

ORDINANCE NO. 2015- 2167

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE VILLAGE OF WESTCHESTER, COOK COUNTY, ILLINOIS, BY AMENDING TITLE 7, ENTITLED “PUBLIC PEACE, SAFETY AND MORALS,” AND BY ADDING THERETO CHAPTER 7.128, ENTITLED “RENTAL RESIDENTIAL PROPERTY,” AND SECTION 7.132, ENTITLED “CRIME FREE RENTAL RESIDENTIAL PROPERTY” AND SECTION 7.136 ENTITLED “CHRONIC NUISANCE PROPERTY/ABATEMENT”

WHEREAS, the corporate authorities of the Village of Westchester have determined that it is proper, desirable and necessary in order to protect, preserve and promote public health, safety and welfare within the Village of Westchester to further amend Title 7, entitled “Public Peace, Safety and Morals” to include Chapter 7.128, entitled “Rental Residential Property”; and

WHEREAS, the corporate authorities of the Village of Westchester have further determined that it is desirable, necessary and in the best interest of the Village of Westchester in order to protect, preserve and promote public health, safety and welfare to add Chapter 7.132, entitled “Crime Free Rental Residential Property,” and Chapter 7.136, entitled “Chronic Nuisance Property/Abatement,” to the Municipal Code of the Village of Westchester and

WHEREAS, the corporate authorities of the Village of Westchester have determined that it is desirable and necessary relative to Crime Free Rental Residential Property, and Chronic Nuisance Property Abatement to also provide an affirmative defense for victims of domestic violence or those in need of assistance due to physical or mental disabilities, who through no fault of their own, may have had one of the violations enumerated in the Chronic Nuisance Ordinance occur at or near their property; and

WHEREAS, the corporate authorities of the Village of Westchester, wish to promote access to safe and affordable housing, prohibit housing discrimination and protect landlord and tenants Constitutional Rights under the First Amendment right to petition the government for a

redress of grievances, the Fourth Amendment guarantees against unlawful seizures, and the Fourteenth Amendment Equal Protection and Due Process guarantees and to provide reasonable accommodations for disabled persons pursuant to the American Disability Act; and

WHEREAS, the corporate authorities of the Village of Westchester, do not wish to penalize residents who contact police or other emergency services in order to prevent domestic violence, and/or assist an individual with a disability; and

WHEREAS, the corporate authorities of the Village of Westchester have determined that it is advisable, necessary and in the public interest of the Village to amend its code of ordinances to provide for a clear explanation of rights, duties and obligations of Landlord, Tenant and Village enforcement and to make available to victims of domestic violence and persons with disabilities, Affirmative Defenses to Nuisance activities caused through no fault of their own.

NOW, THEREFORE, BE IT ORDAINED by the President and the Board of Trustees of the Village of Westchester, Cook County, Illinois, as follows:

Section 1. The facts and statements contained in the preambles to this Ordinance are found to be true and correct and hereby adopted as the findings of the corporate authorities of the Village of Westchester as if fully recited herein.

Section 2. The Municipal Code of Ordinances of the Village of Westchester, as amended, is further modified by amending Title 7 entitled “Public Peace, Safety and Morals” to include Chapters 7.128 entitled “Rental Residential Property

“CHAPTER 7.128
RENTAL RESIDENTIAL PROPERTY”

Sec. 7.128.010. Purpose:

It is hereby declared that the purpose of this Chapter is to provide for the licensing of rental residential property in order to protect, preserve and promote public health, safety and welfare.

Sec. 7.128.020 Inspection Rights and Penalties:

This Chapter shall not be construed to impede in any way the right of the Village to inspect any property pursuant to any other provisions of this Code, nor to seek penalties for violations of other provisions of this Code.

Sec. 7.128.030. Definitions:

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

Family Members: Persons related by blood or marriage.

Multiple-Family Rental Residential Property: Rental residential property containing two (2) or more dwelling units.

Premises: A lot, plot or parcel of land, including the interior and exterior of any structures thereon.

Residential Rental Agreement: All written or oral agreements of whatever duration, which embody the terms and conditions concerning the use of and occupancy of a residential dwelling unit.

Rental Residential Property: Residential structures or dwelling units intended to be rented or leased, including single-family detached structures containing only one dwelling unit, condominium units, townhouse units, and multiple-family residential structures and intended to be used as a home, residence or sleeping place by one or more persons who maintain a household, together with all land, appurtenances, buildings and common areas.

Words or phrases as used in this Chapter and not herein defined shall be defined as provided by the International Property Maintenance Code, 2012 edition, as adopted at Chapter 14.16 and International Building Code, 2012 edition, as adopted at Chapter 14.04 and as amended from time to time.

Sec. 7.128.040. License Required:

(a) It shall be unlawful for any person, firm, partnership, association, corporation, or other legal entity to operate, maintain or offer to rent or rent within the Village any Rental Residential Property, as defined in Section 7.128.030 herein, whether vacant or occupied, without first having obtained and maintained a current license, as provided in this Chapter.

(b) It shall be unlawful for any person to occupy a Rental Residential Property, as defined in Section 7.128.030 herein, or for any owner to allow anyone to occupy a Rental Residential Property, as defined in Section 7.128.030 herein, which is not currently licensed, as provided in this Chapter.

