

1 **BILL NO. G-17-09-19**

2 **GENERAL ORDINANCE NO. G-_____**

3 **AN ORDINANCE ADDING CHAPTER 103:**
4 **COMMERCIAL CHRONIC PROBLEM**
5 **PROPERTY REGULATIONS TO THE CITY**
6 **OF FORT WAYNE, INDIANA, CODE OF**
7 **ORDINANCES**

8 **WHEREAS,** Properties where illegal activity occurs on a regular basis
9 have adverse effects on health, safety, welfare, and quality of life of residents of the
10 City of Fort Wayne's ("City") neighborhoods; and

11 **WHEREAS,** Some persons that own or control such commercial properties
12 in the City allow their properties to be used for illegal activity, with the result that
13 these properties have become chronic problem properties in the community; and

14 **WHEREAS,** The current provisions of the City's ordinances do not provide
15 an adequate tool for abating such chronic problem properties; and

16 **WHEREAS,** The City, through its public safety departments and with the
17 assistance of other City departments, is in a unique position to gather data on such
18 properties and establish an active remediation plan to address the specific problems
19 posed by specific properties; and

20 **WHEREAS,** Commercial Chronic Problem Properties within the City cause
21 a financial burden upon the City by the numerous calls for service to the properties
22 because of the illegal and/or nuisance activities that repeatedly occur or exist on
23 such properties.

24 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF**
25 **THE CITY OF FORT WAYNE, INDIANA:**

26 **SECTION 1.** That Chapter 103: COMMERCIAL CHRONIC PROBLEM
27 PROPERTY REGULATIONS is added to the City of Fort Wayne, Indiana, Code of
28 Ordinances, as follows:

1
2 **CHAPTER 103: COMMERCIAL CHRONIC PROBLEM PROPERTY REGULATION**
3

4 103.01 Intent

5 103.02 Definitions

6 103.03 Warning Notification Process

7 103.04 Review for Designation of Commercial Chronic Problem Property;
8 Designation of Commercial Chronic Problem Property

9 103.05 Remediation Agreements; Proactive measures to reduce time
10 designated as a Commercial Chronic Problem Property

11 103.06 Limited appeals Commercial Chronic Problem Property designation

12 103.07 Intimidation and retaliation prohibited

13 103.08 Discrimination prohibited

14 103.09 Sunset provision

15 103.99 Penalties; Civil action by Law Department/dedication of portion
16 fees/fines to the Law Enforcement Training Fund #153

17 **§ 103.01 INTENT**

18 (A) The Common Council finds that excessive calls for service to problem areas,
19 trouble spots or high-activity areas place an undue burden on public safety
20 resources, which may result in decreased public safety services being
21 provided to other geographic areas of the City.

22 (B) The regulations set forth in this Chapter are designed to protect the overall
23 public health, safety and welfare of the City. They are further designed to
24 help prevent and assist in abating repeat calls for service to the same
25 property or location, which may result in diminished public safety services
26 being provided to other residents and areas of the City. Repeat nuisance
27 service call fees are authorized to be imposed and collected from the Owner,
28 Commercial Tenant, occupant and/or Operator of the property designated as
29 a Commercial Chronic Problem Property. Such fees are intended to help
30 cover costs incurred by the City which are over and above the cost of

1 providing services to properties not designated as a Commercial Chronic
2 Problem Property.

3
4 **§ 103.02 DEFINITIONS**

5 For the purpose of this Chapter, the following definitions shall apply unless the
6 context clearly indicates or requires a different meaning.

7 **Abate** shall mean to remedy a condition which constitutes a violation of federal,
8 state and/or local law which is necessary and in the interest of the general health,
9 safety, and welfare of the City.

10 **Citation** shall mean a written ordinance violation notice or penalty issued by the
11 Fort Wayne Police Department, Fort Wayne Fire Department, Neighborhood Code
12 Compliance or Animal Care & Control requiring payment of a fine to the Office of the
13 City Clerk.

14 **City** means the City of Fort Wayne, Indiana.

15 **Commercial Business Property** shall mean a property used for commercial or
16 industrial purposes, whether or not such property is zoned commercial or industrial
17 pursuant to Chapter 157 of the Fort Wayne City Code. The term shall specifically
18 exclude all portions of a property used for residential purposes.

19 **Commercial Chronic Problem Property** is a Commercial Business Property that
20 has, within any ninety (90) day period:

- 21 (A) been the subject of twelve (12) or more Valid Complaints for any offense
22 under federal, state or local law which occurred on the property; or
23 (B) been the subject of twelve (12) or more compliance letters/orders and/or
24 Citations for violations of state or local law issued by the Fort Wayne
25 Fire Department, Fort Wayne-Allen County Department of Health,
26 Neighborhood Code Compliance, Animal Care & Control and/or the City
27 of Fort Wayne Law Department; or

1 (C) been the subject of a combination of Valid Complaints, Citations,
2 and/or compliance letters/orders issued by the Fort Wayne Police
3 Department, the Fort Wayne Fire Department, Fort Wayne-Allen
4 County Department of Health, Neighborhood Code Compliance,
5 Animal Care & Control and/or the City of Fort Wayne Law Department,
6 which together total twelve (12) or more in number.

7 Multiple Valid Complaints, Citations, and/or letters/orders issued under one (1)
8 incident shall only count once towards designation as a Commercial Chronic
9 Problem Property.

10
11 **Commercial Tenant** shall mean an individual or entity that occupies a rental unit for
12 commercial purposes with the landlord's consent and for consideration agreed upon
13 by the landlord and tenant.

14 **Compliance Officer(s)** shall mean an employee of the Fort Wayne Police
15 Department assigned to oversee the administration and implementation of this
16 Chapter.

17
18 **Operator** shall mean any person who has charge, care or control of a Commercial
19 Business Property. The term shall include a person who leases property to a
20 Commercial Tenant, if such person is not otherwise the Owner of said property.

21 **Owner** shall mean any person, agent, firm, Operator, trust, partnership, limited
22 liability company, corporation or other individual or legal entity having a legal or
23 equitable interest in a parcel of property which constitutes a Commercial Business
24 Property; or recorded in the official records of the state, county or municipality as
25 holding title to such Commercial Business Property; or otherwise having control of
26 the Commercial Business Property, including a receiver, trustee, conservator or the
27 guardian of the estate of any such person, and the executor or administrator of the

1 estate of such person if ordered to take possession of real property by a court.
2 Service on the Registered Agent shall be good service as to the owner.

3 ***Police Documented Call for Service*** shall refer to any time when a sworn member
4 of the Fort Wayne Police Department is dispatched, deployed or responds to an
5 incident at a specific location as a Police Response which results in the issuance of
6 a Citation or Valid Complaint. This term does not include calls made by or on
7 behalf of a victim or potential victim of abuse, a victim or potential victim of a crime,
8 or an individual in an emergency if (1) at the time the call is made, the person
9 making the call reasonably believes that law enforcement assistance or other
10 emergency assistance is necessary to prevent the perpetration or escalation of the
11 abuse, crime, or emergency, or (2) law enforcement assistance/other emergency
12 assistance was needed to address abuse, a crime, or an emergency that has
13 occurred.

14 ***Police Response*** shall mean any and all police action needed to protect the health,
15 safety and welfare of inhabitants of a property or location with such response being
16 subject to the governing rules and regulations of the Fort Wayne Police Department.

17 ***Remediation Agreement*** shall mean a written agreement between an Owner,
18 Commercial Tenant, and/or Operator and a Compliance Officer that outlines actions
19 the Owner, Commercial Tenant, and/or Operator will take to Abate a nuisance or
20 condition occurring on a Commercial Business Property.

21 ***Valid Complaint*** shall refer to a Police Documented Call for Service for violation of
22 any federal, state or local law which occurred at a Commercial Business Property.
23 The term does not include incidents involving an occupant of the premises who is
24 the victim of the crime, including, but not limited to, victims of domestic violence,
25 stalking, sexual abuse and/or persons with mental or physical disabilities pursuant
26 to all applicable local, state and federal laws.

27 ***Warning Notification*** shall be a written document sent by the Fort Wayne Police
28 Department to any Owner, Commercial Tenant, and/or Operator who has received

1 six (6) Valid Complaints, Citations and/or compliance letters/orders under this
2 Chapter.

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4 **§ 103.03 WARNING NOTIFICATION PROCESS**

5 The Fort Wayne Police Department shall issue a Warning Notification to the Owner,
6 Commercial Tenant, and/or Operator advising said person(s) to contact the
7 Compliance Officer to begin the process of working with the Fort Wayne Police
8 Department to Abate nuisances and avoid designation as a Commercial Chronic
9 Problem Property. Such Warning Notification shall be sent within seven (7) calendar
10 days after the sixth Valid Complaint, Citation and/or compliance letter/order is
11 issued against the Commercial Business Property. The Warning Notification shall
12 be delivered by one of the following methods: (1) leaving a copy of the Warning
13 Notification at the Commercial Business Property address, followed by sending a
14 copy through first class United States mail; or (2) sending the Warning Notification
15 by certified mail, return receipt requested. In the case of a rental property, a copy of
16 the Warning Notification shall also be delivered to the Owner by personal service,
17 electronically, or by first class United States mail if such notice was not already
18 provided to the Owner as outlined above.

