

ORDINANCE NO. D-18

AN ORDINANCE DEFINING AND REGULATING
DISORDERLY HOUSES, REQUIRING RENTAL UNITS TO BE CRIME FREE, AND
PROVIDING PENALTIES FOR THE VIOLATION THEREOF

BE IT ORDAINED by the Town Council of the Town of Greenwood, in council duly met, that the previous Ordinance No. D-18, including all amendments thereto, is hereby repealed in its entirety and replaced with the following, to wit:

Section 1. Findings; purpose.

A. The Town Council has determined that at various times, the occupants or users of some dwelling units in the Town of Greenwood use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The Town Council has also determined that a number of persons in lawful possession of dwelling units in the Town of Greenwood are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently but not necessarily comprised of minors with insufficient adult supervision. The Town Council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the Town.

B. 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.

C. It is, therefore, declared to be the purpose and intent of this Ordinance to prohibit the use of dwelling units in the Town of Greenwood for disorderly and other disruptive conduct 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.

Section 2. Definitions. As used in this Ordinance, the following terms shall have the meanings indicated:

CRIMINAL ACTIVITY – Any crime classified by applicable law as a felony or a class A misdemeanor in addition to the following offenses: noise violations, drug offenses, offensive touching, menacing, vehicular assault, sexual harassment, indecent exposure, graffiti, criminal mischief, trespassing, criminal trespassing, crime against a vulnerable adult, unlawfully dealing with a child, disorderly conduct, malicious interference with emergency communications, public intoxication, loitering, criminal nuisance, obstructing of public passage, lewdness, prostitution, patronizing a prostitute, unlawfully dealing with a dangerous weapon, or unlawfully dealing with a switchblade knife.

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 USED FOR DISORDERLY OR OTHER DISRUPTIVE CONDUCT - Any dwelling unit (attached or detached) or any apartment or commercial lodging room located within the Town of Greenwood, the occupants, users or persons in lawful possession of which engage in any of the conduct proscribed by Section Three of this Ordinance. As used in this Ordinance, "dwelling unit" shall include not only the structure itself but also the lands and ways, if any, under control of the person(s) in lawful possession.

OCCUPANT and/or USER - Any person(s) occupying or present on a premises.

PERSON(S) ENTITLED TO LAWFUL POSSESSION – The owner in fee or of a life estate if the property is not under lease, or the ultimate lessee or sublessee if the property is under lease.

PERSON(S) IN LAWFUL POSSESSION - Any person, firm, partnership, association or corporation (or any combination thereof) having legal possession of any premises in the Town of Greenwood.

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.

Section 3. Unlawful acts by occupants and/or users. Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this Ordinance:

- A. Engaging in fighting or in violent, tumultuous or threatening behavior.
- B. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise to any reasonable person of normal sensitivities or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any reasonable person of normal sensitivities or which disturbs, injures or endangers the comfort, repose, peace or safety of any reasonable person of normal sensitivities. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:
 - (1) Playing any radio, phonograph, tape deck, or other similar electronic equipment or musical instrument in such a manner or at such a volume, particularly between the hours of 9:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of any reasonable person of normal sensitivities in any other dwelling unit, apartment or commercial lodging room.
 - (2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.
 - (3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.
- C. Making any offensive, coarse, obscene or profane utterance, gesture or display to another person or persons in such a manner as is likely to provoke a violent or disorderly response.

- D. Obstructing or hindering the free and convenient passage of persons walking, riding or driving over, along or across any public way, sidewalk, pavement, street or alley.
- E. Engaging in any act of indecent exposure or public display of an obscene act or gesture.
- F. Urinating in public view.

Section 4. Unlawful acts by persons entitled to lawful possession.

- A. Any person(s) entitled to lawful possession who, after actual notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this Ordinance shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this Ordinance.
- B. Any person(s) entitled to lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this Ordinance where a violation of Section Three of the Ordinance occurs after such person entitled to lawful possession has, within the past three (3) months, previously been provided actual notice by the Greenwood Police Department of a previous conviction of occupants or users for conduct proscribed by Section Three of this Ordinance.
- C. "Actual notice," as used in Subsection B, shall mean verbal or written notice to one (1) or more of the person(s) entitled to lawful possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused or unclaimed), the Town shall exercise reasonable efforts to provide actual notice by some other means.

Section 5. Criminal Activity Prohibited; Crime-Free Lease Addendum Required.