(c) This Chapter shall not apply to the following structures:

(1) Hotels, motels, and other structures, which rent rooms to occupants if such occupancy is transient only;

(2) Dwellings, buildings, structures and uses licensed and inspected by the state or federal government, including, but not limited to, nursing homes, retirement communities and rest homes;

(3) Dwellings, buildings and structures used or owned by other governmental agencies and public housing authorities and otherwise inspected by them for compliance; and

(4) Dwelling units in Rental Residential Property, all of which are leased to or inhabited by family members of the property owner.

Sec. 7.128.050. License Application and Requirements:

(a) Each applicant for a license to maintain a Rental Residential Property for the purpose of renting it to others shall file a written application with the Code Administration Department, stating:

(1) The full legal name, address, and home and work telephone number of every owner;

(2) For Rental Residential Property which is held in a trust, the name, address and phone number of the trustee and a person with the power of direction regarding such trust shall be provided;

(3) The address of the Rental Residential Property;

(4) The number of dwelling units, if the Rental Residential Property is a Multiple-Family Rental Residential Property;

(5) The name, address and phone number of any management company retained as property agent for the property;

(6) The name, address and twenty-four (24) hour phone number or phone numbers of a responsible person who, in emergency situations, will be available on a twenty-four (24) hour basis and who has the authority to make repairs or to authorize repairs to the Rental Residential Property as needed, whether or not on an emergency basis; and

(7) If the property is a Multiple-Family Rental Residential Property, the square footage of the Property designated for living and sleeping purposes, including individual room sizes, as provided by the Village's property maintenance and/or dwelling code(s), as amended.

(b) Each application for a new rental residential license or a renewal of an existing rental residential license shall be accompanied by a fee of twenty-five dollars (\$25.00), for single-family detached structures, single townhouse units, and single condominium units. For multiple-

family residential structures, the fee shall be twenty-five dollars (\$25.00) for the first rental unit and ten dollars (\$10.00) for each additional rental unit located on the subject property, excluding owner-occupied units and units rented or occupied by the property owner's family members. All such fees shall be payable at the Code Administration Department.

(c) All license fees shall be due and payable on or before July 1 of each calendar year. All licenses shall expire on June 30 of each calendar year. License fees that remain unpaid after June 30, shall be assessed a late payment fee of twenty-five dollars (\$25.00), in addition to the license fee.

(d) Whenever there is a change in the ownership of a Rental Residential Property or the owner's property agent or manager, the owner(s) shall be required, within thirty (30) days of such change, to file an updated written notice with the Code Administration Department indicating such changes.

(e) A license for a Rental Residential Property cannot be transferred to another Rental Residential Property, nor to a succeeding owner.

Sec. 7.128.060. Enforcement:

It shall be the duty of the Code Administration Department to enforce the provisions of this Chapter as authorized by this Code and as amended from time to time by the Village.

Sec. 7.128 070. Violations:

Failure of the owner or owners of record of Rental Residential Property to license such property with the Village shall constitute a violation of this Chapter.

Sec. 7.128.080. Owner Responsibility:

The owner(s) of a Rental Residential Property shall inform each tenant, in writing, prior to occupancy, of the maximum number of persons, per dwelling unit, allowable by the Village

property maintenance and/or dwelling code, as amended. The maximum number of persons per dwelling shall be determined by a Village inspector, in accordance with this Code and any and all adopted codes.

Sec. 7.128.090. Tenant Responsibilities:

The following provisions shall be implied by law to be a term of every Residential Rental Agreement in effect within the Village as of and after the effective date hereof:

(a) Every tenant, occupant or resident shall comply with all obligations imposed specifically upon tenants by provisions of the Municipal Code of Ordinances of the Village of Westchester applicable to residential dwelling units;

(b) Every tenant, occupant or resident shall dispose of all ashes, rubbish, garbage and other waste from his dwelling unit in a clean and safe manner;

(c) Every tenant, occupant or resident shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person on the premises with his/her consent to do so; and

(d) Every tenant, occupant or resident shall conduct himself/herself and require other persons on the premises with his/her consent to conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of their premises.

Sec. 7.128.100. Material Breach of Rental Agreement

Any violation of the provisions of Section 7.128.090 of this Chapter or Chapter 7.132 of this Code shall be deemed to be a material breach of any Residential Rental Agreement or any other lease agreement or rental agreement.

Sec. 7.128.110. Penalty for Violation:

Any person, firm, partnership or corporation violating any of the provisions of this Chapter, in addition to other legal and equitable remedies available to the Village shall, upon conviction or finding of liable, whether by a court of competent jurisdiction or administrative hearing officer, be subject to a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00) for each violation. Each day during which a violation of this Chapter continues or is permitted to exist shall be considered a separate and distinct offense.

Section 3. The Municipal Code of Ordinances of the Village of Westchester, as amended, is further amended by adding Chapter 7.132, entitled “Crime Free Rental Residential Property,” to read as follows:

**“CHAPTER 7.132
CRIME FREE RENTAL RESIDENTIAL PROPERTY”**

Sec. 7.132.010. There is hereby created within the Village a Crime Free Rental Residential Property Program for the express purpose of deterring crime and maintaining a high quality of life and preserving peace and tranquility within and surrounding rental residential property within the Village. This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

Sec. 7.132.020. Applicability:

(a) Except as otherwise provided herein, the provisions of this Chapter 41C shall apply to all tenants, occupants, owners and property managers of rental residential property within the Village regulated by Section 7.128 of this Code.

