

PURCHASING AND LICENSING COMMITTEE

08-079-0

REPLACEMENT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED BY ADDING A NEW ARTICLE IV.

BY COUNCILOR KRAUSE:

The city of Duluth does ordain:

Section 1. That Chapter 29A of the Duluth City Code 1959, as amended, is hereby amended by adding a new Article IV which shall read as follows:

Article IV. Crime Free Housing Program.

Sec. 29A-37. Findings of fact and statement of purpose.

The council finds that providing for the public health, safety and welfare requires a rental unit licensing and maintenance program that not only corrects substandard housing conditions and enforces a habitability standard for rental units as is currently provided for in Article II of this Chapter, but that also provides for the quiet enjoyment of the normal activities of life for occupants of rental properties and for the neighborhoods in which such rental properties are located.

It is the purpose of this Article to ensure that all residential rental units in the city are decent, safe, sanitary and operated and maintained in a manner that avoids the creation of a nuisance to the neighborhood, an influence that fosters blight and deterioration, or creates a disincentive to neighborhood reinvestment. Property owners and managers are responsible for taking such reasonable steps as are necessary to ensure that the citizens of the city who occupy rental units may pursue the quiet enjoyment of the normal activities of life in surroundings that are safe, secure, sanitary and free from criminal activity and nuisances.

Sec. 29A-38. Definitions.

Unless otherwise provided in this Section, the definitions

contained in sections 29A-1 and 29A-27 of this Chapter shall apply to this Article. In addition, for purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(a) Disorderly behavior. Any of the following activities:

(1) A nuisance event as defined in Section 40-10 of this Code; or

(2) A violation of Chapter 49 of this Code or any state statute or federal law related to the ownership, possession or use of a firearm; or

(3) Illegal drug related activity including, but not limited to the illegal possession, manufacture, sale, distribution, purchase, use or possession with intent to manufacture, sell or distribute a controlled substance as defined in the Controlled Substance Act [21U.S.C. 802] or possession of drug paraphernalia as provided in Minnesota Statutes Section 152.092. A tenant shall be deemed to be in possession of a controlled substance if any amount is located in the tenant's rental unit even if the tenant denies knowledge of the controlled substance unless the tenant provides a notarized statement made under oath by a person, other than the tenant or a member of the tenant's household, that the controlled substance was in their possession and the tenant had no knowledge of the controlled substance; or

(4) Any violation of Chapter 34 of this Code; or

(5) Any act that jeopardizes the health, safety and welfare of the landlord, the landlord's agent or other tenants, or guests of tenants of a licensed premise;

(6) The following circumstances shall be deemed to be exceptions to the definition of disorderly behavior:

(A) An "emergency call" within the definition of Minnesota Statutes Section 609.78 and Subd.3, will not be considered an instance of disorderly behavior when the victim and suspect are "family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B 01, Subd. 2 (b) and there exists a report of domestic abuse as defined in the Domestic Abuse Act, Minnesota Statutes Section 518B 01, Subd. 2 (a);

(B) An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3, will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205;

(b) Guest of the tenant. Any person present at the licensed premise by either the express or implied consent of a tenant;

(c) Licensed premise. A rental unit, all common areas of the building in which a rental unit is located, all accessory structures and improvements located upon the real property, and the real property upon which a rental unit is located;

(d) Tenant. The lessee pursuant to a rental agreement and any member of the lessee's household.

Sec. 29A-39. Crime-free rental agreement provisions required; exceptions.

All rental agreements for any rental unit licensed as required by Article II, except for residential facilities licensed by the state, shall be assumed to contain the crime-free provisions of Section 29A-40.

Sec. 29A-40. Licensee duties; mandatory rental agreement terms.

