AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, TO ESTABLISH A PROGRAM TO REDUCE OR ABATE CRIMINAL ACTIVITY IN APARTMENT COMMUNITIES IN THE CITY TO PROMOTE THE HEALTH, SAFETY AND WELFARE OF RESIDENTS OF SUCH APARTMENT COMMUNITIES; REQUIRING THE OWNERS OF APARTMENT COMMUNITIES IN THE CITY TO REGISTER SUCH OWNERSHIP; REQUIRING THE IMPLEMENTATION OF REMEDIAL MEASURES TO REDUCE CRIMINAL ACTIVITY AT AFFECTED APARTMENT COMMUNITIES; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFOR; DECLARING CERTAIN CONDUCT TO CONSTITUTE A NUISANCE AND PROVIDING FOR THE ABATEMENT THEREOF; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, excessive levels of criminal activity in an apartment community are detrimental to human health and welfare and result in impaired health, safety and welfare of residents of such property; and

WHEREAS, numerous studies including, among others, studies conducted by Harvard University, the National Institute of Justice and the Journal of Health and Social Behavior, and a number of others, contained in two volumes on file in the office of the City Secretary, support the premise that criminal activity is harmful to public health and that reducing such activity does improve and promote better public health and such studies have been considered by the City Council in connection with this ordinance; and

WHEREAS, statistics compiled by the Houston Police Department indicate that the growth in the proportion of crime occurring at apartment communities, especially crimes against persons, has increased for the first six months of the current year when compared to the same time period in previous years; and

WHEREAS, there are apartment communities in the City that have become harborages for various criminal activities including, but not limited to, murder, rape, robbery, aggravated assault, burglary, narcotics offenses and theft; and

WHEREAS, the implementation of a registration requirement for owners of apartment communities would greatly facilitate the application and enforcement of City health, building and safety codes and ordinances, as well as state laws regulating or affecting the operation of apartment communities: and

WHEREAS, the City Council recognizes that it is necessary for the City to apply its available police department resources in accordance with the law enforcement needs of

the community at large, and to adjust the application of those resources as necessary to address changes in those needs; and

WHEREAS, there is a need for a program designed to inform, educate and assist the owners of apartment communities that experience excessive levels of criminal activity on their properties as to the most effective and efficient means and methods that have proven successful in reducing criminal activity; and

WHEREAS, the City Council desires to make available to the owners and managers of apartment communities that have experienced excessive levels of criminal activity a set of recommended operating practices and property improvements that have proven successful in reducing criminal activity; and

WHEREAS, the operation of a remedial action eligible apartment community whose owner has failed or refused to implement remedial measures prescribed to address excessive levels of criminal activity at such property constitutes a nuisance and the City Council desires to provide the necessary means for the City Attorney and other City personnel to abate any such nuisance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article IX that reads as follows:

"ARTICLE IX. EXCESSIVE CRIMINAL ACTIVITY AT CERTAIN APARTMENT COMMUNITIES

Sec. 28-281. Purpose.

The purpose of this article is to establish a method by which the city may measure certain types of criminal activity occurring in apartment communities in the city and to create a program to address within those apartment communities shown to have excessive levels of criminal activity the application of methods proven to reduce such activity. It is the intent of this article to identify the parties the city will hold responsible for compliance with and violations of this article, rather than to determine the rights and liabilities of persons under agreements to which the city is not a party. The terms of this article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to

property that is the subject of this article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article by any person. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.

Sec. 28-282. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment community means a multi-family residential rental property under common ownership containing ten or more separate living units designed, built, rented, leased, let out or hired out to be occupied, or that are occupied, as residences, but excludes a condominium subject to chapter 81 or 82 of the Texas Property Code.

Community per capita crime index or CPCCI means a determination by the police official of the criminal activity on the property of an apartment community over the immediately preceding twelve-month period, calculated on a per capita basis. Two separate CPCCIs will be calculated for each apartment community based on the Part 1 and Part 2 crimes listed in the definition of the term *criminal activity* below that have occurred on such property. The CPCCIs shall be calculated in accordance with the manual.