(b) The Crime Free Rental Residential Property Program shall be operated and administered by the Village of Westchester Police Department, with the assistance of the Village of Westchester Code Administration Department.

(c) All applicants for a rental residential license shall, within six (6) months of applying for a rental residential license or within six (6) months of applying for a rental residential license renewal, attend and complete the Village of Westchester Crime Free Rental Residential Property Program at least once every three (3) years. The provisions of this Section shall not apply to owners of Rental Residential Property where all of the occupants of the rental property are related to the property owner by blood or marriage.

Sec. 7.132.030. Crime Free Lease Addendum Provisions:

All leases or rental agreements for multiple-family rental residential premises containing six (6) or more dwelling units shall be in writing and shall contain a crime free lease addendum or have a clause or provision in the lease similar to a crime free lease addendum. The crime free lease addendum shall be approved by the Village Manager as to form and content. The Crime Free Rental Residential Property Program Coordinator, who shall be appointed by the Chief of Police, shall provide, at no cost to the lessor, or the lessor's manager or agent, samples of crime free lease addenda. For purposes of this Section, a crime free lease addendum is a provision which makes it a material violation of a lease for a lessee, an occupant of the premises, a guest of the lessee or for any other party residing or present on the premises of a Rental Residential Property with the permission or consent of the owner or person in control of the property to engage in, facilitate or conspire to commit or commit any criminal activity or offense detailed in Chapter 7.136 of this Code while on the leased premises or any common area of the leased premises or to violate the tenant responsibility provision of Section 7.128.090 of this Code. All crime free lease addenda shall provide that commission of any offenses set forth in Chapter 7.136 of this Code shall be a material breach of the terms and covenants of the lease and shall further provide the lessor or lessor's agent with authority to evict the lessee in accordance with

the provisions of the Illinois Forcible Entry and Detainer Act, 735 ILCS 5/9-101 *et seq.*, if it is established by a preponderance of the evidence, either by a court of competent jurisdiction or administrative hearing officer, that a violation of the crime free lease addendum has occurred. That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter. This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

Sec. 7.132.040. Background Checks:

Unless otherwise required by Chapter 7.136 of this Code, owners, managers, and/or leasing agents shall not be required to perform or require lessees to submit to criminal background checks. It is, however, recommended that if landlords perform background checks of prospective lessees of Rental Residential Property that in addition to being required to submit to criminal background checks, they also perform credit checks, and checks for past evictions prior to entering into a lease agreement. The decision whether or not to lease to a tenant should not be based solely on the fact that the prospective tenant has an arrest record, without further inquiry as to whether or not the arrest record actually reflects that person's conduct. Other factors to consider from a prospective tenant's arrest record, when deciding to lease to him or her, is how old, minor, or irrelevant the records might be to the person's current ability to be a good tenant. Landlords should not impose strict bans on prospective tenants on the basis of the fact that they have a criminal background without making an individualized assessment of the circumstances surrounding the offenses on the person's record and giving the person an opportunity to explain.

Section 4. The Municipal Code of Ordinances of the Village of Westchester, as amended, is further amended by adding Chapter 7.136, entitled “Chronic Nuisance Property/Abatement,” to read as follows:

**“CHAPTER 7.136
CHRONIC NUISANCE PROPERTY/ABATEMENT”**

Sec. 7.136.010 Definitions:

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

- (a) Chief of Police means the Chief of Police of the Village of Westchester or his/her designee.
- (b) Chronic nuisance property means any property located within the Village upon which three (3) or more nuisance activities within a twelve (12) month period have occurred as a result of separate factual events that have either (1) been independently investigated and verified by any law enforcement agency and/or the Village's Code Administration Department, or (2) for which citations or criminal complaints for offenses defined as a nuisance activity occurring within a twelve (12) month period have been adjudicated with findings of liable or findings of guilty having been entered either by a Village of Westchester Administrative Hearing Officer or by a court of competent jurisdiction.
- (c) Contact includes any communication made by a tenant, landlord, guest, neighbor, or other individual to police or other emergency services.
- (d) Control means the ability or legal duty to regulate, restrain, dominate, counteract, or govern conduct that occurs on that property directly or by intervention of any governmental authority or by virtue of parent/child relationship or guardian/ward relationship. For all purposes

of this Chapter, a parent or guardian shall be conclusively deemed to have control over his or her respective child or ward, as the case may be.

(e) Disability means, with respect to a person:

(1) a physical or mental impairment, which substantially limits one or more of such person's major life activities;

(2) a record of having such an impairment; or

(3) being regarded as having such an impairment, but such term does not include current illegal use of, or addiction to, a controlled substance, as defined in the federal Controlled Substance Act, 21 U.S.C. 802

(f) Domestic Violence means "abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 by a "family or household member" as defined in Section 103 of the Illinois Domestic Violence Act of 1986. 750 ILCS 60/Article I, *et seq.*

(g) Dwelling Unit means a room or suite of rooms used for human habitation and for which a lessor and a lessee have a lease agreement, either written or oral.

(h) Landlord means the owner of a building or the owner's agent with regard to matters concerning landlord's leasing or a dwelling.

