

AN ORDINANCE AMENDING CHAPTER 6 OF THE CHARLOTTE CITY CODE ENTITLED “BUSINESSES AND TRADES”

WHEREAS, the City of Charlotte has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order; and

WHEREAS, G.S. 160A-174 allows a city by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city; and

WHEREAS, there are residential rental properties in the City of Charlotte that have become a haven for various criminal or disruptive activities that cause disorder in our community; and

WHEREAS, the City Council desires to minimize and control the adverse effects caused by illegal activities occurring on and in these properties and thereby protect the health, safety, and welfare of the citizens, preserve the quality of life and property values and the character of neighborhoods and businesses, and deter the spread of urban blight; and

WHEREAS, the City Council recognizes that it is necessary for the City to apply its limited police and other municipal resources in accordance with the needs of the community at large, and to adjust the application of those resources as necessary to address activity that is injurious to the health, safety and welfare of the public; and

WHEREAS, the City Council recognizes that deterring crime in residential rental properties is a dynamic partnership between police, property owners, property managers, residents, and neighbors, each with responsibilities in cooperation with the other; and

WHEREAS, the City Council desires to implement a registration requirement for those residential rental property owners whose rental property has an unacceptable level of disorder activity occurring on or in the property; and

WHEREAS, there is a significant and demonstrative need to implement a program designed to assist residential rental property owners and managers who have experienced excessive levels of criminal activity and disorder; and

WHEREAS, the City Council desires to enact a remedial residential rental action program for residential rental property owners in order to implement

recommended measures to curb excessive levels of criminal activity and disorder at rental properties; and

WHEREAS, the City Council, finds that a residential rental property owner's failure or refusal to successfully complete the remedial action program is injurious to the public's health, safety and welfare.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Chapter 6 "Businesses and Trades" of the Charlotte City Code is amended by creating Article XII entitled "Residential Rental Remedial Action Program", to read as follows:

"ARTICLE XII. Residential Rental Remedial Action Program.

Section 6-580. Purpose.

The purpose of this article is to establish a requirement that Owners of Residential Rental Property rental units whose property is within the Disorder Risk Threshold as established by this ordinance must register with the City sufficient identification information so that the City may expeditiously identify and contact the Owner when excessive levels of disorder activity have occurred on or in the property. In addition, the City desires to establish a method to hold Owners of Residential Rental Property accountable for failing to use effective methods to reduce Disorder Activity on their property. It is not the intent of this article to determine the rights and liabilities of persons under agreements to which the City is not a party. This article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to property that is the subject of this Article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.

Section 6-581. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

Disorder Activity: Activity occurring on or in a Residential Rental Property categorized as either reported violent crimes, reported property crimes, and certain types of disorder related person initiated requests for police service only as listed in the appendix of this ordinance entitled "Appendix A – Disorder Activity." A domestic violence call for service is not a Disorder Activity.

Disorder Activity Count: A number assigned to a Residential Rental Property that represents the amount of Disorder Activity occurring within a specified time period in or on the Property. For purposes of determining a Disorder Activity Count, the number of violent crimes is multiplied by 1, the number of property crimes is multiplied by 0.25, and the number of disorder calls for service is multiplied by 0.10.

Disorder Risk Threshold: For each Residential Rental Property Category, the Disorder Activity Count for the Residential Rental Property that is at the bottom of the 96th percentile of Residential Rental Properties within the Residential Rental Property Category.

In Need for Remedial Action: (INRA): A designation by the Police Official that a Residential Rental Property has been identified for enforcement action under this ordinance.

Manager: The person, persons or legal entity appointed or hired by the Owner to be responsible for the daily operation of the Residential Rental Property.

Owner: The person, persons or legal entity that holds legal title to a Residential Rental Property.

Police Official: A person designated by the Chief of Police who is primarily responsible for the administration of this Article.

Registered Agent: The person identified by the Owner of the Residential Rental Property in the registration filed pursuant to this Article that is authorized to receive legal process and/or notice required or provided for in this Article.

Remedial Action Plan: A written plan agreed upon and signed by both the Police Official and Owner whereby the Owner agrees to implement remedial measures on a Residential Rental Property whose Disorder Activity Count exceeds the Disorder Risk Threshold for its Residential Rental Property Category.

Remedial Measures: Mandatory and voluntary measures as stated within the Remedial Action Plan Manual, a copy of which is on file at the City Clerk's Office.

Residential Rental Property: Property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, townhomes, and condominium unit(s).