Crime risk threshold or CRT means the statistically determined level of criminal activity in apartment communities in the city during the immediately preceding twelve-month period, adjusted for the occupancy of the apartment communities surveyed and expressed on a per capita basis. A CRT will be established for each of two categories of criminal activity on the properties of the apartment communities surveyed based on the Part 1 and Part 2 crimes listed in the definition of the term *criminal activity* below that have occurred on such properties. The CRTs shall be calculated in accordance with the manual.

Criminal activity means the commission of one or more of the following crimes listed in the categories designated as Part 1 and Part 2 crimes by the Federal Bureau of Investigation's Uniform Crime Report ('UCR') that result in the preparation of an offense report by the police department, namely:

Part 1 Crimes: Murder, rape, robbery, aggravated assault,

burglary, theft and auto theft; and

Part 2 Crimes: Other assaults, narcotics offenses (restricted to

those of delivery, possession, or manufacture), arson, vandalism, weapons offenses, prostitution, gambling and disorderly conduct.

The following UCR crimes shall not be deemed criminal activity under this article: suicide, all offenses involving domestic violence, forgery and counterfeiting, fraud, embezzlement, stolen property (buying, receiving or possessing), crimes against family and children, driving while intoxicated, violation of alcoholic beverage laws, and vagrancy. State law relieves an owner from responsibility for offenses involving domestic violence and such offenses shall not be deemed criminal activity under this article.

F.A.S.T. means the Forfeiture Abatement Support Team composed of members of the legal and police departments.

F.A.S.T. CPCCI means a determination by the police official of the nuisance activity on the property of an apartment community over the immediately preceding twelve-month period, calculated on a per capita basis. The F.A.S.T. CPCCI shall be calculated in accordance with the manual.

F.A.S.T. CRT means the statistically determined level of nuisance activity that is calculated based upon a survey of the apartment communities in the city on whose property at least one of the crimes listed in Chapter 125, Texas Civil Practices and Remedies Code, has occurred during the immediately preceding twelve-month period, adjusted for the occupancy of the apartment communities surveyed, and expressed on a per capita basis. The F.A.S.T. CRT shall be calculated in accordance with the manual.

F.A.S.T. eligible apartment community means an apartment community at which the F.A.S.T. CPCCI exceeds the F.A.S.T. CRT.

Inspection means the initial onsite assessment by officers of the police department of the physical, operational and on-site measures in effect on the property that might affect the level of criminal activity at a remedial action eligible apartment community to determine the remedial measures deemed most appropriate to reduce criminal activity at such property.

Manager means the person appointed or hired by the owner to be responsible for the daily operation of an apartment community.

Manual means the manual promulgated by the police official to guide the enforcement of this article and containing, but not limited to, procedures for the registration of apartment communities, remediation strategies to reduce or abate criminal activity at apartment communities with excessive levels of criminal activity, a description of the methods and criteria used to calculate and determine the crime risk thresholds and community per capita crime indices described in this article, and related forms.

Nuisance activity means any one of the crimes listed in Chapter 125, Texas Civil Practices and Remedies Code.

Owner means the person or persons who hold title to an apartment community.

Police official means the chief of police or such other person as he may designate to act as the official primarily responsible for the administration of this article or the said official's designees.

Registered agent means the person identified by the owner of an apartment community in the registration filed pursuant to this article authorized to receive any legal process and/or notice required or provided for in this article on behalf of the owner.

Remedial action eligible apartment community means an apartment community at which both CPCCIs are higher than the corresponding CRTs.

Remedial action plan means a written plan issued by the police official to an owner pursuant to this article specifying and requiring the implementation of remedial measures at a remedial action eligible apartment community and the time allotted to the owner to effect such implementation.

Remedial measures means reasonable actions to be taken or implemented on the property of a remedial action eligible apartment community, including but not limited to: (i) property improvements (fencing, lighting, controlled access, etc.), (ii) operational practices (presence of onsite personnel licensed under the Texas Private Security Act, Chapter 1702, Texas Occupations Code or certified peace officer(s), tenant screening, evictions, record-keeping, etc.) and

(iii) educational programs (Positive Interaction Program, Blue Star training, citizens on watch, etc.) and other remedial measures that have proven effective in reducing criminal activity. Remedial measures shall be based upon standardized measures designed to address various crime risk circumstances that are included in the manual, which have been determined to be reasonable by City Council pursuant to Section 28-294. Consequently, measures derived from the manual are deemed to be reasonable. A true and correct copy of the manual shall be kept on file in the offices of the multifamily administrative unit of the police department. A true and correct copy of the manual shall also be kept in the office of the city secretary for viewing by any member of the public.