(i) Nuisance activities mean any of the following building code violations, property maintenance code violations, ordinance violations or criminal activities, behavior or conduct, as defined by state, and federal law or similar provisions of the Village Code of Ordinances of the Village of Westchester:

(1) Disorderly conduct, as defined in 720 ILCS 5/26-1 or Title 7, Chapter 7.24, Section, 7.24.10 of the Westchester Village Code;

(2) Unlawful use of weapons, as defined in 720 ILCS 5/24-1 *et seq.*,

- (3) Mob action, as defined in 720 ILCS 5/25-1;
- (4) Discharge of a firearm, as defined in 720 ILCS 5/24-1.2 and 1.5, or Title 7, Chapter 7.04, Section 7.04.070 of the Westchester Village Code;
- (5) Gambling, as defined by 720 ILCS 5/28-1 or Chapter 22 *et seq.*, of the Westchester Village Code;
- (6) Possession, manufacture, or delivery of controlled substances, as defined by 720 ILCS 570/401 *et seq.*, or Title 7, Chapter 7.72 *et seq.*, of the Westchester Village Code;
- (7) Public indecency, as defined by 720 ILCS 5/11-9 or Title 7, Chapter 7.04, Section 7.04.100 and of the Westchester Village Code;
- (8) Assault, as defined in 720 ILCS 5/12-1, or Title 7, Chapter 7.04, Section 7.04.020 of the Westchester Village Code;
- (9) Aggravated assault, as defined in 720 ILCS 5/12-2;
- (10) Battery, as defined in 720 ILCS 5/12-3, or Title 7, Chapter 7.04, Section 7.04.020 of the Westchester Village Code;
- (11) Aggravated battery, as defined in 720 ILCS 5/12-4;
- (12) Reckless conduct, as defined in 720 ILCS 5/12-5;
- (13) Hate crime, as defined in 720 ILCS 5/12-7.1;
- (14) Sexual abuse or related offense, as defined in 720 ILCS 5/12-15 *et seq.*;
- (15) Prostitution, as defined in 720 ILCS 5/11-14 *et seq.* or Lewdness Public Nuisance act, as defined in 740 ILCS 105/0.01 *et seq.*, or Title 7, Chapter 7.04, Section 7.04.110 and Title 7, Chapter 7.04, Section 7.04.120 of the Westchester Village Code;

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- (16) Criminal damage to property, as defined in 720 ILCS 5/21-1 *et seq.* or Title 7, Chapter 7.68, Section 7.68.020 of the Westchester Village Code;
 - (17) Possession, cultivation, manufacture, or delivery of cannabis, as defined in 720 ILCS 550/1 *et seq.* or Title 7, Chapter 7.72 *et seq.*, of the Westchester Village Code;
 - (18) Illegal consumption or possession of alcohol by a person under the age of twenty-one (21) years, as defined in 235 ILCS 5/1 *et seq.*, or Title 7, Chapter 7.82, Section 7.82.020 of the Westchester Village Code;
 - (19) Criminal housing management, as defined in 720 ILCS 5/12-5.1;
 - (20) Nuisance, as defined in 720 ILCS 5/37-1 or Title 7, Chapter 7.08 *et seq.*, of the Westchester Village Code;
 - (21) Two (2) or more separate violations of the Village's Property Maintenance Code Chapter 10, Article I, Section 10-2A of the Westchester Village Code, which continue after a disposition by a finding of guilty by the Circuit Court of Cook County for those violations, or similar finding of liability by the Village Administrative Hearing Officer.

(j) Owner means any person, partnership, land trust, or corporation having any legal or equitable interest in the property. In addition, Owner includes, but is not limited to:

- (1) A mortgagee in possession in whom is vested:
 - a. All or part of the legal title to the property.
 - b. All or part of the beneficial ownership and the rights to the present use and enjoyment of the premises.
- (2) An occupant who can control what occurs on the property.

(3) Any person acting as an agent of an owner as defined herein.

(k) Permit means to suffer, allow, consent to, acquiesce by failure to prevent, or attempt to prevent, or expressly assent or agree to the doing of an act.

(l) Person means any natural person, association, partnership, corporation, or other entity capable of owning, occupying, or using property in the Village.

(m) Person in charge means any person in actual or constructive possession of a property, including but not limited to, an owner, property manager, tenant or occupant of the property in question under his or her ownership or control.

(n) Property means any real property, including its land and that which is affixed, incidental, or pertinent to land, including but not limited to, any premises, room, house, building, or structure, or any separate part or portion thereof, whether occupied or leased for residential purposes, owned, leased or used for commercial purposes, whether under written or oral agreement.

(o) Rental or Lease Agreement means all written and oral agreements of whatever duration, which embody the terms and conditions of the use and occupancy of a residential dwelling unit or commercial property.

(p) Rental Residential Property: Residential structures or dwelling units intended to be rented or leased, including single-family detached structures containing only one dwelling unit, condominium units, townhouse units, and multiple-family residential structures and intended to be used as a home, residence or sleeping place by one or more persons who maintain a household, together with all land, appurtenances, buildings and common areas.

(q) Shall means mandatory and not merely directory or permissive.

(r) Sexual Violence has the meaning provided under Section 10 of the Safe Homes Act. 765 ILCS 750/10

(s) Tenant means a person who has entered into an oral or written lease with a landlord whereby the person is the lessee under the lease, or otherwise entitled to possession of the property whether or not payment is provided for the tenancy.

(t) Village means the Village of Westchester, Cook County, Illinois.

(u) Village Code means the Municipal Code of Ordinances of the Village of Westchester, from time to time in effect, including all codes adopted by specific reference.

