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Title:	AN ORDINANCE AMENDING TITLE XVIII, HOUSING CODE, CHAPTER 3, RESPONSIBILITIES OF OWNERS/OPERATORS, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY ESTABLISHING NOTICE REQUIREMENTS FOR WINDOW GUARDS BY LANDLORDS AND TENANTS.				
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AN ORDINANCE AMENDING TITLE XVIII, HOUSING CODE, CHAPTER 3, RESPONSIBILITIES OF OWNERS/OPERATORS, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY ESTABLISHING NOTICE REQUIREMENTS FOR WINDOW GUARDS BY LANDLORDS AND TENANTS.

WHEREAS, the Department of Engineering, Division of Inspections desires to establish notice requirements regarding window guards for landlords and tenants; and

WHEREAS, some of the changes made in this Ordinance will provide for the requirements of notice.

NOW THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, THAT:

Note: Additions are shown in **Bold and Underlined**. Deletions are shown in ~~Strikeouts~~.

SECTION 1. Title XVIII, Housing Code, Chapter 3, Responsibilities of Owners/Operators, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, be further amended and supplemented, by establishing notice requirements regarding window guards for landlords and tenants:

§18:3-1.65.Window Guards; When Required; Definitions.

- a. Responsibility of Owners. The owner of any rented dwelling unit shall be required to

provide, install, and maintain approved child-protection window guards on each window in every apartment, dwelling and dwelling unit, and in the common spaces including and in the public hallways of the rented dwelling in which a child who is at least six months of age but no older than 10 years of age resides where a child ten (10) years of age or younger resides. The owner of any rented dwelling or dwelling unit shall ascertain whether a child or children reside therein, in accordance with this Article.

- b. ~~Exclusion. This requirement shall not require the owner to install the window guards on fire escapes, patios and other areas where a person may exit without falling more than six feet.~~ **Optional Window Guard Installation at Tenant Request. The owner of any rented dwelling or dwelling unit shall provide, install, and maintain approved child-protection window guards on each window in every apartment, dwelling and dwelling unit, and in the common spaces including public hallways of the rented dwelling upon receipt of a written request of the tenant for window guards. The tenant is not required to provide a reason for said request.**

- c. ~~Definition. As used in this Article:~~

OWNER

~~Shall mean, the owner, lessee, agent, or other person who manages or controls any rented building.~~

Exclusion. This requirement shall not require the owner to install the window guards on fire escapes, patios, and other areas where a person may exit without falling more than six (6) feet, unless a hazardous condition at that location would necessitate the installation of a window guard. Air conditioner window units are acceptable alternatives to window guards if they are properly secured in accordance with the manufacturer's instructions for installation and do not have an opening greater than four inches on either side of the window unit.

- d. ~~Standard.~~

~~1. General Installation Requirements.~~

~~(a) Window guards shall be installed in accordance with all applicable requirements of the State Uniform Construction Code, N.J.A.C. 5:23, and with manufacturer's instructions.~~

~~(b) Any window guard installed on an emergency egress window shall be releasable or removable from the inside without use of a key, tool, or excessive force. An emergency egress window is any window in a sleeping room located on the second or third floor, other than a window providing access to a fire escape.~~

~~(c) Any window guard installed on a window that is not an emergency egress~~

window, including any window in a unit located above the third floor and any window in a room on the second or third floor that is not a sleeping room, shall be designed, constructed and installed so that it cannot be removed, opened or dislodged without the use of a key or tool.

2. Specifications for Window Guards.

- (a) Window guards shall be so constructed as to reject the passage of a solid four inch sphere at every space and interval.
- (b) Window guards shall bear a 150 pound load at a centerspan when extended to maximum width.
- (c) Window guards shall be constructed of metal or of other material of comparable strength and durability. In order to avoid obstruction of light and air, the diameter or width of metal rods used in window guards shall not exceed 1/2 inch.
- (d) Window guards shall be designed, constructed and installed so as to serve their intended protective purpose without any risk of collapse, breakage, spreading of the bars or other malfunction.
- (e) In a room, window guards shall be of at least a height sufficient to allow a total openable window area, for all windows in the room, of not less than 4% of the floor area of the room. In a public hallway, window guards shall protect the full openable area of each window.
- (f) Window guards shall be securely fastened in order to bear the required load.
- (g) All window guards shall be so designed and installed as to prevent the lower window from being raised four inches or more above the lowest section of the top horizontal bar of the window guard. Where necessary, rigid metal stops shall be installed securely in the upper tracks of each side of the bottom window.
- (h) Screws used to mount window guards and stopping devices should be:
 - (1) Minimum Size No. 10 and long enough to penetrate one inch into a wooden window frame; or
 - (2) Of an adequate type, size, and length to be securely fastened to a metal window frame.