Residential Rental Property Category: Residential Rental Properties will be categorized by the number of residential units contained in the property as follows:

- Category 1 – 1 unit
- Category 2 – 2 to 9 units
- Category 3 – 10 to 49 units
- Category 4 – 50 to 99 units
- Category 5 – 100 to 149 units
- Category 6 – 150 to 199 units
- Category 7 – 200 to 249 units
- Category 8 – 250 to 299 units
- Category 9 – 300 or more units

Residential Rental Property Review Board: The Board created pursuant to this Article.

Section 6-582. Registration of Residential Rental Property.

(a) It shall be unlawful for any owner of Residential Rental Property or person or entity on behalf of that owner to either lease or rent Residential Rental Property to another person or entity when the rental registration for that property has been revoked.

(b) Each Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold for its Residential Rental Property Category shall register by providing the following information at the initial mandatory meeting:

- (1) The address(s) for the Residential Rental Property which shall include the street name(s), number(s) and zip code;
- (2) The name(s), business or personal address, telephone number, and email address of the Owner;
 - a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other Owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a Registered Agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing

partner and one alternate who have legal authority to act on behalf of the partnership.

- d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.
- e. The number of units located on the residential property.

(c) The address(s) required in subsection (b) shall not be a public or private post office box or other similar address.

(d) An Owner that is required to register under this ordinance who sells the property shall notify the Police Official of all purchaser information within thirty (30) days from the date of change of ownership. Purchaser information shall include the name, addresses, phone number and e-mail address for the purchaser.

(e) An Owner that is required to register under this ordinance shall post proof of registration as provided by the City in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(f) The City Manager may establish rental registration fees pursuant to Section 2-1 of the City Code.

(g) Each residential rental property parcel shall be registered separately.

Section 6-583 Disorder Risk Threshold and Disorder Activity Count.

By January 31, the Police Official shall determine the Disorder Activity Count for each Residential Rental Property and the Disorder Risk Threshold for each Residential Rental Property Category. These determinations shall be made using Disorder Activity during the previous calendar year for each year.

Section 6-584. Notification of Mandatory Meeting.

(a) The Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold shall be sent a notice by certified mail to the name and address listed with the Mecklenburg County's Office of Tax Assessor.

(b) The notice shall include the following information:

- (1) The date, time and location for the mandatory initial meeting between the Police Official and the Owner; and
 - (2) The Disorder Activity Count for the Residential Rental Property; and
 - (3) A statement that the Owner may provide additional evidence at the initial mandatory meeting to be considered by the Police Official; and
- (c) A detailed summary of the Disorder Activity that has occurred on or in the property.

Section 6- 585. Mandatory Initial Meeting.

(a) Unless otherwise agreed to by the Owner and Police Official, within thirty (30) days after notice has been provided to the Owner that a property falls at or above the Disorder Risk Threshold, a mandatory initial meeting shall be held between the owner and the Police Official. The initial meeting may be held in person or by telephone. In the event there are multiple property Owners, the Owner attending the initial meeting must have power of attorney to execute the remedial action plan on behalf of the other Owners.

(b) At the mandatory initial meeting, the Police Official and the Owner shall, at a minimum, review the following:

- (1) The data that established the Disorder Activity Count for that property; and
- (2) Any relevant evidence provided by the Owner that may establish that the property does not fall at or above the Disorder Risk Threshold.

(c) After reviewing all the evidence, any previously identified Disorder Activity that is found to either not have occurred on or in the property or does not clearly meet the definition of a Disorder Activity shall be discounted and an adjusted Disorder Activity Count shall be determined. In the event that the adjusted Disorder Activity Count for the property falls at or above the Disorder Risk Threshold, then the Owner and Police Official shall develop and sign a Remedial Action Plan and the property will be set for a six-month review date pursuant to section 6-586. In the event the adjusted Disorder Activity Count is below the Disorder Risk Threshold, then no further action shall be taken by the Police Official.

(d) In the event the Owner fails to attend the initial meeting without just cause, the Police Official shall review all the evidence concerning the property pursuant to Subsections (b) and (c) of this Section and, upon a finding that the adjusted Disorder Activity Count for the property is at or above the Disorder Risk Threshold, shall refer the property to the City Attorney's Office for determination of whether a public nuisance action is warranted.

Section 6-586. Remedial Action Plan and Review.

(a) At the first six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken. If the Disorder Activity count continues to fall at or above the Disorder Risk Threshold, then the property will be designated In Need of Remedial Action (INRA) and the Police Official and the Owner shall amend and sign the Remedial Action Plan and a second six (6) month review date will be set.

(b) At the second six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the amended Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken. If the Disorder Activity Count continues to fall at or above the Disorder Risk Threshold, then the property will be designated In Need of Remedial Action (INRA) and the Police Official and the Owner shall amend and sign the Remedial Action Plan and a third six (6) month review date will be set.