Sec. 7.136.020. Violation:

(a) Chronic nuisance property is hereby declared to be a public nuisance.

(b) It shall be unlawful for any person to allow or permit property within the Village to become or remain a chronic nuisance property in violation of this Chapter.

(c) It shall be unlawful for any property owner(s), manager(s) or person(s) in charge, or tenant in possession to:

(1) Encourage, aid, abet or permit a property to become a chronic nuisance property; or

(2) Allow a property to continue as a chronic nuisance property after receipt of notice to abate the nuisance activity.

(d) Each day that a violation of this Section continues shall be considered a separate and distinct offense.

(e) That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter.

(f) This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

Sec. 7.136.030. Complaints of Nuisance Activity; Review:

Whenever the Chief of Police of the Village receives any combination of two (2) or more police reports documenting the occurrence of nuisance activity, as set forth in Section 7.136.010 (i)(1) through Section 7.136.010(i)(20), or Code Administration Department reports documenting the occurrence of nuisance activity, as provided in Section 7.136.010(i) (21) within a twelve (12) month period, on or within a property, the Chief of Police, or his/her designee, shall independently review such reports and any other relevant facts or evidence to determine whether nuisance activity or other prohibited conduct, as provided in Section 7.136.010(i) of this Chapter, has occurred at or on the property in question. Upon a determination by the Chief of Police, or his/her designee, that the complained of activity(s) has occurred, the Chief of Police shall initiate those procedures for addressing chronic nuisance property, as detailed in Section 7.136.040 of this Chapter.

Sec. 7.136.040. Procedure for Addressing Potential Chronic Nuisance Property :

(a) Following the independent review, as set forth in Section 7.136.030, if the Chief of Police or his/her designee concludes that nuisance activities have occurred, the Chief of Police shall require that the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof or their designee meet with the Chief of Police, at a specified date, time and place, to discuss the nuisance activity and to further discuss proposed action the owner, manager(s), person(s) in charge, and, in the event of leased property, such tenant intends to take to mitigate or abate the activity prior to a third verified incident of nuisance activity, in accordance with the following procedure:

(1) The Chief of Police shall notify the owner(s), manager(s), person(s) in charge, or, in the event, the property is leased property, the tenant, in writing that the property in question is in danger of becoming a chronic nuisance property. Such notice shall be provided by either personal delivery, first class mail postage prepaid or by certified mail return receipt requested. If service is by regular or certified mail, service shall be deemed complete three (3) days after mailing. In the event the property is Rental Residential Property, notice shall be served upon the property owner or manager at the address provided in the license application provided by Section 7.128.050 of this Code. The notice shall contain substantially the following information:

- (i) The street address or a legal description sufficient for identification of the potential nuisance property.
- (ii) A statement that the Chief of Police has information that the property may be a chronic nuisance property or a potential chronic nuisance property as defined by this Chapter, with a concise description of the criminal activity(s) or nuisance activity(s) that may exist, or that has occurred and why the Chief of Police believes the property may be determined to be a chronic nuisance property or a potential chronic nuisance property.
- (iii) A demand that the owner, manager(s) or person(s) in charge or, in the event the property is a leased property, the tenant(s) or other designee respond and meet with the Chief of Police at a specified date, time and location within twenty (20) days of issuance of the notice.

- (iv) That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter.
- (v) This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

(2) At the meeting between the Chief of Police or his/her designee and the parties notified, the Chief of Police may request that the owner, manager(s), person(s) in charge or his or her or its tenant(s), in the case of rental property, implement a reasonable abatement plan designed to alleviate and prevent future occurrences of criminal activity or nuisance activity upon the property. The mitigation or abatement plan shall be in writing and shall be reasonable under the circumstances in its objective, cost and scope, and shall be implemented within sixty (60) days of the meeting with the Chief of Police or such longer period if not practically feasible to do so within sixty (60) days. The Chief of Police shall, within ten (10) days after the conclusion of the meeting, make written Findings of Fact and Conclusions, with respect to the complaints received and reviewed, and the proposed remedial action to be taken by the owner(s), manager(s), or other person(s) in charge or in possession of the property, as recommended by the Chief of Police. Such report shall note whether such remedial action was consented to by the parties attending such meeting.

If the criminal activity or nuisance activity complained of has or is being committed, facilitated or permitted by a tenant leasing the property, and such activity is a violation of the material terms of a lease agreement, the Chief of Police may request that the owner evict the tenant and further request that future tenants execute a "Crime Free Lease Addendum." If eviction is requested, the owner shall proceed with such an action in good faith.

The Village shall assist in the eviction action by reasonably cooperating with the owner, manager(s) or person(s) in charge of the property, including, but not limited to, providing law enforcement officers or other municipal employees as witnesses regarding the nuisance activity if relevant.

(i) Notwithstanding the provisions of Chapter 7.136 of this Code, a Crime Free Lease Addendum shall be mandatory for any Rental Residential Property when there have been three (3) or more sustained complaints of criminal or nuisance activity within a twelve (12) month period at the property.

(ii) Under the Crime Free Lease Addendum, the owner or owner's agent must generally advise prospective tenants of the Crime Free Rental Property Program, and have a signed lease for the rental of the property which identifies all tenants eighteen(18) years of age or older; include a provision in the lease requiring written notice of any guests who will be temporarily residing at the rental property more than seven (7) consecutive days; and inform each tenant in writing of the maximum occupancy restrictions for the property; and have all adult tenants sign the Crime Free Lease Addendum.