- ~~(i) The coating of window guards shall be unleaded.~~
- ~~(j) Window guards shall be installed only in sound (non-rotting) mountings or tracks.~~
- ~~(k) Window guards installed prior to the passage of this section shall be accepted as being in conformity with the specifications contained in this paragraph d,2 if they were installed in accordance with paragraph d,1 above.~~

~~3. Additional Specifications for Window Guards Other than Double Hung Windows.~~

- ~~(a) Window guards intended for casements, sliders and other types or combinations of windows in which the height of the openings is not subject to limitation, shall be of such size as to fill the entire aperture, and shall reject passage of a solid four inch sphere at every space or interval.~~
- ~~(b) Except as otherwise provided in paragraph (c) below, sliding windows and vertical pivoting windows may be equipped with stopping devices in place of window guards as follows:~~
 - ~~(1) For sliding windows, solid metal blocks, measuring at least 1/2 the depth of the window track and 1/2 the width, shall be securely fastened into the bottom and upper window tracks to prevent the window from opening four inches or more.~~
 - ~~(2) For vertical pivoting windows, metal stopping devices shall be securely fastened to the upper and lower window frames so as to prevent the window from pivoting open four inches or more.~~

~~The height of the stopping devices shall extend not less than one inch nor more than two inches beyond the window frame as needed to stop the window. The protruding edge of the stopping device shall be smooth and rounded.~~

- ~~(c) Use of such stopping devices in lieu of window guards shall be allowed within dwelling units only where they do not preclude meeting the requirement, as per N.J.A.C. 5:10-16.2, that the total openable window and/or openable skylight area in each room be equal to at least 4% of the floor area of the room.~~

Definitions. As used in this Article:

Child or children. "Child or children" shall mean any person 10 years of age or younger.

City. "City" shall mean the City of Newark.

Commissioner. "Commissioner" shall mean the City of Newark, Director of the Department of Engineering.

Common Area. "Common Area" shall mean any and all areas to which tenants have access in a dwelling, including but not limited to public hallways and multi-purpose rooms.

Department. "Department" shall mean the City of Newark Department of engineering.

Dwelling. "Dwelling" shall mean the building or structure rented or offered for rent, in whole or in part, to one or more tenants.

Dwelling Unit. "Dwelling Unit" shall mean any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof, or any of the person's or persons' servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy thereof.

Installation of window guard. "Installation of window guard" shall mean proper installation of window guards in accordance with the standards set forth at 18:3-1.66(a) below and maintenance of window guards in a manner approved by the Department.

Owner. "Owner" shall mean owner, agent, or other person who manages or controls any rented building, dwelling or dwelling unit.

Reside. "Reside" shall mean reside, will reside, or are regularly present for a substantial period of time in the dwelling or dwelling unit.

Tenant. "Tenant" shall mean lessee or other occupant, who is 18 years of age or older, residing within a dwelling or dwelling unit, regardless of whether said occupant is a party to a lease agreement.

Window Guard. "Window Guard" shall mean a child-protection window guard that meets the specifications set forth in this Article.

e. Penalty. Anyone found to be in violation of this section shall be subject to a fine not to exceed \$1,000, or to imprisonment for a term not to exceed 90 days, or both.

§18:3-1.66.Standards.

a. General Installation Requirements.

- 1. Window guards shall be installed in accordance with all applicable requirements of the State Uniform Construction Code, N.J.A.C. 5:23, and with manufacturer's instructions.**

2. Any window guard installed on an emergency egress window shall be releasable or removable from the inside without use of a key, tool, or excessive force. An emergency egress window is any window in a sleeping room located on the second or third floor, other than a window providing access to a fire escape.
3. Any window guard installed on a window that is not an emergency egress window, including any window in a unit located above the third floor and any window in a room on the second or third floor that is not a sleeping room, shall be designed, constructed and installed so that it cannot deliberately or through accident, ignorance or inadvertence, be removed, opened or dislodged without the use of a key or tool.

b. Specifications for Window Guards.

