

ORDINANCE 23-2021

**BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**AN ORDINANCE AMENDING CHAPTER 106, OF THE BOROUGH CODE ENTITLED BOARDING HOUSES TO UPDATE
BOARDING HOUSE AND ROOMING HOUSE LICENSING REQUIREMENTS.**

WHEREAS, N.J.S.A. 40:52-10 authorizes a governing body to make, amend, repeal and enforce ordinances to license and regulate rooming and boarding houses within a municipality which are consistent with N.J.S.A. 55:13B-1 et. seq., so long as the municipality notifies the Commissioner of the Department Community Affairs; and

WHEREAS, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such ordinances and regulations as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants.

NOW, THEREFORE, BE IT ORDAINED, by the BOROUGH COUNCIL OF THE BOROUGH OF EATONTOWN, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY that Borough Code is hereby amended as follows:
Chapter 106 of the Code of the Borough of Eatontown, entitled "Boarding Houses," consisting of sections 106-1 to 106-6 is hereby repealed and replaced in its entirety with the following Chapter:

CHAPTER 106 BOARDING HOUSES AND ROOMING HOUSES

§106-1 Purpose

The purpose of this section is to protect the public health and welfare by licensing rooming and boarding houses, pursuant N.J.S.A 40:52-10

§106-2 Definitions

LICENSING AUTHORITY

Shall mean the Borough Council of the Borough of Eatontown.

OPERATOR

Shall mean any person, including for the purposes of this section, any corporation or association of persons or any agency or instrumentality of state or local government, which operates or proposes to operate a rooming or boarding house.

OWNER

Shall mean the holder of title in fee simple to premises and any lessor or sublessor of whom an operator is or proposes to become a sublessor in connection with an application for a license, or renewal thereof, pursuant to this section.

POPULATION

Shall mean the most recent population count reported by the Department of Labor.

ROOMING OR BOARDING HOUSE

Shall mean a rooming or boarding house licensed pursuant to N.J.S.A. 55:13B-1 et seq. A rooming house is further defined as a boarding house wherein no personal nor financial services are provided to the residents [N.J.S.A. 55:13B-3(h)]. It shall include all classes of premises applying for a license as defined in N.J.A.C 5:27-6.

§106-3 License Required

- a. Except as provided in paragraph b of this section, no rooming or boarding house shall hereafter be located or operated in the Borough except upon premises licensed for that purpose by the Licensing Authority
- b. Any rooming or boarding house that is in lawful operation on the date of enactment of this section shall be entitled to continue in operation for one year from the date of enactment and, if the owner of the premises applies for licensure not later than the 60th day next preceding the expiration of that year, until a final determination is made upon that application.

§106-4 License Application

Application for a license under this section shall be made to the Council. The application shall be by a form which can be obtained from the Borough Clerk.

- a. The application must be accompanied by an application fee of \$200 as prescribed by resolution. The application shall be filed with the Municipal Clerk, who will be required to place the application upon the agenda of the next available meeting of the Council.
- b. The form of application shall require the submission of information and supporting documentation, which will provide a basis upon which the Council may conduct the investigation and reach the conclusions required under this section for the issuance or denial of a license.
- c. It shall be the responsibility of the applicant/owner to obtain information required by this application and to exercise due care and diligence to insure its completeness and accuracy.
- d. All information required from the operator must be duly sworn to by the operator in order to form a valid part of the application.
- e. If the application filed pursuant to this section is denied, 90% of the application fee shall be refunded to the applicant, and 10% retained by the Borough in defraying the expenses of the Licensing Authority in carrying out its functions under this section.
- f. All applications by a natural person, partnership or unincorporated association of natural persons shall be duly sworn to by each of the applicants. An application by a corporation shall be duly sworn to by the president or vice president of the corporation. All statements in the application shall be deemed material, and any person who knowingly misstates any material fact therein shall be guilty of a crime of the fourth degree.
- g. Each application shall designate an operator/manager of the premises. That person must meet the requirements for licensure by the NJ Department of Community Affairs and requirements for licensure of a natural person. There shall be a \$25 fee for a background check on the designated operator/manager. Said fee will apply each time the operator/manager changes.