(c) At the third six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the amended Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken. If the Disorder Activity Count continues to fall at or above the Disorder Risk Threshold, then the Police Official shall revoke the rental registration for the property unless it is determined that the Owner has complied in good faith with the remedial action plans.

- (1) In determining whether the Owner has acted in good faith, the Police Official shall weigh the following factors:
 - a. Whether the Owner has regularly met with the Police Official; and

- b. Whether the Owner has exhausted all resources reasonably available to the Owner in order to comply with the terms of the Remedial Action Plans; and
 - c. Whether the Owner has intentionally ignored a term of a Remedial Action Plan; and
 - d. Whether the Disorder Activity on the property constitutes a public nuisance.
- (2) If the Owner has been found to have acted in good faith, then the Police Official may remove the designation of INRA and continue to work with the Owner. A property that continues to fall at or above the Disorder Risk Threshold a second year will be referred to the City Attorney's Office for determination as to whether a public nuisance action is warranted.

(d) All Remedial Action Plans will be based on the procedures and practices set forth in the *CMPD Remedial Action Plan Manual; A Guide to Managing Rental Properties to Prevent Crime*.

Section 6-587. Additional Grounds for Revocation of Rental Registration.

In addition to the grounds stated in Section 6-586(c), the Police Official may revoke the Owner's rental registration based on a determination that the Owner provided materially false or misleading information during the registration process or the Owner refused to meet with the Police Official and/or develop a Remedial Action Plan as required under Section 6-586 without just cause.

Section 6-588. Notice of Revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

Section 6-589. Transition Plan and Notification of Tenants.

Upon revoking a rental registration, the Police Official shall develop a transition plan for the Owner's lawful disengagement from the operation and management of the rental property. The transition plan may include a referral to the City Attorney for the evaluation of the property as a public nuisance or for any other legal or equitable remedy available under law necessary to fairly assist in the disengagement process. Upon revocation and issuance of a transition plan, the Police Official shall take reasonable steps to notify the residents of the property.

Section 6-590. Residential Rental Property Review Board.

(a) A Residential Rental Property Review Board (hereinafter "Board") is hereby established, to be composed of seven members: four members to be appointed by the City Council, two members to be appointed by the mayor and one to be appointed by the City Manager. The appointing authorities shall ensure that the members of the Board are representative of the residential rental, tenant and homeowner community.

(b) One member from the Charlotte-Mecklenburg Police Department who has obtained the rank of captain or above and one employee of the City's Neighborhood and Economic Development Department who has the authority to investigate code violations will sit on the Board as advisors only.

(c) Individuals with a felony conviction within the last ten (10) years shall not be eligible to serve on the Board. Further, conviction of or a plea of nolo contendere to a felony during the term of office shall automatically terminate membership on the Board, irrespective of any appeals. Board members charged with a felony during a term of office shall be automatically suspended until disposition of the charge, and a quorum shall be established from the remaining membership.

(d) Board members shall keep all information about criminal investigations confidential.

(e) The Board shall elect a chairperson and vice-chairperson from its membership.

(f) All members of the Board serve without compensation.

(g) The terms of office shall be for three (3) years with no member serving more than two consecutive full terms. The terms of one-third of the Board shall expire each year. If a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.

(h) Five voting members shall constitute a quorum. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section.

(i) Members shall be subject to removal from the Board with or without cause by the appointing authority.

Section 6-591. Duties and Responsibilities of the Residential Rental Property Review Board.

The Board shall hear appeals from an Owner of Residential Rental Property whose registration has been revoked.

Section 6-592. Notice of Appeal of Revocation.

A Residential Rental Property owner may appeal a notice of revocation of rental registration to the Board. All revocation appeals to the Board must be filed in writing with the City Clerk's office within ten (10) calendar days of the date the notice of revocation is served on the Owner. The Owner shall provide a valid current address for the purpose of all notifications required to be made pursuant to this ordinance. The request must state the reason for the appeal.

Section 6-593. Hearing Procedure and Appeal of Board's Findings.

(a) The City Clerk shall forward an appeal of revocation of rental registration to the Police Official and to the Chair of the Board. The Police Official shall prepare a summary of the case, including all relevant data. The summary shall be provided to the Board and the Owner at least five working days before the hearing.

(b) Unless a quorum cannot be obtained or as otherwise agreed to by the Owner and Police Official, the Board shall hold a hearing within thirty (30) calendar days of the date the appeal is received by the City Clerk. Should the Owner or the Police Official desire a hearing date other than that set by the Board, the Owner or the Police Official shall submit a written request for a change of the hearing date, stating the reason for the request. The Chair shall approve or disapprove such request, provided that such request is received by the Board at least seven (7) calendar days prior to the date of the hearing. For good cause, the Chair may continue the hearing from time to time. The hearing shall be conducted with at least five (5) voting members of the Board present.

