

ORDINANCE NO. ORD-2008-9011

AN ORDINANCE AMENDING SUBSECTION (f)(7) OF SECTION 8-27 OF CHAPTER 8 ENTITLED "IRVING BUILDING STANDARDS CODE" OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS; RELATING TO CRIME FREE MULTI-HOUSING STANDARDS; PROVIDING AN APPEAL PROCESS FOR SUCH STANDARDS; AND PROVIDING PENALTY AND SEVERABILITY.

WHEREAS, the City of Irving is presented with a number of challenges regarding poorly maintained multi-family dwellings; and

WHEREAS, poorly maintained multi-family dwelling communities present the City with increased calls for police and code services; and

WHEREAS, poorly maintained multi-family dwelling communities create an environment where crimes against persons and property are more likely in accordance with the "Broken Window" theory; and

WHEREAS, persons who have committed serious crimes in the past are more likely to commit serious crimes in the future than persons who have not engaged in serious criminal activities; and

WHEREAS, keeping persons with a history of having committed serious crimes from living in poorly maintained multi-family dwelling communities will serve to lessen the likelihood that such persons will commit future serious crimes against the citizens of the City of Irving; and

WHEREAS, criminal background checks are common among well maintained properties which have lower incidences of crime, and are recommended within the rental industry; and

WHEREAS, the voluntary Crime Free Multi-Housing program of the Irving Police Department has been adopted by a number of Multi-Family Dwelling Communities within the City of Irving with good success; and

WHEREAS, the Lease Addendum and the required Management Policies, which are attached to this ordinance as Exhibits 1 and 2 are effective tools for reducing crime; and

WHEREAS, the City Secretary will maintain the Lease Addendum and Management Policies for review and distribution as will the Irving Police Department;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION 1. That paragraph (7) of subsection (f) of Section 8-27 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended to read as follows:

(7) Crime Free Multi-Housing.

a. The Owner and Manager of each Multi-Family Dwelling Community Risk Rated "3" or "4" shall:

- 1. Attend the Crime Free Multi-Housing Advanced Management Techniques seminar as provided by the City of Irving Police Department.**
- 2. Conduct criminal background checks on all prospective Residents and employees 17 years of age or older.**
- 3. Utilize the Crime Free Lease Addendum in all leases and other tenancies. A copy of the wording of such Addendum shall be kept on file in the Office of the City Secretary of the City of Irving.**
- 4. Sign and abide by the required Crime Free Multi-Housing Agreement, which Agreement includes the Management Policies and Criminal History Questionnaire. A copy of the wording of such Agreement shall be kept on file in the Office of the City Secretary of the City of Irving.**

b. If a person presents mitigating circumstances regarding the person's conviction of a Category I crime as listed in the Management Policies, and if the Owner or Manager accepts the mitigating circumstances, then the Owner or Manager may seek a recommendation from the City of Irving Police Department regarding the presumptive exclusion of that person in accordance with the Management Policies. If the Police Department does not recommend that the presumptive exclusion be disregarded, then the person subject to the presumption may appeal such presumption to the Irving Municipal Judge. Such person shall have the burden of proof to show that the person does not present a danger to the life, health, or property of the Residents of the Multi-Family Dwelling Community and the City of Irving. The Irving Municipal Judge shall hear and decide the appeal within five (5) working days of the filing. The issue shall be decided in the same manner and with similar considerations as IV(f) of the Rules Governing the Admission to the Bar of the State of Texas as set forth below. If five (5) years have passed since the person was either convicted or incarcerated for a Category I crime, the person must prove:

- 1. That the best interest of the public as well as the ends of justice, would be served by his or her residency or employment;**
- 2. That he or she is of present good moral character and fitness; and**
- 3. That during the five years immediately preceding the present action, he or she has been living a life of exemplary conduct.**

If five (5) years have not passed since the person was either convicted or incarcerated for a Category I crime, then the person may not appeal the presumption. The decision of the Irving Municipal Judge shall be final.

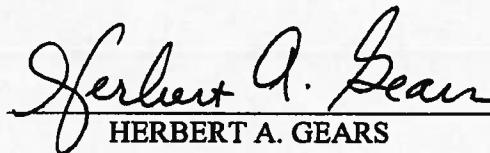
c. The City council may approve updates or revisions to the Lease Addendum or the required Crime Free Multi-Housing Agreement, or any part thereof by resolution passed at a properly posted meeting.

SECTION 2. That the City Council may approve updates or revisions to the Lease Addendum or the required Crime Free Multi-Housing Agreement, or any part thereof by resolution passed at a properly posted meeting.

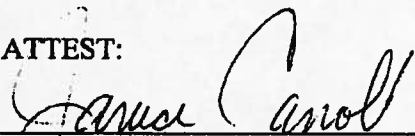
SECTION 3. Any person violating or failing to comply with any provision of this ordinance shall be fined upon conviction not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00). Each day any violation of any provision of this ordinance continues constitutes a separate offense.

SECTION 4. That the terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause, or phrase of this ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,
on November 6, 2008.