(iii) The Crime Free Lease Addendum shall provide in words and phrases, similar to those delineated below, that the tenant, any member of the tenant's household, any guest or any other person or persons associated with the tenant or his or her household:

Shall not engage in any criminal activity or violation of municipal codes or ordinances or any other violations of local, state or federal law on or near the rental unit, common areas or appurtenances;

Shall not engage in any act intended to facilitate any violation of local municipal ordinances or codes or any other violations as defined by local state or federal law

and/or obstruction or resistance of law enforcement efforts against criminal activity on or near the rental unit, common areas or appurtenances;

Shall not permit on or near the rental unit, common areas or appurtenances to be used for or to facilitate any violations of local municipal ordinances or codes or any other violation of local, state or federal law;

Should the tenant, any member of the tenant's household, any guest or any other person or persons associated with the tenant, or his/her household, violate any provisions stated herein on or near the rental unit, common areas or appurtenance, such a violator shall constitute a material noncompliance with the lease and shall further constitute grounds for termination of tenancy and eviction.

(iv) That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter.

(v) This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

(b) If, after complying with the procedures of subparagraph (a) (2) of this Section and within twelve (12) months from the date of the first confirmed case of criminal activity or nuisance activity after the meeting, the Chief of Police receives a report documenting the occurrence of a third or subsequent instance of criminal activity or nuisance activity upon the property, the property may be declared a chronic nuisance property.

(c) It shall be a violation of this Chapter for:

(1) the owner, manager(s), person(s) in charge of the property in question fail to implement, within sixty (60) days of the meeting with the Chief of Police or such other

reasonable amount of time under the circumstances, a reasonable mitigation or abatement plan, as requested by the Chief of Police, or

(2) any person or persons so notified, pursuant to this Section 7.136.040, to fail to respond and meet with the Chief of Police within the twenty (20) day period without good cause shown.

(d) When any party affected by this Chapter responds to and meets with the Chief of Police, as required by Section 7.136.040, no statements made by that person in the meeting with the Chief of Police shall constitute an admission or be used in any judicial or quasi-judicial proceeding as an admission that any nuisance activity has or is occurring at or on the property. This subsection (d) shall not require the exclusion of any other evidence, otherwise admissible and offered for a purpose other than an admission against interest by that person making the statement.

Sec. 7.136.050. Abatement - Administrative Hearing:

(a) The Village may commence an action before the Village's administrative hearing officer for a determination that the property is a chronic nuisance property pursuant to Section 7.136.020. At any hearing before the Village administrative hearing officer to determine whether the property in question is a chronic nuisance property, which hearing shall be conducted pursuant to the provisions and procedures of Title 2, Chapter 2.92 of the Village Code, and the Village shall have the initial burden of proof to show, by a preponderance of the evidence, that the property in question is a chronic nuisance property. Notice of the hearing shall be provided to all persons or entities that may be adversely affected by a decision declaring the property a chronic nuisance property.

The Village's representative shall present evidence in support of its claim that the property is a chronic nuisance property. The property owner(s), manager(s) or tenant(s) in possession, if a leased property, or person(s) in charge or that person's representative or attorney on behalf of the responding party shall be permitted to rebut such evidence.

No continuances shall be authorized by the administrative hearing officer in proceedings under this Chapter unless for good cause shown or except where a continuance is absolutely necessary to protect the rights of any party to the proceeding. Lack of preparedness shall not be grounds for a continuance.

The Administrative Hearing Officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence including police reports shall be admissible only if it is the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs or is otherwise admissible under the Administrative Hearing Code of the Village.

At the conclusion of the hearing, the administrative hearing officer shall make a determination on the basis of the evidence presented at the hearing, whether or not a violation(s) exists or existed and whether or not the property is a chronic nuisance property. The determination shall be in writing and shall be designated as the Findings, Decision, and Order. The administrative hearing officer's decision shall be final and binding, except that the provisions of the Illinois Administrative Review Law shall apply with respect to judicial review of the administrative hearing officer's Findings, Decision and Order. The Findings, Decision, and Order shall include the administrative hearing officer's findings of fact, a decision whether or not a violation(s) exists, a determination as to whether the property in question is or is not a chronic nuisance property based upon the findings of fact, and any monetary fine or other

appropriate sanction imposed against the person(s) in charge/manager(s)/owner(s)/tenant(s) or occupant(s), as specified in subsection (b) below, or dismissing the case in the event a violation is not proved. A copy of the Findings, Decision, and Order shall be served upon the person in charge, owner, or tenant or occupant, within fourteen (14) business days of the date of the hearing.

(b) If the administrative hearing officer makes a finding that a property was, or is, a chronic nuisance property, the administrative hearing officer may fine the party(s) responsible for the violation, in an amount not to exceed seven hundred fifty dollars (\$750.00) for each violation of this Chapter. Each day a nuisance activity occurs or continues shall be considered a separate and distinct violation for purposes of determining a property to be a chronic nuisance property. The administrative hearing officer may, in his or her discretion, impose such a fine for each day the nuisance activity goes unabated. No person shall be found in violation of this Section unless the Village proves the violation by a preponderance of the evidence.

(c) That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter.