(c) The Owner shall appear at the hearing in person and shall have the right to representation by a person of his or her choice. The North Carolina Rules of Evidence, G.S. Chapter 8C, shall not strictly apply to the hearing, but all parties shall have an opportunity to offer evidence, cross-examine witnesses, and inspect documents. Only sworn testimony shall be accepted. The Chair of the Board, as well as any Board member designated by the Chair, shall have the authority to administer the oath as set forth for witnesses in a civil matter by G.S. § 11-11. All hearings before the Board shall be *de novo* and recorded. The Board has the authority to develop rules and regulations consistent with this ordinance to facilitate the hearing process.

(d) The City shall have the burden of proof and must establish by the preponderance of the evidence that the Owner's property is In Need of Remedial Action and has failed to act in good faith to comply with the Remedial Action Plan. After reviewing the evidence and hearing testimony from the witnesses, the Board shall issue findings of fact and conclusions of law and issue an order either affirming or reversing the decision of the Police Official.

(e) An Owner has the right to appeal the Board's decision to the City Council by filing a notice of appeal with the City Clerk within (10) ten days after the Board issues its written decision. When feasible, the matter will be set for review by the City Council at the next regularly scheduled business meeting. The City Council shall make its decision based on the record below, and no additional evidence will be considered. A majority vote by the City Council in favor of the Board's decision is required to uphold the Board's decision to revoke the Owner's registration. An appeal to City Council will stay the proceedings under it completes its review.

(f) If the City Council upholds the Board's decision, the Owner shall have the right to seek judicial review of the Board's decision in a proceeding in the nature of certiorari instituted in the superior court of the county within 30 days after the City Council votes to uphold the Board's decision. Judicial review shall not automatically stay the revocation.

Section 6-594. INRA Designation Binding on Subsequent Owner.

The designation of a property as INRA and the application of the procedures set forth in this article shall be binding upon all subsequent Owners or other transferees of an ownership interest in the Rental Residential Property. However, the revocation may be stayed during the implementation of a transition plan.

Section 6-595. Enforcement, Remedies and Penalties.

(a) The remedies provided herein are not exclusive; may be exercised singly, simultaneously, or cumulatively and may be combined with any other remedies authorized by law; and may be exercised in any order.

(b) It shall be a violation for an Owner of a Residential Rental Property who is required to register the property pursuant to this ordinance to:

- (1) Rent Residential Rental Property within the City limits without registering the property pursuant to this article; or
- (2) Rent Residential Rental Property when that property's registration has been revoked, unless rent is received pursuant to the transition plan set forth in the administrative

order of revocation or the revocation has been lawfully stayed.

(c) Notwithstanding that the Owner's property registration has been revoked, the Owner and its agents shall not commit the following acts:

- (1) Refuse or fail to comply with any order of the City to repair a dwelling pursuant to Section 11-38 of the Housing Code, or
- (2) Terminate the utility services of any occupants or otherwise violate the rights of residential tenants under Article 2A, Article 5, or Article 6 Chapter 42 of the General Statutes.

(d) Notwithstanding that the Owner's property registration has been revoked, the Owner's compliance with its obligations in subsection (c) hereinabove shall not be deemed as offenses under subsection (f) below.

(e) It shall be unlawful for an Owner of a Residential Rental Property who has been notified that the property is at or above the Disorder Risk Threshold to fail to contact the Police Official so designated in the letter within ten (10) days after the letter was sent by certified mail to the Owner's address listed with the Mecklenburg County's Office of the Tax Assessor for that parcel of property.

(f) Failure to comply with the provisions of this section shall subject the offender to a civil penalty of fifty dollars (\$50.00) a day for the first 30 days, one hundred dollars (\$100.00) a day for the next thirty days, and five hundred dollars (\$500.00) a day for each subsequent day.

(g) In addition to the above penalties, an Owner who fails to comply with this article may be subject to all civil, injunctive and equitable remedies available under law.

Section 6-596. Adoption of Remedial Action Plan Manual.

The Remedial Action Plan Manual, a copy of which is on file in the Office of the City Clerk, is hereby adopted. The City Council hereby finds and determines the remediation strategies set out therein to be reasonable and appropriate to address the public health, safety and welfare issues addressed by this article entitled the "Remedial Action Plan Manual". The Chief of Police or his designee is hereby authorized to amend the Remedial Action Plan Manual.

Section 2. This ordinance shall become effective January 31, 2010."

*As presented to the Charlotte City Council
October 12, 2009*