1. Window guards shall be so constructed as to reject the passage of a solid four (4) inch sphere at every space and interval.
2. Window guards shall bear a one hundred fifty (150) pound load at a center span when extended to maximum width.
3. Window guards shall be constructed of metal or of other material of comparable strength and durability. In order to avoid obstruction of light and air, the diameter or width of metal rods used in window guards shall not exceed one-half (1/2) inch.
4. Window guards shall be designed, constructed and installed so as to serve their intended protective purpose without any risk of collapse, breakage, spreading of the bars or other malfunction.
5. In a room, window guards shall be of at least a height sufficient to allow a total openable window area, for all windows in the room, of not less than four (4%) percent of the floor area of the room. In a public hallway, window guards shall protect the full openable area of each window.
6. Window guards shall be securely fastened in order to bear the required load.
7. All window guards shall be so designed and installed as to prevent the lower window from being raised four (4) inches or more above the lowest section of the top horizontal bar of the window guard. Where necessary, rigid metal stops shall be installed securely in the upper tracks of each side of the bottom window.
8. Screws used to mount window guards and stopping devices should be:

(a) Minimum Size No. 10 and long enough to penetrate one (1) inch into a wooden window frame; or

(b) Of an adequate type, size, and length to be securely fastened to a metal window frame.

9. The coating of window guards shall be unleaded.

10. Window guards shall be installed only in sound (non-rotting) mountings or tracks.

11. Window guards installed prior to the passage of this section shall be accepted as being in conformity with the specifications contained in this paragraph b above, if they were installed in accordance with, paragraph a above.

c. Additional Specifications for Window Guards Other than Double Hung Windows.

1. Window guards intended for casements, sliders and other types or combinations of windows in which the height of the openings is not subject to limitation, shall be of such size as to fill the entire aperture, and shall reject passage of a solid four (4) inch sphere at every space or interval.

2. Except as otherwise provided in paragraph 3 below, sliding windows and vertical pivoting windows may be equipped with stopping devices in place of window guards as follows:

(a) For sliding windows, solid metal blocks, measuring at least one-half (1/2) the depth of the window track and one-half (1/2) the width, shall be securely fastened into the bottom and upper window tracks to prevent the window from opening four (4) inches or more.

(b) For vertical pivoting windows, metal stopping devices shall be securely fastened to the upper and lower window frames so as to prevent the window from pivoting open four (4) inches or more.

The height of the stopping devices shall extend not less than one (1) inch nor more than two (2) inches beyond the window frame as needed to stop the window. The protruding edge of the stopping device shall be smooth and rounded.

3. Use of such stopping devices in lieu of window guards shall be allowed within

dwelling units only where they do not preclude meeting the requirement, as per N.J.A.C. 5:10-16.2, that the total openable window and/or openable skylight area in each room be equal to at least four (4%) percent of the floor area of the room.

§18.3-1.67. Notice Requirements

a. Lease Notice

- 1. All leases offered to tenants shall contain a notice, conspicuously set forth therein in prominent boldface type, as a Rider to the lease, advising tenants and prospective tenants of the owner's duty to install window guards in the dwelling or dwelling unit and common areas if any child or children reside(s) in the dwelling or dwelling unit. Said Rider also shall notify tenants and prospective tenants of their right to request, in writing, the installation of window guards for any reason.**
- 2. At the time of lease signing, the owner shall verbally inform the tenant of the owner's duty to install window guards in the dwelling or dwelling unit and common areas if any child or children reside(s) in the dwelling or dwelling unit, and shall inform the tenant of his/her the right to request, in writing, the installation of window guards for any reason.**
- 3. Verification that this verbal notice was provided and understood shall be set forth in the Rider, which shall acknowledge that the tenant was made aware of the owner's duty to install window guards if any child or children reside(s) in the dwelling or dwelling unit and the tenant's right to request, in writing, the installation of window guards for any reason.**
- 4. Said Rider shall request and list the age(s) and dates of birth for any and all child or children who reside(s) in the dwelling or dwelling unit and shall be signed and dated by both the tenant and the owner separately from the lease.**
- 5. The form and content of said Rider shall be specified in Appendix A hereto and shall be available to tenants in English, Spanish, Portuguese and Creole.**

b. Twice-Annual Notice.