Remediation inspection means an inspection by officers of the police department pursuant to this article to determine whether the remedial measures specified in a remedial action plan or an agreement made pursuant to subsection (c) of section 28-287 of this Code have been implemented.

Sec. 28-283. Registration of apartment communities.

- (a) It shall be unlawful for any person to operate an apartment community in the city without first registering the ownership of such property as required by this section. No fee shall be charged for the registration required by this section.
- (b) The owner of an apartment community shall provide or cause to be provided to the police official the following information regarding such property:
 - (1) The name of the owner and, if the owner is a corporation, whether foreign or domestic, the registered agent of the owner and the residential or business address of the owner and registered agent, if any, which address information shall include the street name and number, office or suite number if a business address, and the city, state, and zip code;
 - (2) The nature and extent of the owner's interest in the property. If there is only one owner, the extent of the owner's interest is 100%; and
 - (3) The name and business or residence address, including street name and number, city, state and zip code, of the current manager or management company of the apartment

community and, if the manager is other than an individual, the name, title, business address, including street name and number, city, state and zip code, of the individual to be contacted for any purpose under this article relating to the apartment community.

- (c) The use of a public or private post office box or other similar address shall not be sufficient for the purposes of complying with this section.
- (d) Any change of ownership of an apartment community, including, but not limited to, the sale of the property or any ownership interest therein, shall require the purchaser or transferee to update the information provided under subsection (b) of this section and to file such updated information with the police official within 30 days of the effective date of such ownership change. A prior owner may advise the police official that he no longer holds any ownership interest in the property. The same requirement shall apply to any change relating to the owner's registered agent and manager or management company.
- (e) The owner of a newly constructed apartment community shall comply with the provisions of this section not later than the thirtieth day following completion of construction.
- (f) A true and correct copy of the registration statement shall be posted at all times in the business office at the property or, if no business office is maintained at the property, in a common area or other conspicuous place accessible at all times to the tenants of such property.
- (g) A failure to comply with the requirements of this section shall constitute an offense under this article.
- (h) Compliance with the requirements of this section shall be deemed to meet the requirements of sections 250.003 and 250.004 of the Texas Local Government Code.

Sec. 28-284. Measurement of criminal activity; remediation strategies.

The police official shall determine the CRTs for all apartment communities in the city. The police official shall monitor the CPCCIs for each apartment community on an ongoing basis. An apartment community shall be designated as either remedial action eligible or F.A.S.T. eligible based upon the relationship of its CPCCI(s) to the CRTs or F.A.S.T. CRT, as

applicable. Apartment communities not meeting the threshold for designation as either remedial action eligible or F.A.S.T. eligible shall not be designated and changes in the criteria or methods used to calculate the foregoing indices or the remediation strategies set forth in the manual shall not be implemented until:

- (1) Notice of such change, including the time, date and location of the public hearing required by item (3) of this section, is given by publication in a newspaper of general circulation and the publication produced by the Houston Apartment Association not later than 30 calendar days prior to the date of the public hearing;
- (2) A panel of three persons consisting of: (i) a representative from the multifamily administrative unit of the police department, (ii) a member of the Houston Apartment Association and (iii) a citizen appointed by the mayor having no affiliation with the apartment industry or the police department is selected to carry out the duties set forth in the following item; and
- (3) The panel (i) solicits comments from any interested party concerning the proposed change in criteria or methods for calculating the indices or the remediation strategies prescribed in the manual, and after a 30 day comment period, (ii) holds a public hearing at which any owner or manager may be heard on the proposed changes in criteria or methods used to calculate the indices or the remediation strategies prescribed in the manual and, (iii) no later than 30 days from the date of such hearing, makes a final determination concerning the proposed changes in criteria or methods used to calculate the indices or the remediation strategies prescribed in the manual.

Sec. 28-285. Notice of designation.

