

October 28, 2018

Summary

The goal of this paper is to explain the proposed process to implement universal landlord licensing in Gainesville, Florida. With almost 14,000 properties in Gainesville on the rental market in the last year¹, there is a serious need for action to protect the interests of renters. We have focused on energy efficiency, safety compliance, mediation processes, disclosures, and a few anti-discrimination ordinances that have gained ground elsewhere in the country and state. The City of Gainesville has made significant efforts to explore methods to expand affordable housing, and while this proposal is not a solution to all of the issues associated with affordable housing, it will ensure that tenants can rent safe homes with full knowledge of their rights and the utility expenses of home.

Table of Contents

The Landlord License

 Safety and Health Inspection

Energy Efficiency

Security Deposit Mediation

Anti-Discrimination Ordinances

Appendices

Shimberg Center Data

Sample Safety Checklists

Proposed Sample Ordinances

Walkthrough of the Licensing Process

¹ Data on rental properties was provided by the Shimberg Center for Housing Studies. Although not exact, the data was estimated by subtracting homesteaded properties and seeing which properties were available for rent. See Attachment 1.

1. Landlord Licensing

The ACLC proposes that universal licensing include all landlord classes, including short-term rentals, and that maintaining a landlord license be contingent upon participation in the other programs described in this paper. The licensing fees should not support general government expenditures, but should only cover the costs associated with monitoring and enforcement of rental housing ordinances proposed here. By expanding licensing to all rental properties and committing to keeping costs to a minimum, some already-permitted landlords may actually experience a reduction in their licensing fees. The City of Gainesville already requires a license from some landlords, although the requirements of that license have more to do with nuisance and waste management.²

Depending on how many individual rental units are owned by a landlord, the price of the licensing process could fall into one of several classes. We do not want to overburden housing providers by insisting that a landlord with ten or more properties apply and pay for an individual license per property. The decision on how to set classes based on the number of properties a landlord owns would have to depend on a fiscal study by City staff, but the costs should remain relatively low or neutral if at all possible.

The licensing model presented here is modeled after the policy currently in place in Daytona Beach.³ The requirements are not unduly burdensome and are minimums that ensure the safety of tenants when adhered to. All landlords, as defined by law, must be licensed in order to rent out a home. Understanding that homeowners sometimes rent out a room or that parents purchase a home for a student to live in, those homes would not require a licensed landlord.

In order to protect tenants from unscrupulous practices, all properties will be subject to safety inspections. Inspections would be handled by private inspectors with City certifications or

² City of Gainesville Sec. 14.5 on Landlord Permits

https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH14.5MIBUR E_ARTILAPE_S14.5-2POASPE

³ Daytona Beach Chapter 26 Art. VI on the Rental of Residential Dwellings

https://library.municode.com/fl/daytona_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CH26BU ARTVIREREDWUN

approval, and the inspectors would be hired directly by landlords. All inspection reports, whether passing or failing, would have to be filed for recordkeeping, most likely with the Clerk of Court.

The inspection guidelines will be developed by City staff in conjunction with Gainesville Fire Rescue and other appropriate agencies, but samples exist from other cities.⁴ Ideally, the home would receive a score that shows that it is not a safety risk, or it would need to undergo additional inspections until it scored high enough to not be considered a risk. Chief among the items on the inspection will be ensuring that homes have functioning smoke and CO detectors, that electrical wiring is not exposed, and that the home is in a generally habitable condition. According to GFR “Three of every five home fire deaths resulted from fires in homes with no smoke alarms (38%) or no working smoke alarms (21%).”⁵

Once a property passes inspection, it could be eligible to have its next yearly inspection in the form of a walkthrough by the landlord, followed by a sworn statement filed with the city. This incentive would reward responsible landlords and should be an acceptable alternative to paying for yearly safety inspections. This method is currently in place in Coral Springs and requires a notarization before submission.⁶

Licensing or registration to some degree is required in multiple municipalities in Florida, including Broward County, Coral Springs, Daytona Beach, and Mount Dora. It offers an easily accessible option to protect the interests of tenants who might not know how to navigate city codes enforcement or who might not know their full rights to a safe and sanitary home. Because of this, the license would also require that landlords disclose certain items to the potential tenants, including but not limited to a brochure on tenant rights and responsibilities, the last safety inspection of the property, and other educational materials and resources useful to tenants. The intent is that the landlord and tenant can have greater communication about the proposed rental agreement prior to its initiation, and hopefully avoid issues about housing safety.