- 1. The owner shall cause to be delivered to each dwelling unit, twice annually, a notice, advising tenants of the obligation of said owner to install window guards in accordance with this Article. The first such notice shall be delivered between January 1 and January 30 and the second such notice shall be delivered between July 1 and July 31 each year.**
- 2. The form and content of said Annual Notice shall be specified in Appendix B hereto and shall be available to tenants in English, Spanish, Portuguese and Creole.**
- 3. The Annual Notice shall clearly state that a tenant's failure to respond shall result in an inspection by the owner at a mutually agreeable time.**

4. The owner shall deliver the annual notice either by first class mail addressed to the tenant at the dwelling or dwelling unit address with a certified return receipt; or by hand delivery to the tenant at the dwelling or dwelling unit with a return receipt signed by the tenant acknowledging delivery.
5. The owner shall cause to be conspicuously posted and prominently displayed in the common areas of the dwelling a notice advising tenants of the obligation of the owner to install window guards in accordance with this Article and advising tenants to check their window guards on a regular basis and to report any problems or concerns to the owner.
6. If, after 30 days from the date the Annual Notice was delivered, the owner has fully complied with this Article and does not have a written response to the annual notice that is signed by the tenant or otherwise have actual knowledge that a child or children reside in the dwelling or dwelling unit, then the owner shall, at a time that is mutually agreeable for the owner and tenant, inspect the dwelling or dwelling unit to ascertain whether a child or children reside therein.
7. If, after 60 days from the date the Annual Notice was delivered, the owner has fully complied with this Article and has no actual knowledge if a child or children reside in the dwelling or dwelling unit, then the owner shall inform the Department, in writing, 920 Broad Street, Newark New Jersey 07102, of his/her attempts to comply with this Article.

c. Variation in Form of Notices Prohibited.

- 1.The wording and form of notices specified in this regulation shall not be altered or varied in any manner, except as permitted by the Commissioner.

§18:3-1.68.Orientation

- a. Upon installation of a window guard in a dwelling or dwelling unit, and annually thereafter, the owner shall provide the tenant with an orientation concerning the safe use and manipulation of window guards in accordance with guidelines established by the Commissioner of Community Affairs pursuant to section 5 of P.L. 1995 c. 120 (C.55:13A-7.16).
- b. Upon installation of a window guard in the common area(s) of a multiple dwelling, and annually thereafter, the owner shall provide the tenants with an orientation concerning the safe use and manipulation of window guards in accordance with guidelines established by the Commissioner of Community Affairs pursuant to section 5 of P.L. 1995 c. 120 (C.55:13A-7.16).

§18:3-1.69.Inspection

- a. At least twice annually, the owner shall inspect each window guard under their control to ensure that it remains sound and in conformance with the provisions of P.L. 1995, c. 120 (C.55:13A-7.12 et seq.).

- b. The owner shall enter a record of such inspection in a log, which shall be maintained as a permanent record so long as the window guard remains installed, and for five years thereafter, and which shall be available upon request to the Department or other authorized representative.**

§18:3-1.70. Notice that Installation is Optional or There is a Tie-In between Installations and Tenant Payment is Prohibited.

- a. The owner shall not advise or otherwise communicate to the tenant that the installation of window guards is optional where a child or children reside in the dwelling or dwelling unit, or, that the installation of window guards is, in any manner, dependent upon payment by the tenant.**
- b. The owner shall not impose any conditions, such as fees, or any deterrent in relation to the installation of window guards.**
- c. The owner is financially responsible for the cost, installation, maintenance and repair of window guards in dwellings, dwelling units and all common areas, and window guards shall remain the property of the owner.**

§18:3-1.71. Tenant Obligation to Provide Information and Access; Obstruction or Interference with Window Guards Prohibited.

- a. The tenant shall not refuse or otherwise unreasonably fail to provide accurate and truthful information regarding the residency of children in the dwelling or dwelling unit.**
- b. No tenant of a dwelling or dwelling unit shall obstruct or interfere with the installation, annual inspection, or maintenance of window guards nor shall any person remove or otherwise render ineffective such window guards; provided, however, that the owner may remove window guards from an unoccupied unit or, with the consent of the tenant, from a unit in which no child or children reside.**
- c. If the owner is denied access to a dwelling or dwelling unit for the purpose of installing, annually inspecting, or maintaining window guards in accordance with this Article, the owner shall inform the Department of the same, in writing, including a description of the owner's attempts to gain access and the circumstances of the denial thereof, at 920 Broad Street, Newark, New Jersey 07102.**

§18:3-1.72. Procedures for Requesting Window Guard Variances.

