

### ARTICLE III. - DISORDERLY PROPERTY

#### Sec. 11.5-61. - Purpose.

The purpose of this article is to protect the health, safety, and welfare of the residents of the Town of Windham by eliminating the proliferation of properties harboring occupants who disturb the peace and tranquility of their neighborhoods.

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(Ord. of 10-20-08(1), § 1)

#### Sec. 11.5-62. - Legislative findings.

The Town Council hereby finds that:

- (1) The Town has a substantial and compelling interest in protecting the health, safety, property, and welfare of its citizens and the neighborhoods affected by chronic unlawful or nuisance activity.
- (2) Chronic unlawful or nuisance activity of various kinds on and near disorderly properties adversely affects the health, safety and welfare of citizens and diminishes the quality of life in neighborhoods where this chronic activity occurs. Chronic unlawful or nuisance activity constitutes a public nuisance and should be subject to abatement.
- (3) The existing ordinances and enforcement processes do not adequately control chronic unlawful or nuisance activity or its detrimental effects on citizens and neighborhoods where such chronic activity occurs.
- (4) Establishing the regulatory scheme contained herein will alleviate the problems created by chronic unlawful or nuisance activity through early intervention by the chief of police.

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(Ord. of 10-20-08(1), § 2)

#### Sec. 11.5-63. - Scope.

This article shall apply to the owner(s) of all residential property, as defined in Section 11.5-64, located in the Town of Windham.

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(Ord. of 10-20-08(1), § 3)

#### Sec. 11.5-64. - Definitions.

*Disorderly activities* 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, 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:

- (1) Loud music;
- (2) Loud or otherwise disruptive gatherings;
- (3) Excessive, loud or unnecessary noises audible beyond the property line;
- (4) Altercations occurring on the property, such as fighting, disorderly conduct, brawling or similar activities; or
- (5) Other similar activities occurring within or outside any building located on the property.

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**Commented [KMC1]:** Are you specifically interested only in parties and noise? In theory we could apply this to drug and alcohol offenses, too.

*Disorderly event* means any twenty-four-hour period commencing at noon and ending at noon on the following day during which a police officer observes or the police department receives one (1) or more complaints of a disorderly activity to which the police department responds and substantiates that a disorderly activity has occurred as outlined in Section 11.5-67 of this article. The ~~Police Chief~~ shall have sole discretion in determining whether a disorderly event has occurred.

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*Disorderly event notice* means a document summarizing the findings of the officer investigating a complaint or the officer's observations. The notice shall contain the time, the property identification, the identification of the officer, basis of the complaint or observations, citation of this article and identification of the provisions violated and other items deemed appropriate by the ~~Police Chief~~.

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*Disorderly property* means any residential property for which the ~~Police Chief~~ has notified the owner that the ~~Police Department~~ has documented and substantiated ~~two (2) or more disorderly events occurring on the property~~ within two hundred and seventy (270) days.

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*Owner* means any person, including any legal entity, having the right of legal title or the beneficial interest in a residential property or any portion thereof, as that interest is recorded in the tax records of the Town of Windham or the Registry of Deeds of Cumberland County.

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*Police Chief* means the Chief of Police of the Town of Windham or other official of the police department as may be designated by the chief.

**Commented [KMC2]:** This seems a bit extreme when applied to a multi-family or apartment buildings, especially. Consider reducing to 180 days or increasing to three or more incidents.

*Residential property* means:

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- (1) Lot(s), plot(s), or parcel(s) of land on which a residential building(s) or a building(s) of mixed occupancy is located;
- (2) Residential building(s), including one-family dwelling(s), multiple-family dwelling(s), and rooming houses or boarding houses;
- (3) Residential occupancies in building(s) of mixed occupancy;
- (4) For the purpose hereof, a mixed occupancy building means a building used for any purpose that also contains a residential occupancy therein.

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(Ord. of 10-20-08(1), § 4; Ord. of 4-3-17(2))

Sec. 11.5-65. - Declaration of public nuisance.

- (a) A disorderly property is hereby declared to be a public nuisance.
- (b) The owner of a residential property shall provide sufficient control, oversight, monitoring, and management of the property to prevent the same from becoming a disorderly property.
- (c) The owner of a disorderly property shall be responsible for taking all necessary measures to abate or eliminate the public nuisance.

(Ord. of 10-20-08(1), § 5)

Sec. 11.5-66. - Disorderly property prohibited.

No owner of residential property shall maintain, or allow to be maintained or to exist on the owner's property, a disorderly property as defined in this article. Each and every day that a disorderly event shall be permitted to occur on the property after it becomes classified by the chief of police as a disorderly property shall constitute a separate offense.