⁴ Minneapolis sample

⁵ See Appendix for GFR memo

http://webcache.googleusercontent.com/search?q=cache:d_J3u8f3oNAJ:www.cityofgainesville.org/Portal/s/0/DisplayList/Handler.ashx%3Ffile%3DGFR/PressReleases/2018/2018-03-08%2520Smoke%2520Alarm%2520PSA.pdf+&cd=28&hl=en&ct=clnk&gl=us

⁶ Coral Springs Landlord Checklist <https://www.coralsprings.org/home/showdocument?id=152>

2. Energy Efficiency

In addition to the safety inspection required of all properties, all properties built prior to 1998 would need to undergo an energy efficiency inspection. While the goal is to have all rental properties eventually undergo an energy efficiency inspection, the amendment to the Florida Building Code in 1998 ensured that certain standards were present in homes built from that date on.

This inspection, like the safety inspection, would also be performed by a City-certified inspector but would only occur about every five years after the initial energy efficiency inspection. Recognizing that it would take a significant amount of time for so many properties to be inspected, we propose that a compliance period of about three to five years be implemented. However, landlords could be incentivized to come into compliance earlier if the licensing fee were reduced for properties that weatherize within one or two years or for properties that are already in compliance.

The main concerns, as voiced by the local Community Weatherization Coalition and other local partners, are that older rental properties consume electricity and water at a rate much higher than owner-occupied properties. These groups have proposed that relatively inexpensive modifications to homes would make significant reductions to energy and water consumption, resulting in lower utility bills. As it stands now, many tenants are able to afford the base rent of a property but are then surprised by the unusually high utility bills that accompany the property. This issue makes many traditionally affordable units truly unaffordable for many working families in the city.

The energy efficiency standards could be developed as a matrix, which could include relatively inexpensive modifications like new insulation or low-flow toilets, and could be developed by GRU and/or the Utility Advisory Board. This proposal would not demand weatherization modifications like replacing all windows to be double-pane, as the cost of such upgrades might easily outweigh the benefits yielded. To not overburden the landlord with the cost of weatherizing the home, we propose that the City make available no or low-interest loans for landlords to make the necessary modifications. By offering these loans, the City can help

mitigate the risk of landlords weatherizing properties and then passing along the cost to the tenants via increased rent or fees.

Exemptions to energy efficiency could and should be made available for the sake of preserving historic properties and to offer relief for properties where certain weatherization procedures would be near impossible. For example, insulation may not be an option where an adequate crawlspace does not exist. These exemptions would be approved on a case by case basis.

Last year, the City of Gainesville made a commitment to uphold the Paris Accord and to strive to reduce energy emissions in the city. Earlier this month, the City voted to be 100% renewable by 2045. By helping identify and modify properties that consume more energy and water than average, this program can help the tenants keep energy bills low, and help meet City environmental conservation goals.

3. Security Deposit Mediation

One of the most prevalent issues facing tenants is the unreasonable withholding of security deposit payments. Currently, there are almost no service providers to help with the contested security deposit returns. Three Rivers Legal Services is not able to take on these cases, as their goal is to keep people housed and security deposit disputes arise only after a tenant has already vacated the property.

As such, most tenants do not know that landlords are required to return a full deposit within fifteen days or to give written notification to the tenant that the landlord will keep the security deposit to cover damage to the home or that a response to such a claim from the landlord must be made within fifteen days. The lack of knowledge and inaccessibility of resources leaves many students and working families unable to reclaim substantial funds that are owed to them by Florida law.

We propose that a mediation alternative be a condition of landlord licensing. All landlords must agree to mediation on security deposit disputes, although all parties would maintain their right to take the dispute to a court of law. The mediation program would be free to both parties. The City could further train already certified court mediators or hire full-time mediators to handle this program.

Most importantly, the existence of a program like this one would put on notice landlords with a history of unreasonable withholding and would likely deter them from similar actions in the future. With the Alachua County Wage Recovery Ordinance currently in place, success and ease of recovery have been reported, and we hope to emulate that with the security deposit mediation program. We would also propose that a brochure on the mediation program and security deposit procedures be one of the educational materials disclosed through the licensing program so that tenants and landlords begin their rental agreement on equal footing.

Tallahassee is currently the only city in Florida with a mediation program for landlords and tenants, but the model used there would not be useful for the goals in Gainesville. It is not codified within the City of Tallahassee's Code of Ordinances. A conversation with the City Attorney's Office confirmed that it is simply a program run by the city. This program serves as

the most voluntary version of a mediation program established. A landlord must agree to enter into the program as voluntary participants in order to be subject to it, and the mediation is requested through filing a request with the city attorney's office. Both parties must attend in person or send an authorized representative. The mediation will last an hour and uses certified mediators.