§106-5 Required Notice

Every applicant for a license shall, after filing the application, cause notice of the pendency of the application to be published once per week for two weeks successively in a newspaper, printed in the English language, published and circulated in Monmouth County. The notice shall include the time and place of the Public hearing before the Council, the name of the owner of the premises, the name of the operator of the boarding house, the name of the boarding house, the address of the boarding house, and the business name of the boarding house.

The second publication thereof shall be made not less than one week nor more than two weeks prior to the date for the public hearing

§106-6 Investigation

The Borough Administrator shall, upon receipt of application, cause the following inspections to take place:

- a. With respect to the premises for which a license is sought: (1) that they are in compliance with all applicable building, housing, health and safety codes and regulations; (2) that the location of the premises will not, in conjunction with the proximity of other rooming and boarding houses, lead to an excessive concentration of such facilities in the municipality or a particular section thereof;
- b. With respect to the owner or owners of the premises: (1) if a natural person or persons, that he or they are 21 years of age or older, citizens of the United States and residents of the State of New Jersey, and never convicted, in this State or elsewhere, of a crime involving moral turpitude, or of any crime under any law of this State licensing or regulating rooming or boarding houses, and have never had a license required pursuant to P.L. 1979, c. 496(C. 55:13B-1 et seq.) revoked; (2) if a corporation, that all officers and members of the Board of Directors, and every stockholder holding 10% or more of the stock of the corporation, directly or indirectly having a beneficial interest therein, have the same qualifications as set forth in this subsection for an applicant who is a natural person;
- c. With respect to the operator or proposed operator, that he meets the requirements for licensure by the Department of Community Affairs; and
- d. That the owner and operator, either individually or jointly, shall have established sufficient guarantee of financial and other responsibility to assure appropriate relocation of the residents of the rooming and boarding house to suitable facilities in the event that the licensure is subsequently revoked or its renewal denied. The Department of Community Affairs shall determine in the case of each type of rooming and boarding house under this jurisdiction, what constitutes suitable facilities for this purpose. Said guarantee of financial responsibility shall be in the form of a surety bond in favor of the Borough. The amount for said bond shall be determined by the Borough Administrator at the time of the hearing on the application, by multiplying the number of the maximum allowable licensed beds at the rooming and boarding house in question by the maximum relocation costs allowed by the Department of Community Affairs (including both the maximum moving expenses and rental assistance allowed by the

Department) and then by adding an additional 10% of said total for administrative costs and expenses in the event of relocation. Said bond shall be in form and substance acceptable to the Borough Attorney and for a period of one year.

- e. An inspection performed by a municipal enforcement agent under a contractual agreement with the Department of Community Affairs pursuant to N.J.S.A. 55:13B-1 et seq. and may be deemed the Licensing Authority to satisfy the investigation requirements of this section; such inspection shall be performed by and be under the jurisdiction of the Licensing Authority.
- f.

§106-7 Public Hearing

The Council shall hold a public hearing, at which the applicant, the operator or proposed operator and all other parties in interest including members of the general public, shall be entitled to be heard upon the merits of the application and the suitability of the premises proposed for licensing. The time and place of the public hearing shall be determined within 30 days of receipt of the application, and shall be communicated to the applicant in sufficient time to enable compliance with the publication requirement of this section.

