ORDINANCE NO. 05-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER 12 OF TITLE 11 OF THE COSTA MESA MUNICIPAL CODE RELATING TO REGULATIONS APPLICABLE TO LANDLORDS RENTING PROPERTY UPON WHICH SPECIFIED ILLEGAL DRUG OR GANG ACTIVITIES ARE OCCURRING

WHEREAS, the City Council of the City of Costa Mesa declares it in the public interest to discourage landlords from retaining tenants who commit, permit, maintain, solicit, or are involved in illegal drug activity or gang related crime because such criminal behavior harms other tenants' use and quiet enjoyment of their residences and deteriorates the surrounding neighborhood; and

WHEREAS, the City Council of the City of Costa Mesa previously determined that the adoption of Chapter XII of Title 11 was necessary to protect the public health, safety and general welfare of the residents of the City of Costa Mesa.

WHEREAS, in light of recent case law, the City wishes to amend Chapter XII to provide additional procedural protections for landlords and innocent tenants without undermining the City's purpose of protecting the right of landlords to evict tenants who engage in unlawful conduct and the right of adjoining tenants and property owners to use and enjoy their property without the threat of continued gang, criminal and drug activity occurring in nearby rental units.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 12 of Title 11 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Chapter 12

NARCOTICS AND GANG RELATED CRIME EVICTION PROGRAM

Sec. 11-191. Definitions.

For the purposes of this Chapter, the following words and phrases shall be construed to have the meanings herein set forth.

~~A~~(a) "Criminal street gang" means any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in Penal Code

section 186.22 (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity as defined in said section.

~~B~~(b) "Diligently prosecute" means ~~that~~ filing an unlawful detainer action pursuant to California Code of Civil Procedure § 1161(4) and the procedures described herein or seeking eviction where no unlawful detainer action is legally required; and pursuing such action with constant and earnest good faith effort in an effort to accomplish the vacation of the premises ~~prosecution by the landlord necessary to cause the subject rental unit to be completely vacated~~ by the offending tenant(s) without unreasonable delays.

~~C~~(c) "Extended occupancy motel room" ~~shall~~ means any motel room that is rented to a person or persons whose occupancy exceeds 28 consecutive days or 28 days in any 60 consecutive day period as set forth in section 13-173(a) of this Code.

~~D~~(d) "Gang member" means any person who actively participates in any criminal street gang.

~~E~~(e) "Gang related crime" means any crime committed by a gang member as defined herein.

~~F~~(f) "Illegal drug activity" means a violation of any of the provisions of Chapter 6 (commencing with section 11350) or Chapter 6.5 (commencing with section 11400) of the California Health and Safety Code, or any successor provisions thereto.

~~G~~(g) "Knowingly permit" means having notice or knowledge of any illegal drug activity or gang related crime occurring on the premises and failing to take action to abate said activities.

~~H~~(h) "Landlord" means an owner of residential property who leases or subleases a rental unit to a tenant(s) on property within the City of Costa Mesa. "Owner" includes a person, corporation, partnership, or other legal entity and any agent or independent contractor responsible for leasing for the owner.

~~I~~(i) "Offending tenant" means any tenant who commits, permits, maintains, solicits or is involved in any illegal drug activity or gang related crime on the premises and at least one tenant of the premises has been arrested, cited and/or convicted of such illegal drug activity or gang related crime.

~~J~~(j) "Premises" means the interior of a rental unit and any accessory buildings and the land on which they are located, and the interior of any other residences if leased by the same landlord and located at the same rental unit complex, including, but not limited to, common areas, walkways, garage facilities, private streets and alleys, halls, stairwells and elevators, and the portion of any public street which is immediately adjacent thereto.