(a) It shall be the responsibility of any tenant to ensure

that all tenants and all guests of a tenant while on or about the licensed premise not engage in disorderly behavior;

(b) The licensee shall cause the commencement of an unlawful detainer or other eviction proceedings pursuant to the provisions of state law if a tenant violates the provisions of clause (c) of this Section on three or more occasions during a 12 month period;

(c) Except for rental agreements related to occupancy of a state licensed residential facility, and except as otherwise preempted by federal or state laws and regulations, all rental agreements for the occupancy of a rental unit entered into on or after January 1, 2009, shall be assumed to contain the following provisions:

(1) No tenant or guest of a tenant shall engage in disorderly behavior while on or about the licensed premise;

(2) No tenant or guest of a tenant shall aid or abet disorderly behavior occurring on or about the licensed premise;

(3) No tenant or guest of a tenant shall conspire with others to engage in disorderly behavior on or about the licensed premise;

(4) No tenant shall permit a guest of the tenant to engage in disorderly behavior on or about the licensed premise;

(5) Any violation of paragraphs 1-4, above, shall constitute a material violation of the rental agreement and shall constitute good cause for the immediate termination of the rental agreement;

(d) The licensee, prior to the commencement of the term of the rental agreement shall provide to the lessee(s) a written notice that contains the definition of disorderly behavior as provided by Section 29A-38(a), above, and the provisions of clause (c) of this

Section and shall maintain a written acknowledgment signed by the lessee(s) acknowledging receipt of such notice;

(e) Prior to entering into any rental agreement, the licensee shall cause a criminal background check to be conducted on all prospective adult tenants. The criminal background check shall include a search for all misdemeanor, gross misdemeanor and felony convictions as follows:

(1) A state criminal history check covering the last three years and which utilizes the most recent update of the state criminal history files; or

(2) A criminal history check covering the last three years from the prospective tenant's previous state of residence, if available, if the prospective tenant is moving directly from another state; or

(3) Criminal history check from this state and the prospective tenant's prior state(s) of residence, if available, covering the three year period prior to commencement of the tenancy if the prospective tenant's current period of residency in the state has been for less than a period of three consecutive years.

Sec. 29A-41. Revocation, suspension, declination or denial of a license; authority.

(a) In addition to the provisions of Section 29A-33 of this Chapter, the code official may revoke or suspend a current rental license, deny a new rental license or decline to renew a rental license issued under this Chapter as provided in this Section and Section 29A-42. In buildings containing more than one rental unit, the revocation, suspension, denial or declination may apply to one or more rental units at the discretion of the code official;

(b) The basis for such revocation, suspension, denial or

declination includes, but is not limited to, any of the following circumstances:

(1) The license was procured by misrepresentation of material facts with regard to the rental unit or the ownership of the rental unit; or

(2) The applicant or one acting on behalf of the applicant made misstatements accompanying the application; or

(3) The applicant has failed to comply with any condition set forth in any other rental license granted to the applicant by the city; or

(4) The activities of the applicant or the applicant's agent create or have created a danger to the public health, safety or welfare; or

(5) The rental unit contains conditions that might injure or endanger the safety, health or welfare of any member of the public; or

(6) Failure to pay any application, penalty or reinstatement fees required by this Chapter and council resolution; or

(7) Failure to correct violations of this Chapter in the time period specified in the notice of violation and correction; or

(8) Failure to commence unlawful detainer or eviction proceedings following the third instance of disorderly behavior, except as provided by the postponement of enforcement as authorized in Section 29A-42; or

(9) Violation of any regulation or provision of the applicable to the activity, to which the license has been granted, or any regulation or law of the state so applicable; or

(10) Failure to continuously comply with any condition required of the applicant for the approval or maintenance of the license; or

(11) Any violation of this Chapter.

Sec. 29A-42. Abatement notice; procedure.