(Ord. of 10-20-08(1), § 6)

Sec. 11.5-67. - Documentation and substantiation of complaints.

The police department shall document all responses to observations or complaints of ~~or~~ disorderly activities. In the absence of a complaint, an officer may investigate a disorderly activity based upon the officer's own independent observation. The officer(s) responding to a disturbance complaint or the officer's own observation shall, at the officer's sole discretion, classify each incident as either a substantiated disorderly activity or as an unsubstantiated complaint or observation. The officer(s) shall identify all properties that are the object of the complaint or observation. The officer shall issue a verbal and/or written warning to any person observed by the officer to be present at the property that is the object of the complaint or observation advising them to cease any further disorderly activity on the property. The responding officer(s) need not identify a single individual associated with the complaint or observation at the property.

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(Ord. of 10-20-08(1), § 7)

Sec. 11.5-68. - Notice of disorderly events or disorderly property.

Whenever the Police Chief determines that a disorderly event has occurred, the Police Chief shall notify the owner of the property as to the chief's findings according to the number and frequency of prior disorderly events, if any, as provided below.

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(1) First disorderly event. At the earliest time possible, but within not more than seven (7) days after the first disorderly event at a property, the Police Chief shall serve the owner with a copy of this article and a disorderly event notice advising the owner that the police department has documented the occurrence of a disorderly event at the owner's property. Copies of the disorderly event notice shall be provided to any tenant(s) of dwelling units associated with the disorderly event, town council members, the town manager, code enforcement officer, and the fire chief. The notice shall also advise the owner what subsequent events will result in the property being classified as a disorderly property, and warn the owner that failure to prevent the property from becoming a disorderly property will constitute a violation of this article.

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(2) Second disorderly event. At the earliest time possible, but within not more than seven (7) days after the second disorderly event at a property, the Police Chief shall serve the owner with a copy of this article and a disorderly event notice advising the owner that the police department has documented a second disorderly event at the owner's property. In the event that the property has accumulated at this time two (2) disorderly events within a two-hundred-seventy-day period, the Police Chief shall further notify the owner that the property has been classified as a disorderly property and that the owner is in violation of this article and is subject to a remediation process as set forth in Section 11.5-70 of this article. Copies of the disorderly event notice shall be provided to any tenant(s) of dwelling units associated with the disorderly event, town council members, the town manager, code enforcement officer, and the fire chief.

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(3) Method of service. For the purposes of this section, notices to the owner shall be served simultaneously in two (2) ways:

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a. By certified mail, with address correction and return receipt requested; and

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b. By first class mail with address correction requested.

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For the purposes of this section, a mailing to the owner at the address maintained in the records of the assessor shall constitute adequate notice. Service may also be made by any alternative method authorized by state law or the Maine Rules of Civil Procedure. If the owner has provided the Police Chief or Town Clerk with written notification of the name and address of a duly authorized agent, notice may be served on the agent.

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(Ord. of 10-20-08(1), § 8; Ord. of 4-3-17(2))

Sec. 11.5-69. - Appeal process.

The owner of property that has been classified as a disorderly property by the ~~Police Chief~~ may appeal such classification in writing to the ~~Town Manager~~ within fourteen (14) days of such classification. In the event of a timely appeal, the ~~Town Manager~~ will provide the property owner and the ~~Police Chief~~ with seven (7) days' notice of a hearing date and time. At such hearing, the property owner and the ~~Police Chief~~ shall provide the town manager with all relevant information regarding the property and the appeal. The ~~Town Manager~~ shall issue a written decision on the appeal within fourteen (14) days of the hearing.

(Ord. of 10-20-08(1), § 9)

Sec. 11.5-70. - Remediation process.

Once a property has been classified as a disorderly property by the ~~Police Chief~~, the owner shall be required to undertake a plan of remediation to abate and eliminate that public nuisance in accordance with this section.

- (1) The owner, or the owner's duly authorized agent, shall meet with the ~~Police Chief~~ within fourteen (14) days of the notice of the disorderly property classification.
- (2) At the time of this meeting the owner, or the owner's duly authorized agent, shall provide to the ~~Town~~ the following documentation:
  - a. A list of all dwelling units and their postal or Emergency 911 address designations as they are located on the property;
  - b. A list of the names of all tenants and other authorized occupants of the property at the time of the disorderly property classification, and the dwelling units that they occupy.
  - c. A copy of the terms and conditions contained in any occupancy agreement(s) or other lease document(s) agreed to by tenants of the disorderly property (confidential personal or financial information may be omitted).
  - d. Documentation of any other written or verbal arrangements authorizing occupancy of the disorderly property that may exist in addition to a lease agreement.
- (3) At the time of this meeting, the ~~Police Chief~~ shall provide to the owner, or the owner's duly authorized agent, a complete record of all municipal actions that involved the property in question that were taken in the three hundred sixty-day period preceding the disorderly property classification, including but not limited to records of all disorderly events, disturbance complaints, code enforcement complaints and inspections, and fire-safety inspections.
- (4) Remediation agreement. At the meeting, the owner, or the owner's duly authorized agent, must agree to take effective measures to address the disorderly property, which measures must be satisfactory to the ~~Police Chief~~ and shall be memorialized in a written agreement at the conclusion of the meeting. Remedial measures identified in the agreement shall be implemented within fourteen (14) days of the meeting, and a written report describing the implementation of the remedial measures shall be submitted to the ~~Police Chief~~ within twenty-one (21) days of the meeting. The ~~Police Chief~~ and the owner, or the owner's duly authorized agent, shall sign this written agreement and copies shall be provided to the members of the town council and the town manager. In the event that the owner, or the owner's duly authorized agent, fails or refuses to enter into such a written agreement, the ~~Police Chief~~ may pursue an enforcement action as authorized under Section 11.5-73. Furthermore, in the event that the owner, or the owner's duly authorized agent, fails to:
  - a. Implement the remedial measures;
  - b. File the written report; or

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**Commented [KMCS]:** I'd suggest removing the appeal provision. If someone is declared to have a disorderly property and the Town pursues an enforcement action, they can challenge the declaration as part of their defense.

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c. Otherwise meet the obligations of the agreement within the applicable timetable to the satisfaction of the Police Chief, the chief may pursue an enforcement action under Section 11.5-73.

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- (5) If the owner enters into a remediation agreement acceptable to the Police Chief, the Police Chief may delay commencement of an enforcement action if, in the opinion of the Police Chief, the owner is making a good faith effort to implement the remediation agreement and no new disorderly event occurs on the property.

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(Ord. of 10-20-08(1), § 10)

#### Sec. 11.5-71. - Duration of disorderly property classification.

The disorderly property classification shall be removed from the property by the Police Chief upon the Chief's determination of all of the following:

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- (1) The passage of two hundred seventy (270) days from the date of the last disorderly event without the occurrence of any substantiated disorderly events;
- (2) Payment of all civil penalties and costs arising from any enforcement action;
- (3) Verification by town officials that all deficiencies, if any, discovered during any inspection under Section 11.5-70 have been corrected; and
- (4) Satisfactory implementation of the remediation agreement required under section 11.5-70.

(Ord. of 10-20-08(1), § 11; Ord. of 4-3-2017(2))

#### Sec. 11.5-72. - Civil penalty.

Any person who is found to be in violation of any provision of this article shall be subject to a civil penalty in accordance with the Master Schedule of Revenues, Charges, Fees and Fines, Appendix B to this Municipal Code of Ordinances. (\$500 - \$1,000 per Brunswick Schedule) Each violation of a separate provision of this article, and each day of violation, shall constitute separate offenses. In addition, if the town is the prevailing party in an enforcement action, said person shall also be liable for all reasonable expenses incurred by the town in the enforcement of this article, including, but not limited to staff time, attorney's fees, and costs. All civil penalties shall inure to the benefit of the Town of Windham.

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(Ord. of 10-20-08(1), § 12; Ord. of 11-16-2015(3))

#### Sec. 11.5-73. - Enforcement.

(a) It is a further violation of this article for any owner to:

- (1) Refuse to meet with the Police Chief as required by Section 11.5-70, or to have the owner's duly authorized agent meet with the chief.
- (2) Refuse to enter into a written remediation agreement as required by Section 11.5-70.
- (3) Fail to fully implement the remediation agreement in compliance with the timetable specified in the agreement.
- (4) Fail to abate or eliminate the disorderly property public nuisance.
- (5) Fail to submit the written report to the Police Chief as required by Section 11.5-70.

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- (b) The Police Chief, with the approval of the Town Manager, is authorized to institute, or cause to be instituted, any and all actions and proceedings, either legal or equitable, that may be necessary or

appropriate to enforce the provisions of this article and to seek the abatement and elimination of the disorderly property public nuisance.

(Ord. of 10-20-08(1), § 13)

Sec. 11.5-74. - Separability.

In the event that any provision of this article is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

(Ord. of 10-20-08(1), § 14)