~~K~~(k) "Rental unit" means any dwelling as defined in section 13-6 of this Code, including, but not limited to, any single and multi-family residence, duplex, court, condominium, apartment and/or townhouse in the City of Costa Mesa. The term "rental unit" shall also include any mobile home or trailer for which rent is paid, or for which rent is paid for the land upon which the mobile home or trailer is located, or both. This term shall also mean any recreational vehicle, as defined in California Civil Code § 799.24, if located in a mobile home, trailer or recreational vehicle park, and for which rent is paid, or for which rent is paid for the land upon which it is located, or both. "Rental unit" shall also include any extended occupancy motel room.

~~L~~(l) "Tenant" means any tenant, subtenant, lessee, sublessee or any person entitled to the use or occupancy of a rental unit, or any other person residing in a rental unit, except "tenant" does not include any person under 18 years of age unless she or he is a legally emancipated minor.

Sec. 11-192. Administrative Procedures.

The City Manager of the City of Costa Mesa, or his or her designated representative, may promulgate such administrative procedures as may be reasonably necessary to implement and enforce the provisions of this Chapter.

Sec. 11-193. Implied Lease Term.

All leases of real property in the City of Costa Mesa used for residential purposes shall be deemed to include the following implied term constituting grounds for termination of the lease: The tenant causes or permits any illegal drug activity or gang related crime to occur on the premises.

Sec. 11-194. Notice of Violation.

~~A~~(a)To enforce the provisions of this Chapter, the Chief of Police may cause to be delivered to any landlord a written Notice of Violation advising that the Chief of Police of the City of Costa Mesa has determined that the landlord of the rental unit is in violation of section 11-195 of this Chapter.

(b) The notice shall be delivered personally or by mailing it on the date of the notice via U.S. Postal Service, return receipt requested, to the landlord at his or her address as shown on the most recent County Assessor's Real Property Tax Rolls, or to any other address for the landlord known to the City, or to the landlord's manager of the rental unit. Separate notice shall also be provided to the offending tenant(s) in accordance with this subsection.

~~B~~(c) The Notice of Violation shall:

(~~a~~1) Identify the address of the rental unit, the unit number, where applicable, the offending tenant(s), a detailed description of the specific legal violation(s) which occurred, and the date(s) and time(s) of occurrence, and the resulting arrest(s) and/or conviction(s), together with sufficient documentation to aid the landlord in prosecuting the unlawful detainer action including, but not limited to, documented observations of a peace officer or any witness willing to testify to supply probable cause for the unlawful detainer action, records of arrest or conviction, or such other information in the possession of the Chief of Police which evidences the public nuisance, illegal drug activity or gang related crime by a tenant of the rental unit. As to any offending tenant who is sought to be evicted based on allowing or permitting another person or co-tenant to engage in illegal drug activity or gang related crime, evidence shall include information sufficient to conclude by a preponderance of the evidence that the offending tenant was aware of the illegal drug or gang related criminal activity and failed to take reasonable steps to prevent or report the illegal drug or gang related criminal activity.

(~~b~~2) Notify the landlord that within 30 calendar days of the date of mailing of the notice, she/he must either (i) serve the offending tenant and diligently prosecute either a 3 day notice to quit or a 30 day notice to vacate, or (ii) file a written appeal of the determination of violation with the Costa Mesa City Manager.

(3) The separate notice to the tenant(s) shall also include, in at least 14-point bold type, the following:

> "Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for illegal activity as described above. You should call the city attorney at (insert telephone number) or legal aid to stop the eviction action if any of the following is applicable:
>
> 1. You are not the person named in this notice.
> 2. The person named in the notice does not live with you.
> 3. The person named in the notice has permanently moved.
> 4. You do not know the person named in the notice.
> 5. You have any other legal defense or legal reason to stop the eviction action.

~~C~~(d) The Chief of Police, at least fourteen calendar days prior to ~~before~~ sending a Notice of Violation, shall send a letter to the landlord containing a notice that a specified tenant or occupant of the premises has been arrested or convicted for illegal drug activity or a gang related crime committed on the premises.

11-195. Landlord's Duty to Abate.