§106-8 Restrictions

- a. No license shall be issued which would result in increasing the total number of persons authorized to be residents in rooming and boarding houses within the Borough to more than 100 people; but nothing in this subsection shall warrant refusal of a license or license renewal for premises where a rooming or boarding house has been in lawful operation prior to the enactment of this section.
- b. No license shall be issued for premises when any part of the boundary line of the premises is within 1,000 feet of the boundary line of any other premises for which a license is in force; but nothing in this subsection shall warrant refusal of a license or license renewal for premises where a rooming or boarding house has been in lawful operation prior to the enactment of this section.
- c. No license shall be issued until all real estate taxes, sewer, water and all other municipal liens and charges are current up to and including the quarter within which the application shall take place. The applicant will be disqualified for applying for a license until all aforementioned charges are brought current.
- d. Owner or owners of the premises shall never have had a license required pursuant to N.J.S.A. 55:13B-1 et seq. revoked.
- e. Except as otherwise provided in the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no license shall be issued to any person who has at any time been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offense or offenses, or to any partnership of which such person is a member, or to any association or corporation of which said person is an officer, director or employee or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly.
- f. No license shall be issued to any person if the Council determines that the issuance of a license to such person would be contrary to the best interests of the residents of any rooming or boarding house or of the public generally.
- g. No owner shall employ any person not licensed as an operator to operate any rooming or boarding house. A separate operator shall be required for every building occupied by residents other than an accessory building.
- h. No license shall be issued to any person who has previously been denied a license by either the Department of Health or the Department of Human Services for reason of personal unfitness or who has had a license revoked by either the Department of Health or the Department of Human Services.
- i. No license shall be issued to, or shall continue to be held by, any person, who, in a final adjudication by a court of record or by the Division on Civil Rights, has been found to have discriminated against any resident or prospective resident on the basis of race, color, creed, national origin or ancestry.
- j. A Class D license shall specify the type of facility for which it is issued. Except as otherwise provided in this chapter, any service which may be provided under a Class C license may be provided under a Class D license and any facility operated under a Class D license shall conform to all standards that would be applicable to the facility were it operated under a Class C license.
- k. No license to own or operate a boarding house shall be issued to, or shall be continued to be held by, any person who has not completed a training course approved by the Department of Community Affairs. This subsection shall not apply to persons holding or applying for only Class A (rooming house) licenses or Class F (cooperative sober living residence) licenses and shall only be effective so long as there exists a training program funded by the Department of Human Services.

- l. No license to operate a rooming or boarding house shall be issued prior to receipt of a certification that the building does not have any outstanding violations of the Uniform Fire Code N.J.A.C. 5:70.
- m. No person shall own or operate a rooming or boarding house that offers or advertises or holds itself out as offering personal care services to residents with special needs, including, but not limited to, persons with Alzheimer's disease and related disorders or other forms of dementia, hold out a building as available for rooming or boarding house occupancy for such residents, or apply for any necessary construction or planning approvals related to the establishment of a rooming or boarding house for such residents without first having a Class C or Class D license with an endorsement allowing such services to be offered and provided at the facility.

§106-9 Term of License

- a. After the public hearing, the Licensing Authority shall determine in accordance with the requirements of this section, whether to grant the license. A license when issued shall be valid for one year from the date of issuance and until such time as the Licensing Authority has acted upon an application for renewal, unless sooner terminated by revocation pursuant to the terms of this section.
- b. Not later than the sixtieth day preceding the anniversary date of issuance, the holder of a license shall make application to the Licensing Authority for its renewal. Application for a renewal shall follow the same procedure and requirements as prescribed for a new application and shall necessitate de novo consideration and determination by the Licensing Authority in the same manner as a new application.

§106-10 Revocation

The Licensing Authority may revoke a license granted under this section for any of the following reasons:

- a. A finding that there was any misstatement of material fact in the application upon which the license was issued.
- b. The occurrence of any fact which, had it occurred and been known to the Licensing Authority before the issuance of the license, would have resulted in the denial of the application.
- c. Repeated violations, or prolonged failure to correct any violation, of any applicable building, housing, health or safety code or regulations for at least 60 days.
- d. Refusal to allow access to any portion of the licensed premises at all reasonable time, with or without advance notice in order that officers or agents of the Licensing Authority, or any official charged with enforcement within the municipality of any building, housing, health or safety code or regulations applicable to the premises may determine compliance with such codes or regulations.
- e. Revocation by the Department of Community Affairs of the operator's license or other authorization to operate a rooming or boarding house on the premises.
- f. Notification by the Department of Community Affairs that the premises are not, or are no longer suitable for operation of a rooming or boarding house on the premises.
- g. Failure or refusal to comply with any lawful regulation or Order of the Licensing Authority.
- h. A determination by the Licensing Authority that the issuance or renewal of a license to such a person would be contrary to the best interests of the residents of any rooming or boarding house or the public generally based upon the regulations and conditions set forth in this chapter.

