

**BOROUGH OF MOUNT PENN  
BERKS COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 865**

AN ORDINANCE OF BOROUGH OF MOUNT PENN, BERKS COUNTY, PENNSYLVANIA,  
ESTABLISHING THE BOROUGH CRIME FREE RESIDENTIAL RENTAL HOUSING  
PROGRAM

**WHEREAS**, the Borough Council of Borough of Mount Penn, Berks County, Pennsylvania ("Borough "), enacted Ordinance, No. 749, as amended by Ordinance No. 774 (the "Tenant Registration") requiring any owner of residential and commercial property to obtain a Rental Operating License (a "Rental License") as a precondition to allowing occupancy of such property by anyone other than the owner; and

**WHEREAS**, notwithstanding the use of terms such as rental, lease, landlord, tenant and other like terms, the Rental Operating License Ordinance may be applicable to owners of property occupied by others, even where there is not a lease and even where no rent or other consideration is paid, it being the intent of the Rental Operating License Ordinance and this Ordinance to enhance the health, safety and welfare of all persons occupying properties owned by others in the Borough regardless of the nature of the legal arrangement under which such occupancy prevails; and

**WHEREAS**, The Rental Operating License Ordinance currently requires inspections of all Residential Rental Units (as defined in the Rental Operating License Ordinance) every two years or upon change of occupancy; and

**WHEREAS**, the Borough desires to require persons who rent (whether or not for consideration) any Residential Rental Unit within the Borough ("Landlords,") to participate in the Borough's Crime Free Residential Rental Housing Program (the "Program"); and

**WHEREAS**, the Borough desires to provide incentives to Landlords to participate in the Program and to provide penalties for Landlords who do not participate in the Program; and

**WHEREAS**, the Borough Code of Pennsylvania authorizes Borough of Mount Penn to enact Ordinances to protect and ensure the health, safety, cleanliness and public welfare of its residents; and

**WHEREAS**, the Borough Council for Borough of Mount Penn is of the opinion that it is in need of remedies for disruptive behavior of tenants of a rental property; and

**WHEREAS**, Borough Council for Borough of Mount Penn desires to enact an Ordinance providing for regulation of disruptive behavior of tenant of a rental property.

**NOW THEREFORE BE IT ENACTED and ORDAINED** by the Borough Council of Borough of Mount Penn, Berks County, Pennsylvania by the authority of the same as follows:

## SECTION 1. Delivery of Disclosures to Tenants.

- A. All disclosures and information related to this Ordinance and Borough rental regulations required to be given to occupants by the owner shall be furnished at or before the commencement of the landlord tenant relationship. The owner shall provide occupant with copies of any rental agreement and addendum upon execution.
- B. Terms and Conditions. Owner and occupant may include in a rental agreement terms and conditions not prohibited by this Ordinance or other applicable ordinances, regulations and laws, including rent, term of the agreement and other provisions governing the rights and obligations of the parties.
- C. Prohibited Provisions. Except as otherwise provided by this Ordinance, no rental agreement may provide that the occupant or owner agrees to waive or to forego rights or remedies under this Ordinance. Any provision prohibited by this subsection which is included in a rental agreement is unenforceable.
- D. Provisions of Summary of Ordinance to Occupant. Following the effective date of this Ordinance, a summary hereof in substantially the form set forth in Appendix A, shall be provided to the occupant at or before the commencement of the landlord tenant relationship. If a summary has been provided at or before the commencement of the landlord tenant relationship, a summary does not have to be provided upon renewal. Where a rental agreement has been entered into prior to the effective date of this Ordinance, the owner shall provide the occupants with a copy of the summary within sixty (60) days after enactment of this Ordinance.
- E. The owner shall secure a signed acknowledgement from occupants that the occupants have received the disclosures and information required by this Ordinance. The owner within ten (10) days of the execution of any lease shall furnish to Borough of Mount Penn copies of the signed acknowledgement that the occupants have received the disclosures and information required by this Ordinance.

