

ORDINANCE NO. 77-2017

AN ORDINANCE DEFINING DISRUPTIVE RESIDENTIAL RENTAL PROPERTIES AND REQUIRING ABATEMENT OF DISRUPTIVE PROPERTIES WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY

WHEREAS, the City of Montgomery, Alabama, maintains authority to adopt ordinances which provide for the safety, preserve the health, and promote the prosperity of its citizens under Ala. Code § 11-45-1 (1975, as amended) and enforce obedience to these ordinances; and

WHEREAS, Ala. Code § 11-53-1-et seq. (1975, as amended) declares that unsanitary and unsafe buildings and structures used for human habitation constitute a danger to the health, safety, morals, welfare, well-being and comfort of the inhabitants and general public; and

WHEREAS, the state legislature in Ala. Code § 6-5-155 made specific findings that “Drugs have caused an increase in crime and violence and a deterioration in the habitability of housing and rental accommodations, as well as diminished property values;” and

WHEREAS, certain disruptive conduct that occurs in and about rental properties affects surrounding property owners through lower property values and an inability of surrounding property owners’ quiet enjoyment of their properties; and

WHEREAS, the Council has received an increasing number of complaints throughout the City of disruptive rental properties; and

WHEREAS, the City of Montgomery hereby finds that disruptive rental properties, as defined herein, have been and continue to contribute to drugs, crime, blight, and negatively affect the quality of life in the City of Montgomery as well as continue to constitute a danger to the health, safety, and welfare of the surrounding inhabitants and general public; and

WHEREAS, the intent and purpose of this ordinance is to protect public health, safety, and welfare of inhabitants around disruptive rental properties and provide a process by which property owners are responsible to ensure the tenants to whom property is rented comport themselves so as to promote the public health, safety, and welfare of surrounding inhabitants.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Montgomery, Alabama, as follows:

SECTION 1. Definitions.

“City” means the City of Montgomery, Alabama.

“Disruptive residential rental property” means a building, dwelling, establishment, premises, or place that is leased, rented, or otherwise occupied by someone other than the owner of the property, and where prohibited conduct occurs; includes outside area contiguous to and surrounding a structure, such as a yard or lot under the same ownership. If the building, dwelling, establishment, premises, or place is a multiple-unit dwelling or residence, this definition applies only to that dwelling unit, room, or suite of rooms from which the prohibited conduct occurs.

“Enforcement Officer” is designated by the Mayor and is responsible for enforcing the appropriate sections of this Ordinance. The enforcement officer may be an Inspector, Code Enforcement Official, Police Officer, Fire Marshall, or Fire Inspector depending on the appropriate section. The Enforcement Officer is authorized to undertake whatever actions, in accordance with his or her respective authority, to properly investigate and determine if the officer has probable cause to believe a violation of this ordinance has occurred.

“Owner” means the record owner of the property, as reflected in the records of the Montgomery County Probate Court and/or on the records of the Montgomery County Tax Assessor and any party with a mortgage or other legal interest in the property provided that such interest is recorded in the mortgage or conveyance records of Montgomery County, Alabama.

“Prohibited Conduct” means situations created, originating, or conducted within a building or within the boundaries of the property on which a building is located by the owner, owner’s employees, owner’s representatives, occupants, tenants, or customers thereof, or the visitors to any such owner,

occupant tenant, or customer, which would unreasonably disturb the community, the neighborhood, or an ordinary individual of normal sensitivities at or beyond the property line, including but not limited to:

- A. Loud music and/or excessive, loud, or unnecessary noises audible beyond the property line;
- B. Boisterous gatherings;
- C. Altercations occurring on the property, such as fighting, disruptive conduct, brawling, or other similar activities which may include any alleged violation of the criminal code of the state of Alabama or the City of Montgomery Code of Ordinances;
- D. Any form of conduct, action, incident, or behavior perpetrated, caused, or permitted, by any occupant or visitor of a residential rental property that is so loud, untimely as to the hour of the day, offensive, riotous, or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises such that a report is made to the police;
- E. Violation of the fire code; or
- F. Activities occurring in violation of criminal laws or laws effecting public health, which includes any violation of the Code of Ordinances of the City of Montgomery

SECTION 2. Notice to abate.

(a) Whenever the Enforcement Officer has probable cause to believe the prohibited conduct, as defined in section one (1), has occurred in or upon a residential rental property, the owner and occupants of the property shall be notified that the property is considered a disruptive residential rental property as defined by this ordinance, and consequently, the property constitutes a public nuisance that must be abated. The Enforcement Officer shall issue at least one (1) written warning to the property owner and/or the tenants before seeking a summons from the municipal court magistrate.

(b) In order for a magistrate to issue a summons for a violation of this ordinance, the owner and occupants of the property must have received at least one (1) written warning within the prior

thirty (30) days before a summons can be issued under section three (3) of this ordinance.

SECTION 3. Manner of serving notice.

(a) The City shall provide notice to the owner of the property; the occupants of the property; and/or both parties in the following manner:

(1) By issuance of summons in the same manner as code violations are provided;

(2) In the event a summons is unable to be issued or served by certified mail to the owner of the property; to the occupant; and/or both, written notice shall be issued that provides for thirty (30) days' notice prior to an appearance in the Montgomery Municipal Court with respect to such violations; or

(3) Following attempts to issue summons as described in subsection (a) above and following notice provided by subsection (b) above, the City of Montgomery, at the discretion of the Mayor, shall be authorized to appoint a curator for the filing of a lien and/or filing suit against the property with respect to said violations.

(b) Following receipt of the notice, the Owner and Tenants are deemed to be responsible for any and all prohibited conducted occurring upon the premises. This shall be considered a rebuttable presumption.

(c) Following a notice and summons issued to the property owner and/or occupants, the case shall be set for a hearing before a municipal judge to determine if a violation of this ordinance has occurred.

SECTION 4. Penalty.

It shall be unlawful for any person, owner, or occupant to violate or fail to comply with any provision of this article. The violation of or failure to comply with any provision of this

article shall be punished as provided in Montgomery Code of Ordinances, chapter 1-6.

SECTION 5. Defenses

(a) For the property owner or landlord, it shall be a defense to an alleged violation if the property owner takes steps to remedy the disruptive conduct which may include the initiation of lawful eviction proceedings within thirty (30) days of receipt of notice of the prohibited conduct set forth in this section with intent to pursue the eviction of the tenant(s).

(b) It shall also be a defense for a tenant if the tenant can prove the individual(s) responsible for the prohibited conduct no longer reside at the property.

(c) Further, any other defense allowed at law may also be considered by the municipal court.

SECTION 6. Conflict With Other Laws.

(a) Nothing in this ordinance shall be deemed to conflict with state law governing residential rental agreements or contrary to any other state or federal law including but not limited to the Fair Housing Act and the American with Disabilities Act.

(b) Nothing in this ordinance shall be deemed to prohibit the use of “half-way” houses or other properties that have been so designated for the use of individuals re-entering society following confinement.

(c) Further, nothing in this ordinance shall be read or enforced so as to cause an alleged victim of domestic violence or alleged victim of other criminal conduct to vacate the rental residence.

SECTION 6. Severability.

In the event a section or sections of this ordinance is declared unconstitutional, the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 7. Enactment.

Following publication as required by law, this Ordinance shall take effect at 12:01AM on the first day of October, 2017.

Done this the 5th of September, 2017.

/S/
TODD STRANGE
MAYOR

ATTEST:
/S/
BRENDA GALE BLALOCK
CITY CLERK

77-2017