valid rules and regulations adopted under Section 47-8-23 NMSA
9 1978 embodying the terms and conditions concerning the use and occupancy
10 of a dwelling unit or premises;

11 (J) "Resident" means a person entitled pursuant to a rental agreement
12 to occupy a dwelling unit in peaceful possession to the exclusion of others
13 and includes the owner of a mobile home renting premises, other than a lot or
14 parcel in a mobile home park, for use as a site for the location of the mobile
15 home;

16 (K) "Screening Fee" means a one-time charge that is charged to an
17 applicant by an owner to recoup the owner's cost of purchasing a consumer
18 credit report or reference check or the assistance of a screening service to
19 validate, review or otherwise process an application for renting a dwelling
20 unit;

21 (L) "Term" is the period of occupancy specified in the rental agreement.
22 §14-27-3 OWNER DISCLOSURE TO APPLICANTS.

23 (A) An owner shall disclose to applicants in plain language all costs of a
24 rental agreement in a published listing of the dwelling unit, including the base
25 rent that will be assessed and a description of all fees or charges that will be
26 assessed during the residency, which shall be itemized and readily
27 identifiable in the listing. An owner shall not be liable for violating this
28 provisions for a third-party website's failure to represent all costs provided by
29 the owner.

30 §14-27-4 DWELLING UNIT APPLICANT SCREENING FEE--PROHIBITED FEES.

31 (A) An owner may charge an applicant a screening fee that shall not
32 exceed fifty dollars (\$50.00) to cover the cost of obtaining information about

1 the applicant, including the cost of a consumer credit report, a reference
2 check or a screening service; provided that the owner:

3 (1) provides the applicant with written or digital notice of the screening
4 fee and the applicant agrees in writing to pay the screening fee;

5 (2) shall not charge the applicant a screening fee when the owner knows
6 or should know that a dwelling unit is not available for rent at that time or will
7 not be available at the beginning of the residency;

8 (3) provides the applicant with a written or digital receipt for the
9 screening fee paid by the applicant;

10 (4) shall place a hold on a credit card or wait to deposit cash or checks
11 for an applicant's screening fee until all prior applicants have either been
12 screened and rejected or offered the dwelling unit and declined to enter into a
13 rental agreement; and

14 (5) shall not charge any other fees to process an application.

15 (B) An owner shall return the screening fee within thirty calendar days to
16 an applicant if:

17 (1) a prior applicant is offered the dwelling unit and agrees to enter into
18 a rental agreement; or

19 (2) the owner does not:

20 (a) obtain a consumer credit report;

21 (b) perform a reference check;

22 (c) use a screening service to obtain information about the
23 applicant; or

24 (d) process the application.

25 (C) A screening fee that is returned as provided in Subsection B of this
26 section shall be:

27 (1) returned by certified mail;

28 (2) destroyed upon the applicant's request if paid by check; or

29 (3) made available for the applicant to retrieve.

30 **§14-27-5 BACKGROUND CHECKS.**

31 (A) An owner may require a background check of an applicant before
32 entering a rental agreement. An owner shall not charge more than one
33 screening fee to the same applicant if the screening was completed within

1 ninety calendar days of the application date for any properties under the
2 same ownership.

3 (B) An owner shall provide the applicant with a copy of any reports used
4 to screen the applicant.

5 **§14-27-6 NOTICE OF FEE CHANGES REQUIRED.**

6 An owner may increase a fee that is provided pursuant to the terms of a
7 rental agreement by providing written notice at least sixty days prior to the
8 periodic rental date specified in the rental agreement or at least sixty days
9 prior to the end of the term of a fixed term residency. In the case of a periodic
10 residency of less than one month, written notice shall be provided at least
11 one rental period in advance of the first fee payment to be increased.

12 **§14-27-7 PAYMENT OF RENT.**

13 (A) The resident shall pay rent in accordance with the rental agreement.
14 In the absence of an agreement, the resident shall pay as rent the fair rental
15 value for the use of the premises and occupancy of the dwelling unit.

16 (B) Rent is payable without demand or notice at the time and place
17 agreed upon by the parties. Unless otherwise agreed, rent is payable at the
18 dwelling unit. Unless otherwise agreed, periodic rent is payable at the
19 beginning of any term of one month or less and otherwise in equal monthly
20 installments at the beginning of each monthly period. The date of one month
21 to the same date of the following month shall constitute a term of one month.

22 (C) Unless the rental agreement fixes a definite term, the residency is
23 week-to-week in the case of a person who pays weekly rent and in all other
24 cases month-to-month.

25 (D) If the rental agreement provides for the charging of a late fee and if
26 the resident does not pay rent in accordance with the rental agreement, the
27 owner may charge the resident a late fee in an amount not to exceed five
28 percent of the rent for each rental period that the resident is in default. Late
29 fees shall be calculated only based on rent. Rent calculations to determine
30 late fees shall not include deposits, additional fees or utilities. To assess a
31 late fee, the owner shall provide notice of the late fee charged no later than
32 the last day of the next rental period immediately following the period in
33 which the default occurred.

1 (E) An owner may not assess a fee from the resident for occupancy of
2 the dwelling unit by a reasonable number of guests for a reasonable length of
3 time. This shall not preclude charges for use of premises or facilities other
4 than the dwelling unit by guests.

5 (F) An owner may increase the rent payable by the resident in a month-
6 to-month residency by providing written notice to the resident of the
7 proposed increase at least thirty days prior to the periodic rental date
8 specified in the rental agreement or, in the case of a fixed term residency, at
9 least thirty days prior to the end of the term. In the case of a periodic
10 residency of less than one month, written notice shall be provided at least
11 one rental period in advance of the first rental payment to be increased.