§106-11 Notice of Revocation

A license shall not be revoked until five days' prior notice of the grounds therefor has been served upon the licensee, either personally or by certified mail addressed to the licensee at the licensed premises, and a reasonable opportunity given to the licensee to be heard thereon.

§106-12 Appeal

Upon determination by the Licensing Authority to refuse the granting or renewal of a license, or to revoke a license, the licensee affected shall be entitled to appeal to the Commissioner of Community Affairs for a review of that determination. Said appeal is to be filed within 30 days of a final decision of the Licensing Authority. Said appeal to be filed in writing with the Director of Licensing and inspections; the Commissioner shall have the authority to reverse the Licensing Authorities determination if it concludes that the application was improperly denied, or the revocation improperly imposed. Such review shall be in conformity with the provisions of the "Administrative Procedures Act" P.L. 1968, c. 410 (N.J.S.A. 52:14B-1 et seq.). The decision of the Commissioner in such cases shall be subject to appeal to the Appellate Division of the Superior Court. If an applicant for a license renewal has made timely and sufficient application for a renewal in accordance with the provisions of this section, and the rules of the licensing pursuant thereto, his license shall not expire until any appeals under this section have been finally determined and disposed of.

§106-13 Authority to Act

The Licensing Authority shall be the Borough Council. All decisions of the Licensing Authority shall be by a majority of the quorum present for the public hearing as prescribed by subsection.

§106-14 Violations and Penalties

Any person, firm or corporation who violates or neglects to comply with any provision of this chapter or any rule, regulation or directive promulgated pursuant thereto shall be penalized, following a hearing before the Borough Administrator, by a civil penalty of not less than \$50 and not to exceed \$5,000. The licensee may appeal to the Department of Community Affairs as set forth in § 4-17.12.

§106-15 Inspections

- a. There shall be an annual inspection for each rentable room enumerated on license to own and/or operate a rooming or boarding house issued by the Licensing Authority.
- b. The initial annual inspection fee shall be \$30 per rentable room, regardless of the number of changes in tenancy. During the initial annual inspection, the entire property will be inspected including all common areas, and the exterior of the property.
- c. Any reinspection will require the fee of \$20 per rental room requiring reinspection, \$50 for the reinspection of any common area and a \$50 reinspection fee for the exterior of the property

BE IT FURTHER ORDAINED, that

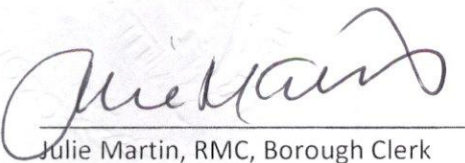
- A. All other Ordinances or provisions of the Code of the Borough of Eatontown or parts thereof, which are inconsistent with any provisions in this Ordinance, are hereby repealed to the extent of such conflict or inconsistency.
- B. If any provision or portion of this Chapter is held to be unconstitutional, preempted by Federal or State Law or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated.
- C. This Ordinance shall take effect upon its passage and publication as required by law.
- D. Upon passage, the Clerk shall provide a copy of the Ordinance to the Commissioner of the Department of Community Affairs pursuant to N.J.S.A. 40:52-10.

DATE INTRODUCED: August 11, 2021

DATE ADOPTED: August 25, 2021

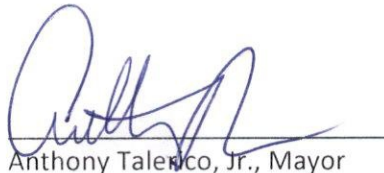
ATTEST:

APPROVED:



Julie Martin, RMC, Borough Clerk

Date: 8-26-2021



Anthony Talenco, Jr., Mayor