## SECTION 3. Crime Free Residential Rental Housing Program. The Borough hereby establishes the Crime Free Residential Rental Housing Program, as follows:

### **A. Purpose and Findings.**

As there is a greater incidence of disturbance which adversely affects the peace and quiet of the neighborhoods at rental residential properties than owner -- occupied residential properties, the purpose of this Ordinance is to protect and promote the public health, safety and welfare of the citizens of Borough of Mount Penn and to ensure owners and occupants share responsibility to prevent and avoid nuisances in the Borough.

### **B. Definitions.**

AGENT -- an adult individual designated by the Owner of a rental unit to act on behalf of the Owner.

**BUSINESS DAYS** -- days in which the business offices of Borough of Mount Penn are open for public business.

**BOROUGH** -- Borough of Mount Penn.

**CODE APPEALS COMMITTEE** -- the appeals committee formed hereunder to hear appeals under this Ordinance. The Code Appeals Committee shall be a three-person subcommittee of the Borough Council, serving as the Code Appeals Committee.

**CODE ENFORCEMENT OFFICER** -- the duly appointed Code Enforcement Official(s) having the duty to enforce this and other codes and ordinances of the Borough.

**CODE OFFICIAL** -- Borough of Mount Penn Code Enforcement Officer.

**COMMITTEE** -- Borough of Mount Penn Borough Sub-Committee serving as the Code Appeals Committee.

**DISRUPTIVE CONDUCT** -- Any form of conduct, action, incident or behavior perpetrated, caused or permitted by an occupant or guest of a rental unit that is so loud, untimely (as to hour of day) offensive, riotous, or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises, as well as any activity which is the subject of criminal citation for Disorderly Conduct or which is an offense under the Pennsylvania Crimes Code or Liquor Code. "Disruptive Conduct" shall also include conduct which causes damage to said premises such that a report is made to a police officer and/or a code official, complaining of such conduct, action, incident, or behavior. It is not necessary that such conduct, action, incident or behavior constitutes a criminal offense, or that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a code official or a police officer shall investigate and make a determination that such activity did occur, and shall have kept written records including a disruptive conduct report, of such occurrences.

**DISRUPTIVE CONDUCT REPORT** -- a written report of disruptive conduct on a form to be prescribed therefor to be completed by a police officer or a code official, as the case may be, who actually investigates an alleged incident of disruptive conduct. A Police Incident Report, in addition to any form that may be prescribed by the Borough, shall constitute a Disruptive Conduct Report. Disruptive Conduct Reports shall be maintained by the Borough for a period of at least two (2) years.

**GUEST** -- a person on the premises with the actual or implied consent of an occupant.

**LANDLORD** - one or more persons, jointly or severally, in whom is vested all or part of the legal title to the premises or all or part of the beneficial ownership and a right to the present use and enjoyment of the premises, including a mortgage holder in possession of a rental unit. Also see Owner.

LANDLORD and TENANT ACT – the Landlord and Tenant Act of 1951, as amended, 68 PS §250.101 et seq.

LEASE – RENTAL AGREEMENT – a written agreement between owner/landlord and occupant/tenant supplemented by the addendum required herein embodying the terms and conditions concerning the use and occupancy of a specified residential rental unit or premises. Also see Rental Agreement.

OCCUPANT – an individual who resides in a rental unit whom has legal relationship with the owner / landlord established by lease or the laws of the Commonwealth of Pennsylvania.

OWNER - one or more persons, jointly or severally, in whom is vested all or part of the legal title to the premises or all or part of the beneficial ownership and a right to the present use and enjoyment of the premises, including a mortgage holder in possession of rental unit. Also see Landlord.

PERSON – a natural person, partnership, corporation, unincorporated association, limited partnership, trust or any other entity.

POLICE – sworn law enforcement officer of the Central Berks Regional Police Department or any other law enforcement agency having jurisdiction within the Borough.

PREMISES – any parcel of real property in the Borough, including the land and all buildings and appurtenant structures or elements, on which one or more rental units is located.