12 (G) Unless agreed upon in writing by the owner and the resident, a
13 resident's payment of rent may not be allocated to any deposits or damages.

14 (H) An owner shall provide the resident a free option for rental payment.

15 ~~§14-27-8 ENFORCEMENT.~~

16 ~~(A) If the City identifies conduct by an owner that violates this~~
17 ~~Ordinance, the City shall promptly notify the owner of the violation, any~~
18 ~~penalty imposed, and any corrective actions required to avoid additional~~
19 ~~penalties.~~

20 ~~(1) The notification shall be in writing mailed to the owner's address as~~
21 ~~registered with Bernalillo County.~~

22 ~~(2) If the owner disputes the violation, the owner may provide~~
23 ~~information that no violation occurred within ten days of receipt of the notice.~~
24 ~~If the City finds based on the evidence provided that there is no violation, a~~
25 ~~penalty shall not be imposed.~~

26 ~~(3) If the violation is not cured within 15 days of receipt of the notice,~~
27 ~~each day the owner continues the violation shall constitute a separate~~
28 ~~violation.~~

29 ~~(B) Mediation through the City Legal Department shall be offered as a~~
30 ~~way to remedy a disagreement between an owner and a resident regarding~~
31 ~~the provisions of the Ordinance.~~

32 ~~(C) The penalty for each violation shall be no greater than \$250 for the~~
33 ~~first violation, and no greater than \$500 for each subsequent violation.~~

1 ~~(D) The Planning Department, Code Enforcement Division, in~~
2 ~~collaboration with the City Legal Department, shall have authority to~~
3 ~~implement and enforce this Ordinance.~~

4 ~~(E) Enforcement of the provisions of this Ordinance shall be both~~
5 ~~complaint-based, and proactive.~~

6 §14-27-8 ENFORCEMENT.

7 (A) Notice of Violation. If the City identifies conduct by an owner that
8 violates this Ordinance, the City shall promptly notify the owner and/or
9 owner's agent of the violation with a notice of violation.

10 (1) Contents. The notice of violation shall contain the name of the
11 owner, the address of the dwelling unit, the effective date of the notice of
12 violation, the type of violation, the amount of any penalty imposed, any
13 corrective actions required to cure the violation, and the deadline to do so.
14 The notice of violation shall inform the owner of the options to request
15 mediation and/or a hearing and shall clearly explain the process to request
16 mediation or a hearing, provide the deadlines to do so, and identify where the
17 request shall be submitted.

18 (2) Delivery. The notice of violation shall be in writing, sent via certified
19 mail to the owner's address as registered with Bernalillo County, and/or the
20 address indicated in the Rental Agreement.

21 (3) Response. The owner shall pay any penalty imposed and cure any
22 violation (as applicable), request mediation, or request a hearing by the
23 response due date as indicated in the notice of violation.

24 (B) Penalty. A violation of this ordinance constitutes a civil infraction
25 punishable by a fine of \$250.

26 (C) Cure. A violation shall be deemed cured upon cessation of the
27 prohibited conduct and, where applicable, the return or reimbursement of any
28 improperly charged fees, correction of lease terms, or provision of required
29 disclosures.

30 (D) Mediation. The owner may request mediation to attempt to resolve
31 the issues contained in a notice of violation. In the event of such a request,
32 the City's Alternative Dispute Resolution office shall facilitate the mediation. If

1 the mediation is unsuccessful, the owner shall have 10 business days to
2 either pay the penalty or request a hearing.

3 (E) Hearing. An owner may request a hearing to contest a notice of
4 violation. In the event of such a request, the City's Independent Office of
5 Hearings shall hold a hearing pursuant to the procedures outlined in the
6 Independent Office of Hearings "IHO" Ordinance, ROA 1994, §§ 2-7-8-1 et seq.

7 (1) The City has the burden to prove the violation by a preponderance of
8 the evidence. The owner has the burden to prove any defenses by a
9 preponderance of the evidence.

10 (2) Documentary evidence, sworn statements, electronic records, and
11 other reliable information reasonably necessary to determine compliance with
12 this Ordinance may include rental listings, rental agreements, addenda,
13 receipts, payment records, screening reports, fee schedules, and proof of
14 refunds.

15 (3) If the City prevails, the owner shall pay the penalty and complete any
16 corrective actions required to cure the violation within 30 consecutive days of
17 the decision.

18 (4) Following a hearing, the owner may appeal the decision of the
19 Hearing Officer to the Second Judicial District Court within 30 consecutive
20 days of the decision.

21 **SECTION 2. SEVERABILITY.** If any section, paragraph, sentence, clause,
22 word or phrase of this Ordinance is for any reason held to be invalid or
23 unenforceable by any court of competent jurisdiction, such decision shall not
24 affect the validity of the remaining provisions of this Ordinance. The Council
25 hereby declares that it would have passed this Ordinance and each section,
26 paragraph, sentence, clause, word or phrase thereof irrespective of any
27 provision being declared unconstitutional or otherwise invalid.

28 **SECTION 3. COMPILATION.** SECTION 1 of this Ordinance is to be compiled
29 as a new Article 27 in Chapter 14 of the Revised Ordinances of Albuquerque,
30 New Mexico, 1994, titled "Rental Practices Ordinance."

31 **SECTION 4. EFFECTIVE DATE.** This Ordinance takes effect five days after
32 publication by title and general summary.
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