In other states, there are currently versions of mediation programs, although some of the models are inherently not conducive to the goals for Gainesville. For example, the ordinance enacted by Palo Alto is the most robust example we found and it requires that mediation be mandatory. The program is overseen by a facilitator administrator, who makes an initial determination as to whether there is enough factual basis to warrant conflict resolution attempts. The ordinance sets up a specific timeline (no mediation until at least fourteen days after notice) within which one can respond to allegations, and this includes an informal reconciliation. It lays out the mediator's duty at mediation and demands the attendance of both parties up until the mediator finishes an opening statement. After the mediator's statement, the process is voluntary, meaning there is no required good-faith effort to participate. The statement makes it clear that there is no obligation to reach an agreement and limits the extent to which the mediation agreement can be used, limiting it to the dispute process unless otherwise specified.

The Town of Los Gatos approved a mediation program that includes mandatory mediation prior to arbitration. It sets up a timeline for requests and responses and lays out a somewhat complex mediation process, also allowing for arbitration. It calls for opening and closing statements during mediation, a presentation from each side, and the preparation of a mediation in the event of an impasse. Its mediation is mandatory. The subpoena power seems to be missing from this section, and overall it looks closer to something that would pass in Gainesville.

In Falls Church, Virginia, a simple mediation and arbitration program exists for landlord-tenant relations under Article V of Chapter 22. It defines all applicable terms as defined in Virginia's Code, and limits the scope within city limits, and is limited to disputes coming from the Virginia Residential Landlord and Tenant Act. The ordinance requires the filing of a complaint, after which a staff member will investigate and try to resolve the issue. If the issue

cannot be resolved, the parties can ask for mediation or arbitration. Compared to the Los Gatos Ordinance, the Falls Church ordinance has a very simplistic description of the mediation process, merely explaining what a mediation is and how one will either reach an agreement or an impasse. The timeline itself is also vague, electing not to lay out specific times between request and mediation, settling for “reasonable” time frames. The housing commission is heavily involved in the mediation process and maintains a record of any reached mediation.

Most of the mediation programs currently in existence cover a wide range of landlord-tenant issues. The program proposed for Gainesville would deal exclusively with security deposit disputes so that City resources are not spent on issues that have recourse through other means

4. Anti-Discrimination Ordinances

At present, the City of Gainesville offers protection against housing discrimination through Sec. 8-1(a)(2) of its city code. The protections protect against housing discrimination on the basis of “sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity,” but do not offer protection from discrimination based on actual or perceived citizenship status or based on income source. We would propose that the City amend its code to include these classes to reduce the barriers residents face in the search for affordable housing.

Given the political climate, less experienced or more emboldened landlords have attempted to use the threat of ICE or deportation to intimidate non-citizen (including legal permanent residents, visiting workers, and DACA recipients) when those non-citizens make demands of their landlords. The landlords have used the threat of ICE to silence requests for maintenance or basic compliance with landlord-tenant law. This proposed ordinance would prohibit and penalize such threats or inquiries, in order to make Gainesville a more welcoming city for all communities.

This proposed ordinance is already in effect in California as a state statute, but we have modified the language to be something more suitable to Gainesville. The following protective language can be inserted into the current city code and enforced through the Human Rights Board:

No landlord or agent of the landlord shall make any inquiry, disclose, or provide any information, prohibit offering accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

Of course the ordinance would not prohibit a landlord from complying with any legal obligation under federal or state law, including, but not limited to, any legal obligation under any federal or state government program that provides for rent limitations or rental assistance to a qualified tenant, or a subpoena, warrant, or other order issued by a court, or from requesting information or documentation necessary to determine or verify the financial qualifications of a

prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

To further aid residents in attaining affordable housing, we also propose that the City pass an income-discrimination ordinance. Such an ordinance is already in use in Miami-Dade and Broward Counties and they have been found legally sound. The ordinance would remove the barriers and stigma faced by families who rely on non-salary sources of income to make ends meet. These income sources can include social security, supplemental security income, child support, alimony, veterans benefits, disability benefits, unemployment, pension and retirement benefits, an annuity, a gift, an inheritance, the sale or pledge of or interest in property, or any form of federal, state, or local public, food, or housing assistance or subsidy, including assistance from the Supplemental Nutrition Assistance Program (SNAP) and the Housing Choice Voucher Program or "Section 8" vouchers.

At present, a landlord or his agent may openly advertise "No Section 8 Accepted." This ordinance would not force landlords to enroll in federal or state housing programs, but it would go a long way in making residents able to meet the income requirements for some homes by applying their varied income sources.