RENT – compensation for providing a shelter or lodging for habitation by humans to reside, monetary or non-monetary.

RENTAL AGREEMENT – a written agreement between owner/landlord and occupant/tenant supplemented by the addendum required herein embodying the terms and conditions concerning the use and occupancy of a specified residential rental unit or premises. Also see Lease.

RENTAL UNIT – any structure or portion of a structure within the Borough which is either (i) not owner-occupied, but is occupied by another person, whether or not for value, or (ii) occupied by the Owner and occupied by someone other than the owner of the real estate, and for which the owner receives any value, including but not limited to money, or the exchange of goods or services.

RENTAL OPERATING LICENSE – the license issued to the Owner of a rental unit under the Rental Operating License Ordinance for lawful rental and occupancy of a rental unit.

TENANT - an individual who resides in a rental unit whom has a legal relationship with the owner / landlord established by lease or the laws of the Commonwealth of Pennsylvania. Also see Occupant.

TWELVE MONTH PERIOD – for purposes of this Ordinance, 12-month period shall be calculated by counting 12 months back from the most recent disruptive conduct report.

**C. Owner and Occupant Duties.**

1. Owner's Duties. Owner shall assure that the conduct and activities of the occupants of every rental unit owned by such owner is in compliance with this Ordinance, the Lease Agreement and Appendix thereto and applicable provisions of the laws of the Commonwealth of Pennsylvania and all other Ordinances of the Borough by providing similar language in their lease with the current tenant and in so doing minimizing disruptive conduct by taking appropriate contractual and enforcement action to cause the conduct and activities of the occupants to comply with their duties set forth herein. And when any common areas are being used by any occupants, owner shall be directly responsible for the behavior of occupants and guests in such common areas of the premises.
2. Occupant Duties. Occupant shall comply with all obligations imposed upon occupants by this Ordinance and all applicable provisions of the laws of the Commonwealth of Pennsylvania, the Lease Agreement and Appendix thereto and all applicable Ordinances of the Borough and shall conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises or adjacent or nearby dwellings or premises and shall not permit others on the premises to act in such a manner as to violate any occupant duties.

**D. Disruptive Conduct.**

1. Investigation and Report of Disruptive Conduct.

One or more Police officers or code officials shall investigate alleged incidents of Disruptive Conduct. They shall complete a Disruptive Conduct Report upon a finding that the reported incident constitutes disruptive conduct as defined herein. The information filed in said report shall include, if possible, the identity of the alleged perpetrators of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct. A copy of the Disruptive Conduct Report shall be given or mailed to the occupant and mailed to the owner within ten (10) business days of the occurrence of the alleged disruptive conduct.

2. Report Against All Occupants.

The content of the disruptive conduct report shall count against all occupants of the rental unit. The content of the disruptive conduct report shall not count against an occupant if the complaint is initiated by that occupant of the rental unit. More than one Disruptive Conduct Report filed against the occupants of a rental unit in a 24-hour period shall count as a single disruptive conduct report for the purpose of this Ordinance. Any disruptive conduct occurring as a result of a person being present on the property in violation of a court order including, but not limited to, a protection from abuse order, or in violation of the Crimes Codes of Pennsylvania,

or whose presence results in issuance of a court order, including, but not limited to, a protection from abuse order being obtained, and upon submission of documentary proof thereof, such activity shall not count as Disruptive Conduct against the property.

3. Eviction.

After three (3) disruptive conduct incidents in any 12 month period by an occupant documented by Disruptive Conduct Reports, the owner shall have ten (10) working days from the date of service of a written notice to the owner to begin eviction proceedings against the occupant(s) and pursue the same through any appeal to the Berks County Court of Common Pleas. This subsection is not intended to limit or inhibit the owner's right to initiate an eviction action. Moving of tenants from one property or dwelling owned by landlord to another property or dwelling owned by the same landlord shall not be considered eviction.