~~A~~(a) A landlord shall not knowingly permit a tenant to use or occupy any leased, residential premises if the tenant commits, permits, maintains, solicits or is involved in any illegal drug activity or gang related crime on said premises that results in an arrest and conviction. This section is not violated unless and until a landlord fails to take abatement action pursuant to this section within the 30-day period allowed.

~~B~~(b) A landlord who receives a Notice of Violation shall, within 30 calendar days of the date of mailing of the notice, either:

(~~a~~1) Serve a 3 day notice to quit or a 30 day notice to vacate on the offending tenant(s), provide the City prosecutor or City Attorney with all relevant information pertaining to the unlawful detainer case, and diligently prosecute the same, or

(~~b~~2) File an appeal with the City Manager.

~~C~~(c) A landlord who has appealed a Notice of Violation and the notice has been affirmed shall within 30 calendar days of the date of mailing of the ruling serve a 3 day notice to quit or a 30 day notice to vacate on the offending tenant(s) and diligently prosecute the same.

~~D~~(d) Notwithstanding the provisions of subdivision ~~B~~ (b), above, the landlord of an extended occupancy motel room, as defined herein, who is not legally required to utilize the eviction or unlawful detainer procedures to evict a tenant, shall cause the removal of the offending tenant or file an appeal with the City Manager within 30 calendar days of the date of mailing of the Notice of Violation.

(e) A landlord prosecuting an unlawful detainer action pursuant to this Chapter shall, within seven (7) days of receiving an order or judgment from the court, deliver a copy of such order or judgment to the Chief of Police.

(f) Nothing in this Chapter shall prevent a landlord from complying with this Chapter by persuading or allowing the offending tenant(s) to voluntarily vacate the premises within the time period allowed.

~~E~~(g) A landlord shall not lease any rental unit that has been vacated according to the provisions of this Chapter, or any other rental unit in the same rental unit complex, to an offending tenant(s) prior to the expiration of 12 months following said tenant(s) vacating the rental unit.

Sec. 11-196. Right to Appeal Notice of Violation.

~~A~~(a). Any person receiving a Notice of Violation in accordance with this Chapter may file a written appeal of the Notice of Violation with the City Manager of the City of Costa Mesa who shall cause the matter to be set for hearing. At least ten (10)

days' w~~W~~ritten notice of the date, time, and place of said hearing shall be ~~served~~ given personally or served by first class mail on the date of the notice, addressed to the appellant's last known business address. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the City which shows service in conformity with this section. The appeal, to be effective, must be filed with and received by the City Manager within 30 calendar days of the date of mailing of the ~~n~~Notice of Violation.

~~B~~(b). The City Manager, or his or her designated representative, shall serve as the Hearing Officer and shall set said appeal for hearing within 30 calendar days of receipt of the appeal application. The Apartment Association of Orange County and the South Coast Apartment Association shall have the right to advise and assist the Hearing Officer during the hearing. This advice shall be provided by one member from each of these associations appointed by their respective association's Board of Directors. At least one of these members shall own a rental unit in Costa Mesa and the other may be either a practicing real estate agent or a property manager. Both members must either live or own property in Costa Mesa. Following the conclusion of the hearing, the Hearing Officer shall affirm, reverse, or reverse subject to conditions, the Police Chief's Notice of Violation. The Notice of Violation shall not be affirmed unless the Hearing Officer finds that it contains sufficient evidence of a violation of the law by the offending tenant(s) to justify the filing of an unlawful detainer action by the Landlord against the offending tenant(s). The Hearing Officer's decision shall be based upon written findings, to be rendered within 14 calendar days of the conclusion of the hearing, and shall be final, notwithstanding section 2-303 of this Code.