- (a) The police official shall provide written notification to the owner or registered agent of each apartment community designated as either remedial action eligible or F.A.S.T. eligible, by personal service, certified mail, or other method which provides confirmation of delivery.
 - (b) The notice shall consist of the following:
 - (1) The designation assigned to the apartment community, specifying the types of crimes identified as having occurred on the property during the period reviewed, including the incident

numbers assigned to such crimes, the population calculated for the property and the street address and the date and time of each offense to allow the owner to understand the basis of the designation;

- (2) The requirement of a mandatory inspection to be conducted by officers of the police department;
- (3) The opportunity and procedures by which the owner may challenge the data provided to the owner pursuant to item (1) of this subsection upon which the designation is based; and
- (4) That the police official will be available to meet with the owner or his manager prior to the inspection for the purpose set forth in subsection (b) of section 28-286 of this Code and that a second meeting with the owner or his manager must occur after the inspection to allow the department and the owner to review the results of the inspection and determine a remedial action plan to reduce criminal activity at the property unless an agreement is reached pursuant to subsection (c) of section 28-287 of this Code.
- (c) The designation of an apartment community and application of the procedures set forth in this article by the police official shall be binding upon all subsequent owners or other transferees of an ownership interest in the apartment community.

Sec. 28-286. Action after designation; initial meeting.

- (a) The owner of a remedial action eligible apartment community must ensure that the police official has received, not less than ten calendar days after the owner's receipt of the notice of designation, a written statement of the owner's decision to either:
 - (1) Schedule an initial meeting with the police official; or
 - (2) Waive the initial meeting with the police official, which waiver shall be deemed a consent to the inspection and the owner's agreement to pay the fee prescribed by this article.

Failure of the owner to timely respond to the notice of designation shall be deemed the owner's acquiescence to the conduct of the inspection and agreement to pay the fee required by this article.

- (b) At the initial meeting, if not waived or deemed waived, the police official shall discuss the apartment community's designation and the basis for such designation.
- (c) A F.A.S.T. eligible apartment community shall be subject to the provisions of sections 2-268 through 2-270 of this Code and upon designation shall be referred by the police official to F.A.S.T for further action.

Sec. 28-287. Inspection, meeting and remedial action plan.

- (a) After the police official has designated an apartment community as a remedial action eligible apartment community and has provided the owner the opportunity for an initial meeting, the police official shall collect from the owner the fee required by section 28-290 of this Code and cause the apartment community to be inspected.
- (b) Upon completion of the inspection, the police official shall schedule a second meeting at which the police official and the owner or his manager will: (i) discuss the results of the inspection and the owner's past efforts and actions to reduce criminal activity at the property; (ii) review the remedial measures proposed by the police official or the owner to reduce the criminal activity that resulted in the property's designation; and (iii) formulate and reduce to writing a remedial action plan specifying the remedial measures to be implemented at the property by the owner and the time for completion of each of such measures.
- (c) The refusal or failure of an owner or his manager to meet with the police official following an inspection shall be deemed the owner's acquiescence to the remedial action plan issued by the police official under this article. In such instance, the police official shall deliver a copy of the remedial action plan to the owner or his manager by either of the methods authorized in subsection (a) of section 28-285 of this Code.

Sec. 28-288. Redesignation; evaluation.

- (a) The designations of all apartment communities will be redetermined by the police official not less than every two years after the date of initial designation.
- (b) The designation of a remedial action eligible apartment community may be redetermined not sooner than six months following the final deadline for the owner's implementation of remedial measures in the remedial action plan.

Sec. 28-289. Remediation inspection; subsequent inspection.

- (a) Each remedial action eligible apartment community for which the police official has conducted an inspection and issued a remedial action plan is subject to a remediation inspection following the expiration of each of the respective dates for completion set out in the plan or agreement.
- (b) An apartment community that is designated a remedial action eligible apartment community twelve months following the implementation of a remedial action plan issued pursuant to section 28-287 of this Code shall again be subject to an inspection and may be issued a new or revised remedial action plan pursuant to that section, at the discretion of the police official. After the initial payment of the fee prescribed by section 28-290 of this Code, no further payment of such fee shall be required of the owner of a remedial action eligible apartment community unless a reduction in the level of criminal activity at such property results in the removal of a designation under this article followed by a subsequent designation of the property as either remedial action eligible or F.A.S.T. eligible.

Sec. 28-290. Inspection fee.