4. Maintenance of List of Disruptive Conduct Report for Tenants and Occupants and Evicted Occupants.

The Code Enforcement Official shall maintain a list of the names of all occupants and tenants against whom a Disruptive Conduct Report is issued and the outcome thereof. The Code Enforcement Official shall also maintain a list of all occupants and tenants evicted as a result hereof. The names shall remain on the list for a period of five (5) years.

**E. Suspension, Revocation and Reinstatement of Rental Permit.**

1. Suspension or Revocation of Rental Operating License.

Failure of an owner to take action required herein will result in commencement of the process to suspend or revoke a Rental Operating License as set forth herein.

2. Reinstatement of Suspended Rental Operating License.

The rental unit with respect to which the Rental Operating License has been suspended shall not have its Rental Operating License reinstated until the applicable reinstatement fee is paid, the disruptive occupants have been evicted and any life safety Property Maintenance Code violations on the Premises have been remediated, or the appeals board has ruled in the occupant's favor, or the appeals board has ruled in the owner's favor but not ordered eviction of the occupant(s), or the occupants have filed an appeal to a higher court preventing their eviction.

3. The owner of a rental unit with respect to which the Rental Operating License has been revoked, or any person or entity owned or controlled by, or affiliated with, such owner, may not reapply for a Rental Operating License for such rental unit for a period of twelve months.

## F. Appeals.

1. Right to Appeal. The occupant(s) and/or owner may appeal the contents of a Disruptive Conduct Report to the Code Appeals Committee. Additionally, any person aggrieved by the suspension, nonrenewal, denial or revocation of a Rental Operating License as a result of a Disruptive Conduct Report or alleged failure to take actions required by this Ordinance may appeal. All appeals shall be filed in writing with the Code Enforcement Official with the appropriate filing fee per the Borough fee schedule within twenty (20) days of service of the Disruptive Conduct Report or notice of suspension, nonrenewal, denial or revocation of a Rental Permit.
2. Powers of Code Appeals Committee on Appeals of Disruptive Conduct Reports.

In hearing appeals of Disruptive Conduct Reports, the Code Appeals Committee shall have the following powers:

- a. To hear and decide appeals where it is alleged that there is an error in a decision or determination by a police officer or code official in the enforcement of this Ordinance. The hearing shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. Section 101 et.seq.
- b. To modify any order and to authorize a variance from the terms of this Ordinance when because of special circumstances, undue hardship would result from literal enforcement and where such a variance substantially complies with the spirit and intent of this Ordinance.
- c. To grant a reasonable extension of time for the compliance of any Order issued by the code official where there is a demonstrated case of hardship and evidence of a bona fide intent to comply within a reasonable time period.

In exercising the above-mentioned powers, the Code Appeals Committee shall act with reasonable promptness and seek to prevent unwarranted delays prejudicial to the party involved and to the public interest; provided, however, that the Code Appeals Committee shall file its decision within fifteen (15) business days after the appeal hearing.

The Code Appeals Committee shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by parties.

The Code Appeals Committee may reverse or affirm wholly or partly, or may modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as justice would require, and to that end, however, the Code Appeals Committee in its determination, shall be bound by this Ordinance and shall not ignore the clear provisions and intent of this Ordinance.

### 3. Effect of Appeals.

Any decision or order issued under, per and in accord with this Ordinance shall be held in abeyance upon the timely filing of an appeal thereof with the Code Appeals Committee. Said abeyance shall include, but not be limited to, revocation, suspension, denial or non-renewal of a Rental Operating License until the appeal is resolved. An appeal of a disruptive conduct report that would result in eviction as required herein shall stay the requirement for commencement of eviction proceedings against the occupants until the appeal is resolved, if the eviction proceedings were a direct result of a disruptive conduct report.

