

Sponsor: Councilman Embert  
First Reading: 09/08/15  
Second Reading: 09/21/15  
Third Reading: 10/05/15  
Ord. No.: 014-15

AN ORDINANCE TO AMEND CHAPTER 18 (“BUILDINGS AND BUILDING REGULATIONS”), ARTICLE XI (“RENTAL PROPERTIES”) TO REQUIRE RENTAL UNITS TO BE CRIME FREE AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, The Town Council has determined that at various times, the occupants or users of some dwelling units in the Town of Smyrna use those dwelling units for the purpose of engaging in criminal behavior.

WHEREAS, the Town Council has further determined that the persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.

WHEREAS, It is, therefore, declared to be the purpose and intent of this Ordinance to prohibit the use of dwelling units in the Town of Smyrna for criminal activity by imposing civil penalties not only upon the occupants and/or users of such premises, but also by imposing civil penalties on those persons in lawful possession of any premises in the Town who, after notice of a previous conviction for conduct proscribed by this Ordinance, fail to take appropriate actions to prevent a subsequent violation.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Amend Chapter 18 (“Buildings and Building Regulations”), Article XI (“Rental Properties”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

**Sec. 18-401. - Definitions**

For the purposes of this article XI, the following words shall be defined as follows:

*Criminal activity* – Any crime classified by applicable law as a (a) Felony, (b) Class A Misdemeanor, or (c) any of the following offenses: any drug offense defined by Title 16 of the Delaware Code, and the following misdemeanors in addition to any Class A misdemeanor, as defined by Title 11 of the Delaware Code: §601-offensive touching, §602-menacing, §628-vehicular assault 3, §763-sexual harassment, §764-indecent exposure, §811-criminal mischief, §812-graffiti, §820-trespassing, §821/2/3-criminal trespassing, §1105-crime against a vulnerable adult, §1106-unlawfully dealing with a child, §1301-disorderly conduct, §1313-malicious interference with emergency communications, §1315-public intoxication, §1321-loitering, §1322-criminal nuisance, §1323-obstructing of public passage, §1341-lewdness, §1342-prostitution, §1343-patronizing a

prostitute, §1445-unlawfully dealing with a dangerous weapon, §1446-unlawfully dealing with a switchblade knife.

*Directly related to the owner:* Any person who is related by blood or marriage (i.e. "in-laws") to the following degrees of kinship: husband, wife, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, uncle, aunt, niece, nephew.

*Drug-related criminal activity* – The illegal manufacture, sale, distribution, use, or possession of any illegal or controlled substance defined by Title 16 Chapter 47, as the same may be amended from time to time and in accordance with any future corresponding provision of law.

*Dwelling unit.* A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

*Owner.* Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

*Premises* - A dwelling unit, apartment or commercial lodging room, together with the lands and ways, if any, under the control of the person(s) in possession.

*Rental unit.* Any dwelling unit which is required to obtain a rental license under the terms of this article.

**Section 2.** Amend Chapter 18 (“Buildings and Building Regulations”), Article XI (“Rental Properties”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

**Sec. 18-404. - Conditions of lease or occupancy agreement; crime-free lease requirement.**

- (a) Any agreement (written or oral) for occupancy of a rental unit shall be subject to the condition, which shall be incorporated into and made a material provision of the occupancy agreement, that the occupancy agreement shall be terminated by the owner for any of the following:
  - (1) Occupancy by more persons than permitted under the Housing Code of the Town of Smyrna.
  - (2) Two convictions of any occupant and/or user for violation of section 42-107(d) of the Smyrna Town Code. ("Disorderly dwelling unit—Unlawful acts by occupants and/or users") for violations occurring within any three-consecutive month period.
  - (3) Engaging in any use prohibited by the zoning code of the town after written notice of such violation from the town;
  - (4) Using or permitting the use of the rental unit or common areas thereof for purposes of prostitution, gambling and/or any drug offense in violation of applicable state statute.
  - (5) A violation of the provisions of section 18-404(b) of the Smyrna Town Code.
  
- (b) Tenants, any members of the tenant’s household, any guest, or any other person under the

tenant's control, on or within 500 feet of the leased premises, shall not engage in criminal activity or drug-related criminal activity, any act intended to facility criminal activity or drug-related criminal activity, or permit the leased premises to be used for or to facilitate any criminal activity or drug-related criminal activity. All residential leases renewed or otherwise entered into after the effective date of this ordinance, whether the original lease is in writing or verbal, shall include a written lease addendum, signed by the property owner and tenant, which shall include the following provisions:

“In addition to all other terms of the lease, property owner and tenant agree as follows:

- a. The tenant, any member of the tenant's household, any guest, or any other person under the tenant's control, on or within 500 feet of the leased premises:
  - i. Shall not engage in criminal activity, including drug-related criminal activity.
  - ii. Shall not engage in any act intended to facilitate criminal activity or drug-related criminal activity.
  - iii. Shall not permit the dwelling unit to be used for or to facilitate any criminal activity or drug-related criminal activity.
  - iv. Criminal activity is defined as any crime classified by applicable law as a (a) Felony, (b) Class A Misdemeanor, or (c) any of the following offenses: any drug offense defined by Title 16 of the Delaware Code, and the following misdemeanors in addition to any Class A misdemeanor, as defined by Title 11 of the Delaware Code: §601-offensive touching, §602-menacing, §628-vehicular assault 3, §763-sexual harassment, §764-indecent exposure, §811-criminal mischief, §812-graffiti, §820-trespassing, §821/2/3-criminal trespassing, §1105-crime against a vulnerable adult, §1106-unlawfully dealing with a child, §1301-disorderly conduct, §1313-malicious interference with emergency communications, §1315-public intoxication, §1321-loitering, §1322-criminal nuisance, §1323-obstructing of public passage, §1341-lewdness, §1342-prostitution, §1343-patronizing a prostitute, §1445-unlawfully dealing with a dangerous weapon, §1446-unlawfully dealing with a switchblade knife.
  - v. Drug-related criminal activity means the illegal manufacture, sale, distribution, use, or possession of any illegal or controlled substance defined by Title 16 Chapter 47, as the same may be amended from time to time and in accordance with any future corresponding provision of law.
- b. Any activity prohibited by this agreement shall constitute a substantial violation of the lease, material noncompliance with the lease, material breach of an obligation imposed upon tenants by a municipal ordinance under 25 Del. C. § 5513(a)(3), and grounds for termination of tenancy and eviction.”