- A. 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 facilitate criminal activity or drug-related criminal activity, permit the leased premises to be used for or facilitate any criminal activity or drug-related criminal activity, or violate either Greenwood Ordinance A-13 (nuisance ordinance) or D-19 (noise ordinance), as either may hereafter be amended from time to time.
- B. All residential leases, whether the original lease is in writing or verbal, shall include a *written crime free lease addendum*, signed by the property owner/manager and tenant, including the following provisions:

"In addition to all other terms of the lease, owner/landlord and tenant agree as follows:

- (1) 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:

- a. Shall not engage in criminal activity, including drug-related criminal activity, on or within 500 feet of the leased premises.
- b. Shall not engage in any act intended to facilitate criminal activity or drug-related criminal activity.
- c. Shall not permit the dwelling unit to be used for or to facilitate any criminal activity or drug-related criminal activity.
- d. Shall not violate Greenwood Ordinance A-13 "An Ordinance to Compel All Property Owners and Occupants of Property Within the Physical Boundaries of the Town of Greenwood to Eliminate Nuisances Marring the Attractiveness of the Town and Endangering the Health and Safety of the Residents and Creating Hazards to the Preservation of the Property Owned or Occupied or Contiguous Thereto and to Provide Penalties for the Violation of its Provisions" and Greenwood Ordinance D-19 "An Ordinance Prohibiting Loud, Unnecessary or Disturbing Noises Upon the Streets, Sidewalks or Parking Areas Within the Town of Greenwood" on or within 500 feet of the leased premises.
- e. 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.
- f. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in 16 Del.C. Ch. 47).

(2) Any activity prohibited by this agreement shall constitute a substantial violation of the lease, material noncompliance with the lease, and grounds for termination of tenancy and eviction."

C. The Town of Greenwood shall provide a template crime free 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.

E. Eviction Required.

(1) A property owner/landlord shall be required to evict a tenant by bringing an action for Summary Possession under the Delaware Code if the tenant, any member of the tenant's household, or any guest or other person under the tenant's control, does the following on or within 500 feet of the leased premises:

- a. Engages in any drug-related criminal activity; or
- b. Engages in any combination of three (3) or more of the following within a twelve (12) month period:
 - i. A violation of either Greenwood Ordinance A-13 (nuisance ordinance) or D-19 (noise ordinance) (as either ordinance may hereafter be amended); or
 - ii. Criminal activity as defined in this Ordinance.

When the prohibited conduct outlined above occurs, the Town Manager or Chief of Police shall direct the property owner or property manager to begin the process to terminate tenancy. Such notice of mandatory eviction shall be sent by certified mail to the property owner/landlord and property manager, if a property manager is on record with the Town, and to the tenant. If a certified mailing is returned unclaimed, the notice may be sent by regular mail with a proof of mailing. A property owner/landlord shall not be required to evict an individual who did not engage in criminal activity and who was the victim of the criminal activity.

- (2) Upon notification of mandatory eviction by the Town Manager or Chief of Police in accordance with subsection (E)(1), the property owner/property manager shall have thirty (30) days to initiate the eviction process or otherwise terminate the tenancy. The property owner/property manager 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 Ordinance, and the property owner/property manager and tenant shall be notified of this right of appeal in the notice of mandatory eviction. Any appeal filed by the property owner/property manager 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 E(1)(a) and E(1)(b) of this Section 5 or did everything reasonably possible to prevent or curtail the same unlawful activities.

Section 6. Penalties for Offenses. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than three hundred dollars (\$300.00) and shall pay the costs of prosecution. Any property owner/landlord failing to evict a tenant in violation of this Ordinance shall be fined the maximum amount of three hundred dollars (\$300.00), with each month the property owner/landlord is in violation of this Ordinance being deemed a new violation.

Section 7. Repealer. All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Section 8. Effective Date. The Town Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect and be in force from and after its approval by Council.

PASSED by a majority of the elected members of the Town of Greenwood, Delaware, this
7TH day of JANUARY, 2014

**MAYOR AND COUNCIL OF
GREENWOOD, DELAWARE**

ATTEST: Willard T. Russell (SEAL) BY: Donald Donovan
Willard T. Russell, Secretary Donald Donovan, Mayor

This shall certify that this is a true and correct copy of the Ordinance adopted by the
Town Council of the Town of Greenwood at a duly called and duly noticed meeting of the Town
Council at which a quorum was present held on JANUARY 7TH, 2014

Lisa R. Mark
Town Clerk