### 4. Enforcement upon Resolution of Appeal to Code Appeals Committee.

If the appeal of a disruptive conduct report and the decision of the police officer or code official is affirmed, within ten (10) business days or time for compliance as required by a decision of the Code Appeals Committee, the Borough shall inspect to determine compliance including whether the occupant(s) has voluntarily moved from the premises or the owner has initiated eviction proceedings. If, when required, the occupant has not voluntarily moved or the Owner has not initiated eviction proceedings, and the time for compliance as required by the decision of the Committee has expired, the Borough shall institute revocation of the Rental Operating License pursuant to the provisions herein.

### 5. Appeal to the Court of Common Pleas.

Any owner or occupant aggrieved by any decision of the Code Appeals Committee may appeal to the Court of Common Pleas of Berks County. Such appeal shall be in accord with Local Agency Law, 2 Pa. C.S. Section 101 et seq. An appeal shall be filed with the Court of Common Pleas within thirty (30) days after the date of the Decision of the Committee. Notice of appeal shall be filed upon all parties to the appeal before the Committee, including the Committee, and the Borough. An appeal of a decision of the Committee shall not automatically stay enforcement of the Committee's Decision.

## **G. Share Information.**

The Borough's Departments and Divisions are authorized to share information obtained under this Ordinance.

## **H. Regulations.**

The Borough shall have the authority to create Regulations determined to be necessary or appropriate for implementation and administration of this Ordinance, provided they are consistent with the intent of this Ordinance, subject to review and approval of Borough Council.



## **I. Enforcement, Violations and Penalties, and Remedies.**

Notwithstanding anything to the contrary in this Ordinance, this Ordinance may be enforced by any of the following: a Borough Code Enforcement Officer, the Central Berks Regional Police Department or any other Borough Official designated by the Borough Council by Resolution.

Any owner that violates the provisions of this Ordinance shall have the Rental Operating License for the subject premises suspended or revoked as determined by the Code Appeals Committee. Any person who has a Rental Operating License suspended may not conduct rentals at the Premises to which such Rental Operating License relates until such Rental Operating License is reinstated and any Person who has a Rental Operating License revoked may not reapply for a Rental Operating License for the Premises to which such Rental Operating License relates for a period of twelve months.

Nothing in this Ordinance shall prohibit the Borough from taking requisite legal and/or equitable action to prohibit violations or enforce provisions of this Ordinance or as otherwise provided for in Borough Ordinances and laws of the Commonwealth of Pennsylvania.

In addition to suspension or revocation of a Rental Operating License for violation of this Ordinance, as set forth above, any person who shall violate any provision hereof shall be subject to enforcement of this Ordinance against such person and shall be subject to the institution of fines against such person as set forth herein. Enforcement of this Ordinance shall be by action brought before a Magisterial District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure and may be prosecuted by the Borough Solicitor without the consent of the District Attorney as required under Pennsylvania Rules of Criminal Procedure number 83(c).

The Board hereby determines to set and prescribe a criminal fine for violation of this Ordinance of not-to-exceed six hundred dollars (\$600) for a first offense and not-to-exceed one thousand dollars (\$1,000) for any subsequent offense. The fines set forth herein may be amended from time-to-time by Resolution of the Borough. In addition, the Board hereby determines that the Magisterial District Justice may prescribe imprisonment to the fullest extent allowed by law for the punishment of summary offenses.

### **SECTION 4. Repeal of Ordinances.**

Any ordinance or part of ordinances conflicting with the provisions of this Ordinance is hereby repealed insofar as they are inconsistent with this Ordinance's provision.

### **SECTION 5. Severability.**

If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the

validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Borough Council of Borough of Mount Penn, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

SECTION 6. Effective Date.

This Ordinance shall be effective ten days after enactment hereof or on such earlier date as may be permitted by law.

DULY ORDAINED and ENACTED as an Ordinance this 23 day of Feb., 2021.

BOROUGH OF MOUNT PENN  
Berks County, Pennsylvania

By: Troy Goodman  
Troy Goodman, President, Borough Council

Attest:

Bette E. Petrov

Bette E. Petrov, Secretary

APPROVED this 23rd day of February, A.D., 2021

Joshua Nowotarski

Mayor – Joshua Nowotarski