(d) This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

Sec. 7.136.060. Alternative Enforcement:

(a) Nuisance Abatement. The Village, as an alternative to Administrative Adjudication, may commence an action in the Circuit Court of Cook County Fourth Municipal District or Chancery Division of the Circuit Court of Cook County for a determination that the property is a chronic nuisance property and/or to abate the chronic nuisance.

Upon being satisfied by affidavits or other sworn evidence that an alleged chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction or permanent injunction to enjoin any defendant from maintaining such chronic nuisance property and may enter an order restraining any defendant named from occupying, using or interfering with all property used in connection with the chronic nuisance property.

(b) Commencement of action, burden of proof.

(1) In an action seeking closure of a chronic nuisance property, the Village shall have the initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property.

(2) It shall be an affirmative defense by the property owner of rental or leased property to an action seeking the closure of a chronic nuisance property that the owner of the property, manager(s) or person(s) in charge, at the time in question, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct of tenants or others in possession leading to the findings that the property is a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, obtain an order for possession of the property, pursuant to the provisions of the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.*).

(3) In establishing the amount of any civil penalty or other relief requested, the court may consider any of the following factors, if they are found appropriate, and shall cite those found applicable:

(i) The actions or lack of action taken by the owner or person(s) in charge to mitigate or correct the nuisance activity at the property;

(ii) Whether the criminal activity or nuisance activity at the property was repeated or continuous;

(iii) The magnitude or gravity of the criminal activity or nuisance activity at the property;

(iv) The cooperation of the owner or person(s) in charge of the property with the Village to correct the offending condition or abate the nuisance;

(v) Whether the owner or property manager, in the event of rental or leased property, has required the tenant(s) to sign a “Crime Free Lease Addendum”;

(vi) Whether the property owner(s) or property manager, in the event of rental or leased property, have attended the Village Sponsored Crime Free Property Program Seminar; and

(vii) The cost to the Village of investigating and correcting or attempting to correct the condition.

(viii) That the owner(s), manager(s) or other persons in charge of the property, tenant(s) in possession thereof may raise any affirmative defense delineated in Section 7.136.080 of this Chapter.

(ix) This Ordinance is not intended to deter those persons in need of Police, Fire or Paramedic services from calling for those services.

(c) Remedy:

(1) In the event a court determines a property to be a chronic nuisance property, the court may order that the property be closed and secured against all use and

occupancy for a period of not less than thirty (30) days, but not more than one hundred eighty (180) days or until the nuisance activity(s) or violation(s) complained of is abated. In addition, the court may employ any other remedy deemed by it appropriate to permanently abate the nuisance, including the entry of a permanent injunction enjoining any tenants, co-tenants, and/or occupants responsible or partially responsible for the property becoming a chronic nuisance property from future use, occupancy of or presence at or upon the property.

(2) In addition to the remedy provided in subparagraph (a) above, the court may impose upon the owner(s), manager(s), person(s) in charge and/or tenant(s) or occupant(s) of the property in question a civil penalty in an amount not to exceed the sum of seven hundred fifty dollars (\$750.00) per day, payable to the Village of Westchester, for each day the owner(s), person(s) in charge and/or tenant(s) or occupant(s) had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a chronic nuisance property.

(3) In determining what remedy or remedies to employ, the court may consider evidence of other conduct, which has occurred on the property, including, but not limited to:

- (i) The disturbance of neighbors;
- (ii) The occurrence of other criminal activity or nuisance activity at, on or from the property;
- (iii) The property's general reputation for criminal or nuisance activity and/or the reputation of persons residing at or frequenting the property;
- (iv) Physical damage to the property in question or surrounding properties;

(v) Any hazard posed to any occupant of the property or adjoining property occupant or owner resulting from the physical condition of the property in question or its structures.

(d) The court may authorize the Village to physically secure the property against use or occupancy in the event the owner or person in charge of the property fails to do so within the time specified by the court. In the event that the Village is authorized to secure the property, all costs reasonably incurred by the Village to effect the closure shall be made and assessed as a lien against the property and shall be a debt due and owing the Village. As used herein, "costs" mean those costs actually incurred by the Village for the physical securing of the property.

(e) The Village Code Administration Department employee effecting the closure shall prepare a statement of costs incurred, and the Village shall thereafter submit said statement to the court for its review. If no objection of the statement is made within the period described by the court, a lien in said amount shall be recorded against the property.

(f) Any person who is assessed the cost of closure and/or civil penalty by the court shall be personally liable for the payment thereof to the Village.

(g) The entry of such an order or injunction against a tenant shall not constitute a defense to nor an excuse of the obligation to pay rent by such tenant during the effective period of such order or injunction.

Sec. 7.136.070. Chronic Nuisance Located at Multi-Unit Rental Residential Property:

(a) In the event any chronic nuisance property is a multi-unit rental residential property, any order entered by the court to abate the nuisance or otherwise vacate the property shall, in the discretion of the court, be limited in scope as to apply only to the individual rental

unit or person(s) in charge or tenant(s) or occupants of that unit forming the basis for a finding that the property is a chronic nuisance property.

Sec. 7.136.080. Affirmative Defenses:

(1) Tenants and Landlords shall not be penalized under this Chapter based on:

(A) contact made to police or other emergency services, if (i) the contact was made with the intent to prevent or respond to domestic violence, or sexual violence; (ii) the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or (iii) the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

(B) an incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises; or

(C) nuisance activities occurring in the dwelling unit or on the premises that is directly relating to domestic violence, dating violence, sexual violence, engaged in by a member of a tenant's or lessees' household or any guest or other person under the tenant's, lessees' or household member's control, and against the tenant, lessee, or household member.