(c) The Town of Smyrna shall provide a template lease addendum.

(d) A copy of the signed crime free lease addendum, together with a copy of the signed written lease if one exists, shall be submitted to the Town upon the request of the Town Manager.

~~(b)~~(e) In order to facilitate compliance with this section, copies of a suitable notice form shall be provided to owners by the town and shall be provided by the owner to the occupant(s) at or prior to the time of entering into such occupancy agreement. Such notice be filled out in triplicate,

with one copy being filed with the town by the owner. Such notice shall specify the maximum number of occupants permitted in the rental unit and the names and ages of the occupants. Failure of the owner to provide the occupants with a copy of such notice, failure of the owner to obtain the names and ages of the occupants, and/or failure to file a completed copy of such notice with the town hall shall constitute a violation of this article. Such information shall be deemed to be confidential information not available for public inspection.

**Sec. 18-405. - Owners duty to terminate lease and commence proceedings for summary possession; revocation of rental license for failure to do so.**

- (a) Any violation of the conditions of occupancy established by section 18-404(a), or engaging in three (3) or more of the activities prohibited under 18-404(b) within a twelve (12) month period. is hereby declared to be a "material breach of an obligation imposed upon tenants" by the Code of the Town of Smyrna in accordance with 25 Del. C. Section 5513(a)(3) or any future corresponding provision of law. Anything herein to the contrary notwithstanding, any individual who was the victim of criminal activity and who did not engage in criminal activity shall not be in violation of any of the provisions under 18-404(b).
- (b) Whenever an owner receives written notice from the town of a breach of any of the conditions set out in section 18-404(a) or 18-404(b), the owner shall, within three business days, initiate and diligently and in good faith pursue all necessary steps and procedures required by 25 Del. C. Part III ("Residential Landlord/Tenant Code") to obtain an order of summary possession. The owner shall provide the town copies of all required letters, notices, and court documents, contemporaneously upon the mailing, filing, or receipt of same by the owner so as to allow the town to monitor the progress of such efforts by the owner. The owner shall not be required to evict an individual who was the victim of criminal activity and who did not engage in criminal activity.
- (c) Failure of the owner to initiate and diligently pursue such steps in a timely manner shall constitute a violation of this ordinance and shall also authorize the town to revoke the owners rental license for a period of not less than one month and not more than one year; provided, however, that no rental license shall be revoked for violation hereunder unless the owner shall have been given prior written warning by the town of such intention to revoke, stating the grounds therefore, and the owner shall not have corrected such violation or appealed such decision to the town manager ~~within three working days of such notice~~ as outlined in section 180-405(e).
- (d) Notice of a breach of the conditions imposed by section 18-404(a) or section 18-404(b), and notice of a violation under section 18-405(c) shall be given to the owner by any of the following:
  - (1) Certified mail, return receipt requested addressed to the owners address as provided by the owner on the application for rental license; provided however, that notice shall be deemed complete if the notice is returned marked "refused". If such notice is returned marked "unclaimed", the town shall publish notice once in a newspaper of general circulation in the county.
  - (2) Facsimile transmission ("fax") to a tax telephone number provided to the town by the owner;
  - (3) Personal delivery to the owner or to the owners agent or by leaving a copy thereof at the owners usual place of abode in the presence of some person residing there of suitable age and discretion who shall be informed of the contents thereof.

(e) The property owner and tenant shall have 15 days from the date of the notice of mandatory eviction to file a written appeal with the Town Manager contesting the determination that eviction is required under the Smyrna Town Code, and the property owner and tenant shall be notified of this right of appeal in the notice of mandatory eviction. Any appeal filed by the property owner or the tenant with the Town Council shall be heard at any special or regular Council meeting to be held within 30 days of the date the appeal was filed. The party filing the appeal shall receive prior written notice of the date the appeal will be heard. In addition to any other lawful grounds upon which an appealing party may challenge an eviction requirement, the Town Council may find that eviction is not required where the Town Council finds that the tenant was wholly without knowledge of the unlawful activities outlined in section 18-404 of the Smyrna Town Code or did everything reasonably possible to prevent or curtail the same unlawful activities.

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SYNOPSIS

This ordinance provides that certain behaviors involving criminal activity and drug-related criminal activity are in violation of the Smyrna Town Code for rental properties and required property owners to initiate eviction proceedings when tenants or those under the control of a tenant have engaged in criminal activity and drug-related criminal activity. This ordinance requires property owners to execute a written lease addendum with all tenants. This ordinance does not apply to victims of criminal activity who did not participate in criminal activity, and appeals procedures are outlined herein.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

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This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on \_\_\_\_\_, 2015 and posted at the Town Hall on \_\_\_\_\_, 2015.

So Certifies:

\_\_\_\_\_  
Town Clerk