(c) The landlord or his, her or its authorized agent may offer evidence at any appeal hearing of any safety-related reasons that he, she or it has not or cannot pursue an unlawful detainer action against the offending tenant(s). If the Hearing Officer determines that credible evidence of a safety-related reason has been shown which prevents or makes unreasonable the landlord's pursuit of an unlawful detainer action against the offending tenant(s), the landlord may be relieved from his, her or its obligation to diligently prosecute an eviction or unlawful detainer action against the offending tenant(s), provided that:

(i) The landlord executes a written assignment to the city prosecutor or city attorney of his or her right to bring an unlawful detainer action against the offending tenant(s), on a form prepared by the city prosecutor or city attorney; and

(ii) The landlord provides all relevant information in his, her or its possession, pertaining to the criminal activities occurring on the premises and to the unlawful detainer or eviction proceedings or action to the city prosecutor or city attorney, including but not limited information as to the names and addresses of all occupants of the premises, their relationship to one another, if any, a copy of the rental agreement for the premises and any amendments thereto, copies of any correspondence, notices, warnings, or other documents relating

to the tenancy of the offending tenant(s), and the names and addresses of any witnesses to the offending tenant(s)' activities known to the landlord ; and

(iii) The landlord agrees to reimburse the City for the costs of investigation, discovery, and reasonable attorney's fees incurred by the City in prosecuting the eviction or unlawful detainer action, up to maximum of $600.00, subject to any order of the Court reimbursing such costs as part of any judgment or other order in the unlawful detainer or eviction action.

Sec. 11-197. Lien Authorized.

Any judgment for money, including permitted fees and costs, awarded to the City of Costa Mesa through an enforcement action pursuant to this Chapter, may be recorded as a lien against the subject property in an amount not to exceed $5,000; and, if judgment is entered against multiple defendants, they shall be jointly and severally liable for any judgment so ordered.

Sec. 11-198. Prohibition and Penalties.

~~A~~(a). It shall be unlawful for any person to violate any of the provisions or to fail to comply with any of the mandatory requirements of this Chapter.

~~B~~(b). Actions to enforce the provisions of this Chapter shall be governed by section 1-33 of this Code, provided, however, that the first three (3) criminal charges filed against a person for any violation of this Chapter shall be ~~an~~ infractions.

Sec. 11-199. Civil Remedies and Penalties.

(a) In addition to any other remedy provided for herein, if the landlord fails to comply with the provisions hereof by filing a timely appeal of the Notice of Violation, or having failed to file an appeal or upon denial of an appeal, to file and diligently prosecute an eviction or unlawful detainer action against the offending tenant(s), the city prosecutor or city attorney may file and prosecute such action, in which the landlord and/or owner shall be joined as a defendant. Service of the summons and complaint upon the defendant offending tenant(s) and owner/landlord shall be made in accordance with Sections 415.10, 415.20, 415.30, 415.40 and 415.50 of the Code of Civil Procedure. Costs, including costs of investigation, discovery and attorney's fees, may be awarded to the City in such action against both the offending tenant(s) and the landlord/owner who is joined as a defendant.

~~A~~(b). The violation of any of the provisions of this Chapter shall constitute a nuisance and may be abated by the City of Costa Mesa through civil remedies, including, but not limited to, a restraining order, preliminary or permanent injunction, or any other remedy at law or in equity for the abatement of such nuisance.

~~B~~(c). A court rendering a judgment pursuant to this Chapter may, in addition to any other remedies at law or in equity, impose a civil penalty in the maximum amount permitted by law, payable to the City of Costa Mesa, and require the payment of the City's attorney's fees, costs of investigation and discovery, and court costs.

Sec. 11-200. Exceptions.

(a) Nothing in this Chapter shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to California Code of Civil Procedure, section 1179.

(b) Nothing in this Chapter shall be deemed to affect or impair the City's right to determine that any owner-occupied or rental property is being conducted in such a way as to constitute a public nuisance and to pursue available legal remedies relating to such nuisance pursuant to the provisions of Chapter I of Title 13 of this Municipal Code, including but not limited to sections 13-16 and 13-17, or pursuant to California Health and Safety Code section 11571.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to ~~a~~effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this ____ day of _____, 2005.

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
Deputy City Clerk of the
City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, MARY T. ELLIOTT, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 05-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2005, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ___ day of _____ _____, 2005, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2005.

_____
Deputy City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa