

ORDINANCE NO. 2016-9

AN ORDINANCE OF THE CITY COUNCIL OF THE CHARTERED CITY OF VISTA, CALIFORNIA, ADDING CHAPTER 9.40 TO THE VISTA MUNICIPAL CODE REGARDING CRIME FREE MULTIFAMILY HOUSING

The City Council of the City of Vista does ordain as follows:

1. Findings. The City Council hereby finds and declares the following:

A. This ordinance is enacted pursuant to the powers vested in the City of Vista pursuant to Article XI, Sections 5 and 7 of the California Constitution.

B. Through this ordinance, the City Council seeks to reduce the incidence of crime in the City, to improve the living environment of residents living in multifamily developments which have high crime rates or service calls, and to benefit the community surrounding those multifamily developments.

C. The crime free multifamily certification program has operated in the City of Vista on a voluntary basis where in most cases the program has produced a reduction in service calls generated by participating developments. A reduction in service calls has also been documented for properties participating in the program elsewhere in the County of San Diego, as established by records maintained by the Sheriff. Based on these showings, and the information available through the International Crime Free Association, the City Council wishes to make participation in the crime free multifamily housing program mandatory under certain circumstances, and in doing so, seeks to expand the program's benefits.

2. Code Amendment.

A. Chapter 9.40 is added to the Vista Municipal Code to read as follows:

**“CHAPTER 9.40
CRIME FREE MULTIFAMILY HOUSING**

Section 9.40.010.	Purpose
Section 9.40.020.	Definitions
Section 9.40.030.	Noncompliant Multifamily Developments; Issuance and Delivery of Finding of Noncompliance
Section 9.40.040.	Application for CFM Certification; Issuance
Section 9.40.050.	Operational Requirements Imposed on All Noncompliant Multifamily Developments
Section 9.40.060.	Schedules of Required Actions; Modifying Deadlines.
Section 9.40.070.	Finding of Compliance
Section 9.40.080.	Appeals
Section 9.40.090.	Transfers of Noncompliant Multifamily Developments.
Section 9.40.100.	Program Fees; Fee Waivers
Section 9.40.110.	Enforcement; Remedies
Section 9.40.120.	Commencement and Sunset Dates for Chapter

Section 9.40.010. Findings; Purpose

A. The City Council finds that a multifamily development which repeatedly reaches or exceeds its threshold for service calls to the Sheriff qualifies as a noncompliant multifamily development under this Chapter and constitutes a public nuisance. In those instances the public health, safety and welfare require the City to work with the property owner and property manager of the multifamily development so that the nuisance conditions associated with the multifamily development can be eliminated and damage to the public health, safety and welfare can be abated. These actions should help control crime, contain blight, avoid reductions in property values, curb negative impacts on economic activity, preserve a desirable quality of life within Vista, and control long-term enforcement costs that would otherwise be imposed by the City.

B. In an effort to abate or reduce these nuisance conditions, the City Council intends to establish a program by which noncompliant multifamily developments are required to adopt practices and take actions to reduce or eliminate nuisance conditions and to improve the public health, safety and welfare. As part of this program, the owner or manager of a noncompliant multifamily development will be required to participate in a program to secure a crime free multifamily certification, and to take the steps required to obtain a finding of compliance in accordance with this Chapter.

C. The City Council intends to implement this Chapter in a manner which allows the owner of a noncompliant multifamily development to continue uninterrupted rental operations provided that the owner is making substantial progress toward obtaining a crime free multifamily certification.

D. The City Council also intends that the program operate in a manner to regulate the number of noncompliant multifamily developments which enter the program in a given six-month period, thereby facilitating a manageable and well-operated program. To advance this aim, the City Council intends that priority shall be given to those multifamily developments which appear to be most damaging to the Vista community as determined by the compliance officer.

Section 9.40.020. Definitions

The following terms, when used in this Chapter, shall have the meanings set forth below:

“Actions which are not subject to appeal” means: (1) the issuance of an administrative citation, which may be appealed as provided in Chapter 1.13; (2) any administrative action to declare a multifamily development or a condition associated with that development a public nuisance pursuant to Chapter 8.36, which may be reviewed as provided in that Chapter; (3) any civil action filed in a California or Federal court, including any administrative tribunal, which shall be heard or reviewed using the procedures particular to that court or tribunal; (4) any citation or complaint for an infraction or misdemeanor under the Vista Municipal Code, the Vista Development Code, or other law which shall be reviewed or adjudicated as otherwise provided by applicable law; or (5) the issuance of a courtesy notice pursuant to Section 9.030.A.

“Administrative citation” means an administrative citation issued pursuant to Chapter 1.13 with respect to the operations of, or physical conditions of, a multifamily development.

“Available unit” means: (1) a unit which is vacant, uninhabited, or unoccupied; (2) a unit on a month-to-month tenancy when it rolls over; and (3) a unit which had been or is under a term lease upon expiration or extension of that term (including conversion of the lease to a month-to-month tenancy).

“CFM certification program” means the City-administered program established by this Chapter under which a noncompliant multifamily development takes actions based on a schedule of required actions with the aim of obtaining a finding of compliance.

“CFM tenant meeting” means a periodic meeting held at the noncompliant multifamily development to address the roll-out of the CFM certification program and its implementation with respect to the noncompliant multifamily development and which is to be attended by tenants, managers, the owner of the noncompliant multifamily development, as well as representatives of the Sheriff and the City.

“CFM tenant meeting rules and guidelines” means written rules and guidelines prepared by the City Manager or designee which establish requirements for noticing, advertising, and conducting CFM tenant meetings.

“Crime free multifamily certification” or **“CFM certification”** means a certificate, issued by the compliance officer to a noncompliant multifamily development pursuant to Section 9.40.040, after all certification actions for that development have been achieved and all notices of violation have been corrected.

“Compliance officer” means any person or persons designated by the City Manager to assume the responsibilities assigned to a compliance officer pursuant to this Chapter.

“Deliver” means providing a copy of a document to a property owner or manager through one of the following means: (1) by actual personal delivery of the document to the property owner and/or property manager; (2) by posting the document on the premises of the multifamily development, in a conspicuous location, addressed to the property owner and/or property manager; (3) by sending the document by email to the property owner or manager, provided its receipt is actually acknowledged; or (4) by mailing the document to the property owner at: (i) the address of the multifamily development; (ii) the owner’s address contained in the last equalized assessment roll; or (iii) the address listed on the most recent business license for the multifamily development on file with the City. Any delivery by mail shall be made by either first class mail (postage prepaid), or alternatively, by registered or certified mail, return receipt requested.

“Delivery date” means the earliest of the following for a document delivered by the City of Vista: (1) the date the document is personally handed or delivered to that property owner or property manager, as applicable; (2) the date on which the document is posted on the multifamily development in a conspicuous place; (3) the date on which the document is deposited into the United States postal service for delivery by first class mail (postage prepaid) or by registered or certified mail, return receipt requested for delivery to the property owner or property manager, as applicable; or (4) the date the property owner or manager acknowledges receipt of a document delivered by email or other means.

“Determination” means any action or decision taken pursuant to this Chapter, except for actions which are not subject to appeal.

“Disputed determination” means any determination which has been timely appealed pursuant to Section 9.40.080 and which is not final under this Chapter.

“Excluded Call” means a call to the Sheriff’s Department which, pursuant to written rules adopted by the City Manager: (1) is not indicative of criminal or nuisance activity tied to a multifamily development; and (2) is therefore not treated as a service call with respect to the multifamily development for purposes of this Chapter.

“File” means the date on which a document: (1) is personally delivered to the City Clerk, as reflected by the stamp of the City Clerk or; (2) the date of the United States postmark on a document mailed and actually received by the City Clerk.

“Finding of compliance” means a written finding issued by a compliance officer pursuant to Section 9.40.070 after a noncompliant multifamily development has: (1) accomplished all required actions; (2) received a CFM certification; and (3) operated with acceptable levels of service calls for a 48-month period in accordance with paragraph A of Section 9.40.070.

“Finding of noncompliance” means a written finding, issued in accordance with Section 9.40.030 determining that a multifamily development is a noncompliant multifamily development which must participate in the program established by this Chapter until it has received a finding of compliance pursuant to Section 9.40.070.

“First-step appeal determination” means a determination made by a hearing officer upon completion of a first-step appeal procedure pursuant to Section 9.40.080.

“Hearing officer” means a City employee or other person who reviews, administers and issues a decision with respect to the one-step appeal procedure or the two-step appeal procedure, as applicable, who has been assigned or appointed to that position by the City Manager.

“Initial determination” means a determination made by a compliance officer upon completion of a first-step appeal.

“Lease” means any action by which a unit or a bed within a multifamily development is leased, rented or otherwise made available for consideration of any sort to a person pursuant to an oral, written or other arrangement executed, approved or accepted by a property owner or property manager. The term “Lease” also includes any action by a property owner or property manager to provide a person with occupancy rights to a unit (or a bed or bedroom within a multifamily development), if the property owner or property manager receives grant funds or payments from third parties to defray the cost of providing housing to serve a targeted population which includes such person (such as the homeless, parolees, etc.).

“Multifamily development” means any apartment, boarding house, transitional housing, supportive housing, rental mobilehome park, or condominium development (under a single ownership) which has at least ten units, inclusive of any unit occupied by an on-site manager. The term multifamily development excludes: (1) group homes for the developmentally disabled; and (2) residential

uses licensed or regulated by state or federal law to the extent those licenses or regulations preempt application of this Chapter.

“Noncompliant multifamily development” means any multifamily development which: (1) has been issued a final finding of noncompliance pursuant to Section 9.40.030; and (2) has not received a finding of compliance pursuant to Section 9.40.070.

“Program Fee” means a fee, if any, set by resolution of the City Council pursuant to Section 9.40.100 which is charged to the property owner of a noncompliant multifamily development and used to defray all or part of the costs of administering the CFM multifamily program with respect to noncompliant multifamily developments.

“Property manager” means any person who or entity which: (1) is identified as a manager for a multifamily development; (2) executes leases for units in the multifamily development; (3) is authorized to terminate leases within the multifamily development; or (4) executes the functions, on behalf of a property owner, which are ordinarily performed by a property manager. When the property manager is an entity, the term “property manager” also includes the person or persons which the entity has selected, hired or employed to discharge the functions of a property manager on behalf of the entity.

“Property owner” means a person, trust, corporation, partnership or other entity which owns at least a fifty percent (50%) interest in a multifamily development, whether such ownership is direct or indirect. When a property owner is an entity, the term “property owner” also includes the person who serves as the most senior executive officer for the entity.

“Required action” means each action listed in a schedule of required actions (including those added to the schedule of required actions pursuant to a safety and compliance report prepared pursuant to Section 9.40.050.E).

“Required action deadline” means the deadline for accomplishing each required action as set forth in the schedule of required actions or the safety and compliance report, subject to possible extension pursuant to Section 9.40.060.

“Review period” means any six-month period from January 1 through June 30 or July 1 through December 31, which begins on or after January 1, 2015.

“Safety and compliance report” means the report listing required actions and setting forth required action deadlines which is prepared pursuant to paragraph E of Section 9.40.050.

“Schedule of required actions” means a schedule, initially prepared by the compliance officer pursuant to section 9.040.030, listing the required actions (inclusive of required action deadlines) for a noncompliant multifamily development and which may be augmented or modified by the safety and compliance report pursuant to Section 9.40.050.E, or as provided in Section 9.40.060.

“Service call” means a call to the Sheriff’s Department, not including an excluded call, to report suspicious or criminal activity, or to request assistance, where the address for the multifamily development is used as the address for the incident based on the contents of a computer aided dispatch (CAD) record or similar report.

“Service call threshold” means a whole or fractional number for a multifamily development which equals 25% of the units within the development.

“Substantial progress towards obtaining a CFM certification” means progress with respect to a noncompliant multifamily development, measured as of a date, consisting of: (1) satisfactorily completing all required actions to be completed prior to such date; and (2) all remedial actions required by a final administrative citation to be completed prior to such date.

“Unit” means a dwelling unit, apartment unit, condominium unit, or mobilehome pad (with or without a mobilehome on it).

Section 9.40.030. Noncompliant Multifamily Developments; Issuance and Delivery of Finding of Noncompliance

A. Issuance. A compliance officer may issue a finding of noncompliance for a multifamily development when the officer, based on an initial review, determines that the service calls attributable to the multifamily development have equaled or exceeded the service call threshold for the development during at least two six-month review periods occurring within an 18-month period. The compliance officer shall also endeavor to provide a courtesy notice to each multifamily development which has exceeded its service call threshold for a review period, but has not received a finding of noncompliance. The courtesy notice will advise the recipient that an additional exceedance of the service call threshold could result in the issuance of a finding of noncompliance, and obligate the multifamily development to participate in the CFM certification program.

B. Contents of Finding of Noncompliance. The finding of noncompliance shall include: (1) the address of the multifamily development; (2) a statement advising the property owner or property manager that the multifamily development has been determined to be a noncompliant multifamily development; (3) a brief statement of the facts and reasons supporting that determination; (4) a schedule of required actions (which may be augmented or modified in accordance with paragraph (E) of Section 9.40.050) and Section 9.40.060) setting forth each required action and each associated required action deadline; (5) a statement that the property owner or property manager receiving the finding of noncompliance is legally obligated to submit an application for a crime free multifamily certificate; (6) a form of application; and (7) a notice regarding appeal rights. A copy of Chapter 9.40 of the Vista Municipal Code and the CFM tenant meeting rules and guidelines shall be included with the finding of noncompliance.

C. Delivery. The compliance officer shall effect delivery of the finding of noncompliance to property owner, and may effect delivery of it to the property manager if the compliance officer chooses.

Section 9.40.040. Application for CFM Certification; Issuance

A. Obligation to Submit Application. Each property owner and/or property manager receiving a finding of noncompliance is legally obligated to submit to the City Clerk an application for CFM certification, even if the property owner intends to appeal that determination. Such application shall be filed no later than 7 city business days following delivery of the finding of noncompliance.

B. Content of Application. The application shall be on a form provided by the City, and shall include the location of the property; the name, address and

telephone of the owner; the name, address and 24-hour telephone number(s) of the manager or custodian of the property; the owner's agent for service of process; and such other information as may be required by the City.

C. Issuance of CFM certification. The compliance officer, with the consent of the Sheriff, shall issue a CFM certification for a noncompliant multifamily development within 14 city business days of the date on which the following have occurred: (1) each required action for that development has been accomplished (inclusive of all remedial actions required by a safety and compliance report prepared pursuant to Section 9.40.050.E); and (2) each remedial action required by an administrative citation has been completed.

Section 9.40.050. Operational Requirements Imposed on All Noncompliant Multifamily Developments

Until a finding of compliance is issued for a noncompliant multifamily development, the following rules, prohibitions and obligations must be followed, observed, satisfied, and discharged with respect to each noncompliant multifamily development, and by each property owner or property manager associated with that noncompliant multifamily development.

A. Limitation on Rental of Units. No available unit shall be leased, nor shall any bed or bedroom be leased, unless: (1) a crime free lease addendum has been executed by all adult tenants who will reside in the unit or bedroom; (2) the property owner or property manager has completed actions required pursuant to a schedule of required actions except for those with deadlines on or after the date of the lease action; ; and (3) the property owner or property manager has completed all remedial actions required pursuant to a final administrative citation except for actions with deadlines occurring on or after the date of the lease action.

B. Form of Crime Free Lease Addendum. Each crime-free lease addendum shall be in the following form, with only those changes approved in writing by the City Manager or designee:

CRIME-FREE LEASE ADDENDUM

In addition to all other terms of the lease, Landlord and Tenant agree as follows:

- (a) The Tenant, any member of the Tenant's household, any guest or any other person associated with the Tenant on the leased premises:
 - (1) Shall not engage in any nuisance activity as defined in Civil Code sections 3479 and 3480, any criminal activity, including drug-related criminal activity, on the leased premises. "Drug related criminal activity" means the illegal manufacture, sale, distribution, use, or possession of any illegal or controlled substance as defined in 21 U.S.C. 802.
 - (2) Shall not engage in any act intended to facilitate nuisance or criminal activity.
 - (3) Shall not allow the dwelling unit to be used for or to facilitate any nuisance or criminal activity.
- (b) The Tenant, any member of the Tenant's household, any guests or any other person associated with the Tenant shall not violate any civil law,

ordinance or statute in the use and occupancy of the premises, commit waste or nuisance, annoy, molest or interfere with any other person on the property.

(c) ANY ACTIVITY PROHIBITED BY THIS AGREEMENT SHALL CONSTITUTE A SUBSTANTIAL VIOLATION OF THE LEASE, MATERIAL NONCOMPLIANCE WITH THE LEASE, AND GROUNDS FOR TERMINATION OF TENANCY AND EVICTION.

C. Occupancy of Units in Violation of Crime Free Lease Addendum Prohibited. An adult tenant, following the effective date of this ordinance, shall not move into a unit, bedroom, or bed without first executing a crime free lease addendum. No lease occupancy of a unit shall be permitted which would violate the terms of an executed crime free lease addendum.

D. Lease Addendum Tracking Sheet. Within 30 calendar days of the date on which a finding of noncompliance becomes final, and every February 1 and August 1 thereafter, a lease addendum tracking sheet shall be delivered to the compliance officer consisting of: (1) a listing of each unit in the multifamily development; (2) whether the unit is occupied; (3) whether a current and effective lease addendum has been executed for that unit; and (4) for each unit without a fully executed lease addendum; (a) an indication whether or not, in the prior six-month review period, the lease for that unit either expired or rolled over; and (b) the next date on which the lease for that unit is set to expire or rollover. The preceding information shall be submitted using a form created by the City, or if no such form exists, using a form prepared by the property owner or property manager. Until a finding of compliance has been issued, a copy of each effective lease addendum shall be maintained by the property owner and shall be available for inspection by the City upon 48 hours advance notice, but not more often than on three occasions during any three month period.

E. Safety and Compliance Report; Associated Inspections. With at least 48 hours advance notice, the property owner and property manager shall permit the Sheriff Department and the City to complete a safety and code compliance inspection of all common areas within the noncompliant multifamily development. Following the inspection, the compliance officer (with input of the Sheriff) will produce a safety and compliance report that identifies: (1) code violations present at the noncompliant multifamily development which require correction or remediation; (2) other physical changes, modifications, or improvements to the property needed or useful in creating an environment designed to reasonably minimize the opportunity for crime; (3) changes in the operations of the noncompliant multifamily development which will minimize the opportunity for crime, and (4) the deadline for completing or accomplishing each of those changes, corrections, modifications or improvements. Following issuance of the safety and compliance report: (1) each action, change or modification identified in that report shall constitute a required action under the schedule of required actions; and (2) each associated deadline shall constitute a required action deadline for purposes of the schedule of required actions.

F. Completing Required and Remedial Actions by Deadlines. Each required action must be accomplished by its required action deadline; and (2) each

remedial or corrective action required by a final administrative citation must be completed by the compliance deadline set by the citation.

G. Inspections to Verify Satisfaction of Required or Remedial Actions. Upon 48 hours advance notice, the compliance officer shall be permitted to inspect those portions of the multifamily development which the officer must reasonably view to confirm that all remedial actions required by paragraph F, have been timely accomplished.

H. Signage. If the property owner does not reside on the premises of any multifamily development, a notice stating the name and address of the owner, or the name and address of his agent in charge of the multifamily development, shall be posted in a conspicuous place on the premises.

I. Seminar. By the deadlines set in the schedule of required actions, all persons administering, managing or controlling the operation of any noncompliant multifamily development must: (1) attend and complete a crime free housing seminar, administered by the Sheriff's Department or other provider selected by the City; and (2) repeat that training at least once every two years thereafter.

J. CFM Tenant Meeting. An initial CFM tenant meeting satisfying the CFM tenant meeting rules and guidelines shall take place by the date set forth in the schedule of required actions. In accordance with the schedule of required actions, a draft plan to promote the meeting shall be prepared by the property owner and property manager, submitted to the compliance officer for comment, revised, and then implemented to promote the meeting. At minimum, the plan shall provide that written notice of the meeting shall be delivered to each unit, and that attendees at the meeting shall include the owner or owner's representative, senior managers for the development, and representatives of the Sheriff and City. The management shall create a record of adults attending the meeting (evidenced by their signatures) which shall list the unit in which each attending adult resides. If fewer than 25% of the units had adult tenants in attendance at the meeting, the compliance officer, in his or her discretion may require the management to advertise and hold a second meeting within 60 days of the initial meeting. Thereafter, CFM tenant meetings shall be conducted annually.

K. Non-Retaliation. No action shall be taken to terminate a tenancy, increase the rent for a tenancy, or to threaten punitive action concerning a tenancy based solely on a decision, by a tenant or a tenant's invitee, to place a telephone call to the sheriff to report a crime or suspicious activity.

L. Payment of Program Fee. The property owner shall cause to be paid, in a timely manner, the full amount of the program fee(s) when due.

Section 9.40.060. Schedules of Required Actions; Modifying Deadlines

A. Schedules of Required Actions—Content. A schedule of required actions shall be included with each finding of noncompliance issued by the compliance officer. The schedule shall: (1) list each required action pertaining to a noncompliant multifamily development which must be satisfied or completed as a precondition to the issuance of a CFM certification for that development; and (2) a reasonable deadline for accomplishing each of those required actions. The contents of the schedule of required actions shall (by operation of law) be augmented or modified to: (1) to include each new required action or required

action deadline contained in a safety and compliance report prepared pursuant to subsection 9.40.050.E; and (2) modification in a required action deadline approved pursuant to paragraphs B through D of this Section. The compliance officer is encouraged to prepare an updated and consolidated schedule of required actions to reflect these changes, but those changes shall be effective whether or not an updated and consolidated schedule is prepared.

B. Requests to Adjust Deadlines. After a finding of noncompliance becomes final, a property owner or property manager may request that the City extend a certification action deadline by submitting an application to extend a required action deadline to the City Clerk. The request must demonstrate: (1) good cause for the extension; and (2) the property owner or property manager has made substantial progress toward obtaining a CFM certification on behalf of the noncomplying multifamily development.

C. Action on Requests to Adjust Deadlines. The compliance officer shall deny, partly grant, fully grant, or conditionally grant the request and set forth his or her determination in writing with a presentation of the facts and reasons for the determination. The resulting deadline adjustment determination shall be delivered to the property owner and/or property manager. Once a request to extend a deadline has been finally denied, a further request to extend the same deadline may not be processed.

D. Modifications by Compliance Officer. A compliance officer, in his or her sole discretion, may unilaterally modify a required action deadline or work constituting a required action, provided that the property owner and/or property manager consents to the modification in writing. Neither an action nor an inaction by the compliance officer under this paragraph is appealable. Modifications proposed by the compliance officer shall be limited to changes which will produce a more practicable implementation of the Chapter without impairing its objectives.

Section 9.40.070. Finding of Compliance

A. Issuing Finding of Compliance. A compliance officer shall issue a finding of compliance within 14 city business days after the date that both of the following have occurred: (1) a CFM certification has been issued to the noncompliant multifamily development; and (2) a period of 48 consecutive months have passed from the issuance of that certification during which the multifamily development has operated without exceeding its service call threshold, unless that exceedance is excused by the City Manager or the City Manager's designee. The City Manager or designee may excuse an exceedance on up to one occasion during a 24 month span, provided that the property owner or property manager has been provided evidence which clearly and convincingly demonstrates that: (1) the exceedance was due to unusual circumstances; (2) neither the property owner nor the property manager were in a position to reasonably avoid the exceedance; and (3) the noncompliant multifamily development had been operated in a responsible and diligent manner consistent with all requirements of this Chapter and sound management practices which are encouraged as part of the CFM certification program.

B. Effect. When a noncompliant multifamily development has received a finding of compliance, the multifamily development, shall be released of all obligations, duties and limitations imposed by this Chapter until such future time,

if at all, that a new finding of noncompliance is issued for that multifamily development. However, all multifamily developments, following completion of the CFM certification program are encouraged to voluntarily continue participating in the crime free multifamily housing program.

C. Option for Owner to Request a Finding. A property owner may request that the City issue a finding of compliance for noncompliant multifamily development if more than ten days have passed since all preconditions to issuance of the finding were met. The property owner's request should set forth all facts and reasons supporting the request. Thereafter, compliance officer shall issue the finding of compliance or explain in writing why a finding of compliance has not been issued.

Section 9.40.080. Appeals

A. Appealable Determinations. Each determination taken pursuant to this Chapter may be appealed as follows.

B. First-Step Appeal Procedure. A property owner or manager may appeal an initial determination under this Chapter by filing a complete appeal with the City Clerk no later than 7 city business days following the delivery date for that initial determination. If a timely and complete appeal is not filed, the initial determination shall become final and non-reviewable.

C. Second-Step Appeal Procedure. Upon completing a first-step appeal procedure, a property owner or manager may appeal the resulting first-step appeal determination by filing a complete appeal with the City Clerk no later than 7 city business days following the delivery date for that determination if (and only if) that determination involves one of the following: (1) a finding of noncompliance issued pursuant to Section 9.40.030.A and C; (2) a compliance order issued pursuant to subsection 9.40.110.H requiring a property owner to stop leasing available units; or (3) a failure to issue a finding of compliance after receiving a legitimate request pursuant to Section 9.40.070.C. If an appeal of a first-step appeal determination is not available under this paragraph, or if is not filed in a timely and complete manner, the first-step appeal determination shall become final and shall not be subject to further review.

D. Complete Appeal Applications. For purposes of this Section, an appeal application is incomplete unless all of the following are satisfied: (1) the City-created form is used, or if none exists, a form prepared by appellant is used; (2) the appeal fee is included with the application in the amount set by City Council resolution; (3) the specific determination to be appealed is identified; (4) the result sought by appellant on appeal is described; (5) all reasons, including legal reasons, for the result being sought are presented; and (6) all evidence supporting the desired result are identified. In addition, the appellant should submit with the application (i) any additional evidence (not in the record) which the appellant wants the hearing officer to consider; and (ii) any materials or information that may be necessary to establish a foundation for expert opinions offered or other evidence submitted.

E. Rules for Processing Appeals. If a timely and complete appeal if filed in accordance with this Section, the appeal shall be conducted using the following procedures

1. The City Clerk shall provide the compliance officer with the appeal application, including any exhibits. No later than 14 city business days after the appeal application is filed, the compliance officer may submit to the City Clerk additional materials presenting reasons for the disputed determination and additional relevant evidence.

2. If such a submission is received by the City Clerk, a copy shall be made available for review by the appellant at the offices of the City Clerk, and (at the option of the City Clerk) may be provided by email or other means to the appellant if practicable. After being notified of an additional submission by the compliance officer, the appellant shall have five days in which to file a written response with the City Clerk.

3. If the hearing officer determines that it might be productive, the hearing officer can invite the appellant and the compliance officer (or the compliance officer's designee) to participate in an informal meeting to determine if a mutually acceptable resolution of the appeal may be possible. The meeting shall not be used present any new arguments or any new evidence. If the informal meeting achieves a mutually acceptable resolution, the resulting resolution shall be formalized into a stipulated decision on appeal which shall be signed by the appellant, compliance officer, and hearing officer. Thereafter the stipulated decision shall be binding and must be followed by the property owner and manager.

4. If a mutually acceptable resolution is not achieved under the preceding subparagraph, the hearing officer shall consider the case file, all submitted evidence, and all relevant arguments. Based on those submissions (but not on the discussions occurring during the informal meeting, if any), the hearing officer shall issue a written decision on appeal which presents the evidentiary determinations, reasons and conclusions supporting the decision on appeal. That written decision shall be provided to the City Clerk and the appellant. Thereafter, it shall be binding, final, and non-reviewable.

F. Modification of Rules. These procedures described in paragraph E may be supplemented, modified or adjusted to promote fair and efficient hearings by either City Manager or hearing officer with advance written notice to the parties.

Section 9.40.090. Transfers of Noncompliant Multifamily developments

No property owner shall transfer a noncompliant multifamily development or a multifamily development which has received a finding of noncompliance (whether or not final) unless the owner first: (1) informs the prospective buyer that the multifamily development has been designated a noncompliant multifamily development or has been issued a finding of noncompliance pursuant to this Chapter; (2) provides the prospective buyer with the finding of noncompliance including the schedule of required actions; and (3) provides the City, with an executed document, in which the prospective buyer: (a) acknowledges that the multifamily development has been identified by the City as a noncompliant multifamily development pursuant to Chapter 9.40 of the Vista Municipal Code; and (b) the multifamily development, upon acquisition, shall continue to retain its classification as a noncompliant multifamily development subject to all terms and obligations this Chapter, including the obligation to take all required actions

contained in the schedule of required actions on or before the required action deadline.

Section 9.40.100. Program Fee; Appeal Fees; Fee Waivers

A. Program Fee. By resolution, the City Council may establish a program fee to be paid by each noncompliant multifamily development to defray the costs of administering the CFM certification program. The program fee may be set using any lawful method selected by the City Council, including without limitation: (1) a fee which varies based according to a sliding scale based on the units within the multifamily development; and (2) a fee which is payable by the ownership of a multifamily development, on an annual or other periodic basis, for the time period that the multifamily development participates in the CFM certification program.

B. Appeal Fee. By resolution, the City Council may establish an appeal fee to be paid by a property owner seeking to appeal a determination under this Chapter.

C. Fee Waivers. If a property owner claims an economic hardship will result from paying a program fee or appeal fee, the property owner may apply for a waiver of the fee on forms provided by the City Clerk for that purpose. The forms shall be executed under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained therein. If the City Clerk determines that a sufficient showing has been made to support the waiver, the City Clerk shall waive the fee. A sufficient showing requires that the owner demonstrate that payment of the fee would pose a serious economic hardship on the property owner.

Section 9.40.110 Enforcement; Remedies

A. Violations of this Code. A violation of this Chapter occurs any time: (1) a requirement of this Chapter is not satisfied or is violated; (2) a required action is not achieved by its required action deadline; (3) a correction required by a final administrative citation is not accomplished by the deadline set in the citation; (4) each required action described in compliance order is not accomplished by the deadline and in the manner required by that compliance order; or (5) a person required to obtain a crime-free lease addendum intentionally allows a tenant or other person to occupy a bed or unit within a multifamily development in material violation of the crime-free lease addendum required by this Chapter.

B. Separate Violations. Each day a violation is committed or permitted to continue constitutes a separate violation of this Code which is enforceable in accordance with the terms of this Section.

C. Remedies Cumulative. Each remedy allowed by this Chapter is a cumulative remedy and is not exclusive of any other remedy available under this Chapter or other legal authority, including any federal, state, or local authority.

D. Enforcement by Administrative Penalty. Any violation of this Chapter may be enforced through the issuance of administrative citations in accordance with Chapter 1.13 of the Vista Municipal Code.

E. Nuisance. Any violation of this Chapter is deemed to be a public nuisance enforceable pursuant to Chapter 8.36 of the Vista Municipal Code.

F. Misdemeanor. Any violation of this Chapter is a misdemeanor and may be enforced pursuant to Chapter 1.16 of the Vista Municipal Code.

G. Civil Actions. In addition to any other remedies provided in this Chapter, any violation of this section may be enforced by civil action brought by the City. In any such action, the City may seek, without limitation, and the court shall grant, as appropriate, any or all of the following remedies:

1. Injunctive relief;
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
4. Payment or reimbursement of any governmental fines or penalties imposed on the City as a result of the violation.
5. Civil penalties, not to exceed \$2,500 per violation for each day during which any violation of any provision of this Chapter is committed, continued, permitted or maintained by such person(s).

H. Compliance Order. In addition to or instead of initiating an enforcement action under paragraphs D through G, the City or compliance officer may issue a written compliance order describing any violation(s) of this Code, setting a date or dates for correcting or remedying such violation(s), and specifying (if appropriate) the means for remedying the violation(s). The issuance of a compliance order shall not prevent the City from concurrently or thereafter taking any enforcement action described in paragraphs D through G, including during any period that an appeal involving the compliance order may be pending under Section 9.40.080.”

Section 9.40.120 Commencement and Sunset Dates for Chapter

This Chapter shall take effect on the sixtieth (60th) day following its adoption, and shall thereafter operate for a period of two years. Upon the conclusion of that two year period, this Chapter shall have no further force or effect unless extended by an ordinance of the City Council. Staff shall provide an annual report to the City Council regarding the operation of this Chapter.

3. **Effective Date.** This ordinance shall become part of the Vista Municipal Code on the 31st day following the date of adoption.

[Continued on page 15.]

4. **Adoption.** INTRODUCED and ADOPTED at a meeting of the City Council held on August 9, 2016, by the following vote:

AYES: Mayor Ritter, Campbell, Rigby, Franklin

NOES: None

ABSTAIN: None



JUDY RITTER, MAYOR

APPROVED AS TO FORM:
DAROLD PIEPER, CITY ATTORNEY

ATTEST:
KATHY VALDEZ, CITY CLERK

By: 

By: 

APPROVED
Darold Pieper
20160810132040

CERTIFICATION

I, Kathy Valdez, City Clerk of the City of Vista, California, certify that I caused the foregoing Ordinance No. 2016-9 to be posted on August 24, 2016, at the following locations within the City of Vista: 1) the Reference Desk of the Vista Branch of the San Diego County Public Library, 700 Eucalyptus Avenue; 2) the Lobby Counter at the Gloria McClellan Adult Activity & Resource Center, 1400 Vale Terrace Drive; and 3) the City Clerk's Office, 200 Civic Center Drive.

A handwritten signature in cursive script that reads "Kathy Valdez".

Kathy Valdez, City Clerk