- (a) A fee of \$400 shall be charged to the owner of an apartment community to defray the costs incurred by the police official in conducting the inspection, the meetings required by sections 28-286 and 28-287 of this Code, preparing the remedial action plan, and conducting the remediation inspection(s) of the apartment community. The fee shall be paid to the police official prior to the commencement of the inspection.
- (b) The chief of police shall review the inspection fee on an annual basis and may increase the inspection fee in an amount not greater than that necessary to recover the actual costs of the inspection, meetings required by sections 28-286 and 28-287 of this Code and the remediation inspection(s), up to five percent over the fee set for the prior year. A proposed increase in the inspection fee of greater than five percent shall require the approval of city council. A record of the current fee shall be maintained on file in the office of the city secretary and in the office of the chief of police.
- (c) All revenues received by the city resulting from the operation or enforcement of this article shall be allocated to the police special services fund administered by the police department.

Sec. 28-291. Conduct constituting an offense.

- (a) It shall be unlawful for an owner of a remedial action eligible apartment community to:
 - (1) Fail or refuse to permit officers of the police department to conduct an inspection of the property after receipt of notice under section 28-285 of this Code;
 - (2) Fail or refuse to permit the police official to conduct the remediation inspection(s) to ensure conformity to a remedial action plan issued under this article;
 - (3) Fail or refuse to attend the meeting required by subsection (b) of section 28-287 of this Code;
 - (4) Fail or refuse to timely implement or maintain a measure specified in a remedial action plan issued under this article made pursuant to subsection (b) of section 28-287 of this Code; or
 - (5) Fail or refuse to pay the inspection fee prescribed in this article.
- (b) Failure to comply with the provisions of this article shall be punishable by a fine of not less than \$500 nor more than \$2,000. Each day of non-compliance shall constitute a separate violation.
- (c) Citations issued in connection with any violation of this article shall be issued in compliance with the provisions of Sections 250.003 and 250.004, Texas Local Government Code, as amended from time to time.

Sec. 28-292. Nuisance.

- (a) The city council hereby finds and declares that the operation of a remedial action eligible apartment community whose owner has failed or refused to timely implement one or more remedial measures contained in a remedial action plan, as set forth in this article, constitutes a nuisance and is unlawful.
- (b) After at least 10 days prior written notice to the owner of an apartment community described in the foregoing subsection, given in the manner provided in subsection (a) of section 28-285 of this Code, notifying the owner that legal action will be taken if the owner fails to take immediate

action to implement a remedial action plan as provided in this article, the city attorney is authorized to institute any legal action to enforce this article including, but not limited to, the filing of civil injunctive proceedings in a court of competent jurisdiction against the owner of a remedial action eligible apartment community described in the foregoing subsection, seeking a mandatory injunction to compel the owner of any such property to implement the remedial measures set forth in a remedial action plan issued to such owner.

Sec. 28-293. Receipt of notice.

Any notice sent or required to be sent by the police official shall be deemed to have been received by the owner or his registered agent not later than the third business day after mailing.

Sec. 28-294. Adoption of initial manual.

The city council hereby adopts the apartment security ordinance manual dated October 2006 and on file in the office of the city secretary as the initial manual under this ordinance. The city council hereby finds and determines the remediation strategies, remediation strategy standards, computation methodology and remediation strategy framework set out therein to be reasonable and appropriate to address the public health, safety and welfare issues addressed by this ordinance. The police official may make changes to the manual consistent with this ordinance pursuant to and in accordance with the procedures set out in section 28-284 of this Code."

Section 3. Except for Section 28-283 as adopted in **Section 2** of this Ordinance, which becomes effective on the 120th day following the passage and approval of this Ordinance by the Mayor, the provisions of this ordinance shall take effect immediately.

Section 4. That the program adopted in **Section 2** of this Ordinance shall be reviewed by the City Council not later than five years after the date of passage of this Ordinance for the purpose of ascertaining the program's effectiveness.

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions

of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect, as provided in **Section 3**, above.

PASSED AND APPROVED this the day of My day of

Mayor of the City of Houston

Prepared by Legal Dept.

RDC:asw 11/08/2006

Requested by Mayor Bill White L.D. File No. 0420500068003

Senior Assistant City Attorn

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NO

CAPTION | ADOPTED

		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
		LAWRENCE
		JOHNSON
		CLUTTERBUCK
		EDWARDS
	1	WISEMAN
		KHAN
2/		HOLM
		GARCIA
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w.		BROWN
2000		LOVELL
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