(D) It shall be an affirmative defense by the property owner of rental or leased property to an action seeking the closure of a chronic nuisance property that the owner of the property, manager(s) or person(s) in charge, at the time in question, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct of tenants or others in possession leading to the findings that the property is a chronic

nuisance property, or could not, in spite of the exercise of reasonable care and diligence, obtain an order for possession of the property, pursuant to the provisions of the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.*).

(2) Nothing with respect to this Section:

(A) limits enforcement of 50 ILCS 750/15.2 against any person calling the number “911” for the purpose of making a false alarm or complaint and reporting false information, from being charged with Disorderly Conduct as defined in 720 ILCS 5/26-1 or Chapter 35, Section 35-15 of the Westchester Village Code, or

(B) prohibits claims made pursuant to 735 ILCS 5/9-1 *et seq.*, of the Forcible Entry and Detainer Statute, except where the tenant, lessee, or household member who was the victim of domestic violence, sexual violence, stalking, or dating violence did not knowingly consent to the barred person entering the premises or a valid court order permitted the barred person’s entry onto the premises; or

(C) prohibits the Village from enacting or enforcing ordinances to impose penalties from on the basis of the underlying criminal activity or local ordinance violation not covered by paragraph (1) of this Section and to the extent otherwise permitted by existing State and federal law; or

(D) shall prevent the landlord or Village from seeking possession solely against a tenant, household member, or lessee of the premises who perpetrated the domestic violence, sexual violence, or other criminal activity; or

(E) shall prevent the property owner or Village from seeking possession against a tenant, lessee or household member who is a victim of domestic violence, dating

violence, and stalking, sexual violence or has a disability, if that tenant, lessee, or household member has committed the nuisance activity on which the demand for possession is based.

(F) A landlord shall have the power to bar the presence of a person from the premises owned by the landlord who is not a tenant or lessee or who is not a member of the tenant's or lessees' household. A landlord bars a person from the premises by providing written notice to the tenant or lessee that the person is no longer allowed on the premises. That notice shall state that if the tenant invites the barred person onto any portion of the premises, then the landlord may treat this as a breach of the lease, whether or not this provision is contained in the lease. Subject to paragraph (2) of subsection (B), the landlord may evict the tenant.

(G) Further, a landlord may give notice to a person that the person is barred from the premises owned by the landlord. A person has received notice from the landlord within the meaning of this subsection if he has been notified personally, either orally or in writing including a valid court order of protection, as defined by subsection (7) of 725 ILCS 5/112A-3 of the Code of Criminal Procedure of 1963 granting exclusive possession as the remedy (2) of subsection (b) of 725 ILCS 5/112A-14 of that Code, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof. Any person entering the landlord's premises after such notice has been given shall be guilty of criminal trespass to real property as set forth in 720 ILCS 5/21-3 of the Criminal Code of 2012, or Chapter 35, 35-15 of the Westchester Village Code.

After notice has been given, an invitation to the person to enter the premises shall be void if made by a tenant, lessee, or member of the tenant's or lessees' household and shall not constitute a valid invitation to come upon the premises or a defense to a criminal trespass to real property.

Section 5. Any ordinance or portion of any ordinance in conflict with the provisions of this Ordinance is repealed solely to the extent of such conflict.

Section 6. Severability – Should any provision or portion of this Ordinance be declared void or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance not so declared shall remain in full force and effect.

Section 7. This Ordinance shall be in full force and effect ten (10) days after its passage, approval and publication in the manner provided by law.

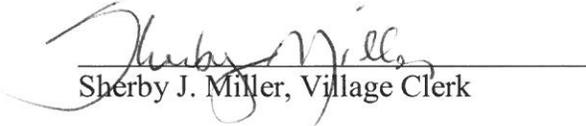
ADOPTED this 15th day of December, 2015, pursuant to a roll call vote as follows:

Angelo A. Calcagno	<u>Aye</u>	Celestine Reda	<u>Absent</u>
Carl C. Celestino	<u>Aye</u>	Nick Steker	<u>Aye</u>
Frank Perry	<u>Aye</u>	Tom Yurkovich	<u>Aye</u>
		President Pulia	<u>Aye</u>

APPROVED this 15th day of December, 2015.


Sam D. Pulia, Village President

ATTEST:


Sherby J. Miller, Village Clerk

ORDINANCE NO. 2015- 2107

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE
VILLAGE OF WESTCHESTER, COOK COUNTY, ILLINOIS,
BY AMENDING TITLE 7, ENTITLED "PUBLIC PEACE, SAFETY AND MORALS,"
AND BY ADDING THERETO CHAPTER 7.128, ENTITLED
"RENTAL RESIDENTIAL PROPERTY," AND SECTION 7.132, ENTITLED "CRIME FREE
RENTAL RESIDENTIAL PROPERTY" AND SECTION 7.136 ENTITLED "CHRONIC
NUISANCE PROPERTY/ABATEMENT"

PASSED AND APPROVED BY
THE PRESIDENT AND BOARD OF TRUSTEES
THE 15th DAY OF DECEMBER, 2015

Published in Pamphlet form by
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Authorities of Westchester, Illinois
the 15th day of December, 2015