- a. All requests for window guard variances must be submitted in writing for review to the Department at 920 Broad Street, Newark, New Jersey 07102**
- b. Requests for variances will be considered only if submitted by the owner or tenant.**

- c. Requests for variances will be considered when the installation of a window guard proves to be impossible for structural reasons.
- d. A request for variance shall be submitted in writing to the Department and shall include:
 - 1. Name, address, and phone number of applicant.
 - 2. Address of dwelling(s) or dwelling unit(s) for which the variance is being requested and the type and number of windows involved.
 - 3. Reason(s) for the request.
 - 4. Description of condition or conditions warranting the request, including photos and/or mechanical drawings of the windows in question depicting the particular structural idiosyncrasy or aberration making the request necessary.
 - 5. The alternative device presented for consideration must meet the same criteria and standards of safety as the prescribed window guards.
- e. All variances shall be granted on a time-limited basis as determined by the Department of Engineering and shall be subject to review, renewal or retraction at the expiration of the prescribed period or earlier should an abuse of the procedural requirements be identified.
- f. When the strict application of a provision of this section presents practical difficulties or unusual hardships to the owner, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this regulation and upon such condition as, in the Commissioner's opinion, is necessary to protect life and health.

§18:3-1.73.Owner Duty to Inform Tenant of Variance.

- a. The owner must notify the tenant or potential tenant, prior to the signing of the lease, that the owner is in possession of a variance as set forth at 18:3-1.73.
- b. In the event an owner applies and is granted a variance that permits the non-installation of a window guard during a tenancy, the tenant may terminate the lease agreement without penalty or cost to the tenant.
- c. A tenant must provide the owner with at least one-month's notice prior to termination of the lease.

§18:3-1.74.Owner Obligated to Maintain Window Guard Log.

- a. The owner is required to maintain a log in accordance with the Article that includes:
 - 1. The signed lease notice for each tenant as required by § 18.3-1.67(a).

- 2. A record of all Twice Annual Notices in accordance with § 18.3-1.67(b).**
- 3. A record of all Orientations in accordance with § 18.3-1.68.**
- 4. A record of all Inspections and/or inspection attempts as required by § 18:3-1.70.**
- 5. A copy of all Optional Installation requests made in accordance with § 18:3-1.65.**
- 6. A record of all Variances in accordance with § 18:3-1.72 and 1.73.**

- b. The owner shall maintain the window guard log as a permanent record so long as the window guard remains installed, and for five years thereafter, and which shall be available upon request to the Department.**

§18:3-1.75.Prohibition of Retaliatory Eviction.

- a. No owner shall be permitted to initiate eviction proceedings against a tenant where the eviction grounds result from the tenant's attempts to enforce this Article, or following complaints issued against the owner under this Article. Should the owner initiate an eviction proceeding against the tenant, such action shall be presumed retaliatory conduct by the owner.**

§18:3-1.76.Complaint Process.

- a. The tenant or owner may file a complaint with the Commissioner for failure to comply with the provisions of this Article. The Commissioner shall investigate complaints within a reasonable time period. The Commissioner must notify both parties of its findings within ten (10) business days after inspection.**

§18:3-1.77.Nuisance.

- a. Failure to install or maintain window guards pursuant to this Article is hereby declared to constitute a nuisance and a condition dangerous to life and health.**

Every person obligated to comply with the provisions of this Article is hereby ordered to abate said nuisance and condition by installing and maintaining the required window guards forthwith.

§18:3-1.78.Violations and penalties.

- a. *Penalty.* Any person found guilty before the Municipal Court of the City of Newark for violating provisions of this Article shall be subject to a fine not to exceed One Thousand (\$1,000.00) dollars, or to imprisonment for a term not to exceed ninety (90) days, or both.**

§18:3-1.78. Enforcement of Code; Notice of Violation.

- a. For the purpose of enforcement of this Code, an Officer of the Office of Inspections and Enforcement, by visual inspection, shall service a notice on an Owner or Tenant that constitute of a violation of non-compliant with this Title.**

SECTION 2. To the extent that any previous ordinance(s) are inconsistent with or contradictory hereto, said ordinance(s) are hereby repealed or amended to the extent necessary to make the same consistent herewith.

SECTION 3. The provisions of this Ordinance are severable. To the extent any clause, phrase, sentence, paragraph, or provision of the Ordinance shall be declared invalid, illegal or unconstitutional, the remaining provisions shall continue in full force and effect.

SECTION 4. Codification. This Ordinance shall be a part of the Code of the City of Newark as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code. The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Newark in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

SECTION 5. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance authorizes the Department of Engineering, Division of Inspection to amend Title XVIII, Housing Code, Chapter 3, Responsibilities of Owners/Operators, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, by establishing notice requirements to landlords and tenants regarding Window Guards.

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