HERBERT A. GEARS
MAYOR

ATTEST:


Janice Carroll, TRMC
City Secretary

APPROVED AS TO FORM:

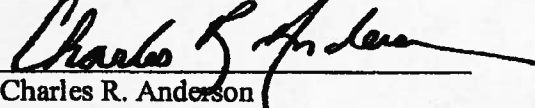

Charles R. Anderson
City Attorney



Exhibit 1



CRIME FREE LEASE ADDENDUM

In consideration for the execution or renewal of a lease of the dwelling unit identified in the lease, Manager or Owner and Resident agree as follows:

Resident, any member(s) of the resident's household, a guest or any other person affiliated with the resident, at or near the resident premises:

1. Shall not engage in criminal activity, including drug-related criminal activity, on or near the said premises. "Drug related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use an illegal or controlled substance (as defined in Section 102 of the Federal Controlled Substance Act [21 U.S.C. 802]).

2. Shall not engage in any act intended to facilitate criminal activity.

3. Will not permit the dwelling unit to be used for, or to facilitate criminal activity.

4. Shall not engage in the unlawful manufacturing, selling, using, storing, keeping or giving of an illegal or controlled substance as defined in Texas Health and Safety Code Chapter 481 – Texas Controlled Substances Act, at any locations, whether on or near the dwelling unit premises.

5. Shall not engage in any illegal activity, including, but not limited to prostitution as defined in Texas Penal Code Chapter 43 – Public Indecency, criminal street gang activity or engaging in organized criminal activity as defined in Texas Penal Code Chapter 71 – Organized Crime, threatening, intimidating, or committing assault as prohibited in Texas Penal Code Chapter 22 – Assaultive Offenses, including but not limited to the unlawful discharge of a weapon, on or near the dwelling unit premises, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent, or other tenant, or involving imminent or actual serious property damage.

6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions of this added addendum shall be deemed a serious violation, and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for immediate termination of the lease. Unless otherwise provided by law, proof of violation shall not require a criminal conviction, but shall be by a preponderance of the evidence.

7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum shall govern.

8. This LEASE ADDENDUM is incorporated into the lease executed or renewed this day between Manager or Owner and Resident.

Resident Signature

Date

Resident Signature

Date

Property Manager's Signature

Date

Name of Property

10/01

Exhibit 2

MANAGEMENT SCREENING POLICY

I. PURPOSE

The purpose of this policy is to assist the company, property manager or leasing agents by providing procedures to follow and determining factors to consider in selecting:

1. Potential employees for employment, and
2. Potential tenants for tenancy.

II. PROCEDURES

- A. **Criminal History Questionnaire and Background Checks.** Prior to accepting employment or becoming a tenant at the Multi-Family Dwelling Community, all persons shall fill out an Application which will include a Criminal History Questionnaire (copy attached). After receipt of a Criminal History Questionnaire which the company decides is acceptable, the company will obtain a criminal background check on that person from a firm engaged in that business. Such Questionnaire and criminal background check will be maintained by the company on the premises until six months after the time the person is no longer residing or working at the complex. If no convictions are revealed, the company will proceed with its normal hiring or leasing practice.
- B. **Category 1 Convictions.** Every conviction revealed will result in one of two levels of review. Convictions of any Category I offense will result in a rebuttable presumption that the applicant poses a significant risk of engaging in criminal activity in the future which may threaten the health, safety or property of the residents or employees of the apartment complex or the City of Irving, and the application will be denied.
- C. **Review of Denial.** If an applicant offers mitigating information showing that the presumption is inappropriate in his or her particular case, and such mitigating information is convincing to the company based on the Questions and factors listed below, the company may contact the ranking officer on duty within the Community Services Division of the Irving Police Department and ask for an immediate recommendation as to whether the mitigating information overcomes the presumptive rejection. The Company shall send or fax a completed Criminal History Questionnaire and the results of the criminal background check to initiate the review. Under normal circumstances, (and barring emergency or technical difficulty) the Irving Police Department will respond the same business day. If the Police Department finds the mitigating factors overcome the presumption, the Department will recommend in writing that the presumption be disregarded and the company may proceed with its hiring or leasing procedures.
- D. **Appeal.** If the recommendation is made that the mitigating information is not sufficient to overcome the presumptive rejection, the applicant may appeal the presumptive rejection by sending written notice to the Municipal Court Administrator, 305 North O'Connor Boulevard, Irving, Texas, who will arrange for review by the Municipal Judge or the Judge's designee. If an applicant is successful in the appeal and presents a certified copy of the order finding that the presumption should be overcome, then the company may proceed with its hiring or leasing procedures.

E. **Category II Convictions.** Convictions of any Category II offense will be reviewed by company's management which will decide whether the applicant will be rejected or accepted based on considerations listed in the "Questions and Factors" column below.

The following chart will assist the company, property manager, or leasing agent in determining approval or rejection of an application.

Category I Convictions Presumptive Rejection	Category II Convictions Discretionary Rejection
Arson	Driving while intoxicated
Murders	Theft
Sexual offenses	Embezzlement
Assaults: Class A or Felony	Possession of prohibited weapon
Robberies	Bad checks
Felony Possession of Drugs	Misdemeanor drug use
Burglaries	All other non-violent crimes
Auto Theft	

Questions and Factors:

- Nature of crime?
- Anyone injured?
- How long ago?
- Age at time?
- Any other convictions?
- Rental history ok?
- References
- Variance between the Criminal History Questionnaire and the Criminal Background Check.