(a) The city shall respond as follows to a violation of the provisions of this Article:

(1) Upon occurrence of the first instance of a determination by the city that a rental unit was the location of an incident of disorderly behavior, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official and the tenant of the rental unit. The notice shall direct the licensee to take steps to prevent further violations;

(2) Upon the occurrence of the second instance of the occurrence of an incident of disorderly behavior occurring at the rental unit within 12 months of the notice provided in clause (a)(1), above, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the tenant of the rental unit. The notice shall direct the licensee to submit, within ten days of the date of the notice, a written abatement report of all actions taken by the licensee since the first notice and actions the licensee intends to take to prevent further disorderly behavior;

(3) Upon the occurrence of the third instance of disorderly behavior occurring at the rental unit within 12 months after the first of two previous notices, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the

tenant of the rental unit. In addition to such notice, the code official shall revoke, suspend, or reject an application to renew the license. The code official shall make the decision to revoke, suspend or refuse to renew the license within 15 days of the notice.;

(b) For purposes of this Section, second and third instances of disorderly behavior shall be those which:

- (1) Occur at the same rental unit; or
- (2) Involve tenants of the same rental unit; or
- (3) Involve guests of a tenant at the same rental unit; or
- (4) Involve guests of the same tenant; or
- (5) Involve the same tenant;

(c) Notwithstanding the provisions of Section 29A-41, above, no adverse license action shall be imposed where the instance of disorderly behavior occurred during a pending unlawful detainer action or other eviction proceeding or within 30 days of notice given by the licensee to a tenant to vacate the rental unit, except that if the code official determines that the licensee has failed to diligently pursue such process, such adverse license action shall proceed. Further, an action to deny, revoke, suspend or not renew a license based upon violations of this Article may be postponed or discontinued at any time if the code official determines that the licensee has taken appropriate measures which will prevent further instances of disorderly behavior. Such measures may include, but are not limited to, evidence of a failed eviction process despite the licensee's diligent pursuit of same;

(d) A determination that the rental unit has been the location of disorderly behavior shall be made by a preponderance of

the evidence to support such a determination. It shall not be necessary that criminal charges be brought in order to support a determination of disorderly behavior, nor shall the fact or dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this Article;

(e) The code official shall notify the licensee or the licensee's agent in writing of the basis for the revocation, suspension, denial or non-renewal and the date upon which the action takes effect. Notice of the action shall be posted at the rental unit and/or licensed premise by the code official. No person, other than the code official, shall remove or alter any posting. The notice shall indicate the date the rental unit or licensed premise shall be vacated and no person shall reside in, occupy or cause to be occupied the rental unit or licensed premise until the code official has so removed said posting and issued a valid license therefore.

Sec. 29A-43. Violation; penalty.

Any person who violates the provisions of this Article may be charged with a violation thereof and be subject to the penalty provided in Section 1-7 of this Code.

Sec. 29A-44. Enforcement alternatives.

Enforcement actions provided in this Article shall not be exclusive, and the city may take any action with respect to a licensee, a tenant, or a rental unit(s) as is authorized by this Code or state law.

Sec. 29A-45. Retaliation; waiver prohibited.

No licensee or the licensee's agent shall bar or limit a tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct or impose a penalty

on a tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct. A tenant may not waive and no such licensee or licensee's agent may require the tenant to waive the tenant's right to call for police or emergency assistance. Any such waiver contained in a rental agreement shall be null and void and unenforceable.

Sec. 29A-46. Appeal.

The action of the code official to revoke, suspend, deny an application for rental license or deny renewal of a rental license made pursuant to this Article is subject to appeal as provided in Section 29A-5 of this Code.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Approved for presentation to council:

\_\_\_\_\_  
Department Director

\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

Approved:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Auditor

COUNCILOR REQUEST/ATTY GK/MAL:blj

9/19/2008

STATEMENT OF PURPOSE: This ordinance creates a new Article IV to Chapter 29A of the Code relating to rental licensing. It provides for a process whereby the city may abate the occurrence of frequent criminal and nuisance activities within a rental unit by requiring the licensee to take action to abate the activity. The ordinance also grants to the city the authority to revoke, suspend, deny renewal or deny issuance of a rental license as a result of a licensee's failure to abate. The authority granted in this ordinance is in addition to any other authority possessed by the city pursuant to this Code or other laws of the state.