16 **§ 103.04 REVIEW FOR DESIGNATION OF COMMERCIAL CHRONIC**
17 **PROBLEM PROPERTY; DESIGNATION OF COMMERCIAL CHRONIC**
18 **PROBLEM PROPERTY**

19 (A) When reviewing documentation to designate a Commercial Business
20 Property as a Commercial Chronic Problem Property, the Compliance
21 Officer shall review and verify:

- 22 1. The number of Police Documented Calls for Service,
23 Valid Complaints and Citations issued by the Fort Wayne
24 Police Department in the applicable ninety (90) day
25 period; and
- 26 2. The number of Citations and/or compliance letters/orders
27 issued by the Fort Wayne Fire Department, Fort Wayne-
28 Allen County Department of Health, Neighborhood Code
29 Compliance, Animal Care & Control and/or the City of Fort
30

Wayne Law Department to a Commercial Business Property in the applicable ninety (90) day period; and

3. The number of violations issued by a state and/or federal agency.

(B) If the Compliance Officer determines that the Commercial Business Property has been the subject of twelve (12) or more Valid Complaints, Citations, and/or compliance orders/letters within the applicable ninety (90) day period, the Compliance Officer shall designate the Commercial Business Property as a Commercial Chronic Problem Property.

(C) The Fort Wayne Police Department shall notify in writing the Owner, Commercial Tenant, and/or Operator that his/her/its Commercial Business Property has been designated as a Commercial Chronic Problem Property. Said notification shall be delivered by the following methods: (1) leaving a copy of the notification at the Commercial Business Property address, followed by sending a copy of the notice through first class United States mail; or (2) sending notification to the Owner, Commercial Tenant, and/or Operator by certified mail, return receipt requested. This notification shall identify:

1. The Owner, Commercial Tenant, and/or Operator and the specific address that has been designated as a Commercial Chronic Problem Property;
2. The number of Valid Complaints, Citations, and compliance letters/orders pertaining to said Commercial Business Property in the applicable ninety (90) day period;
3. The cost(s) which may be incurred if there are any future Valid Complaints, Citations, or compliance letters/orders pertaining to the Commercial Business Property;
4. The cost(s) which may be incurred for any future background investigations and/or issuance of letter(s)/orders;

5. The name, title, and contact information (i.e., mailing address, telephone & fax numbers and email address) of the individual whom the Owner, Commercial Tenant, and/or Operator may contact if he/she has questions regarding the notification; and
6. The time period which the Commercial Chronic Problem Property designation will last and the terms and conditions which must be met for the removal of such designation.

(D) Copies of the written designation shall be simultaneously sent electronically to the Fort Wayne Fire Department, Fort Wayne-Allen County Department of Health, Neighborhood Code Compliance, Animal Care & Control, City of Fort Wayne Law Department, Office of the City Clerk and the Common Council Member who represents the District where the subject Commercial Business Property is located. In the case of a rental property, a copy of the written designation shall also be sent to the Owner, if the Owner was not the primary intended recipient of the designation as outlined above.

(E) Once designated as a Commercial Chronic Problem Property by the Compliance Officer, said property shall remain so designated and tracked on a computerized matrix for compliance/enforcement purposes for one (1) year from the date of designation. Said designation shall be removed upon action by the City of Fort Wayne Law Department after reviewing documentation from the Fort Wayne Fire Department, Fort Wayne-Allen County Department of Health, Neighborhood Code Compliance, Animal Care & Control and/or the City of Fort Wayne Law Department that said property has not been the subject of a Valid Complaint, Citation, or compliance letter/order for a period of not less than three hundred sixty-five (365) continuous days, unless credited per the regulations set forth in Section 103.05. Additionally, any and all fines and repeat nuisance service call fees associated with said Commercial Chronic Problem Property must have been paid in full for removal from the matrix.

1 (F) The City deems the Owner, Commercial Tenant, and/or Operator
2 responsible for any and all prohibited conduct occurring at the Commercial
3 Business Property after receipt of the written notice designating the
4 property as a Commercial Chronic Problem Property.

5 **§ 103.05 REMEDIATION AGREEMENTS; PROACTIVE MEASURES TO REDUCE**
6 **TIME DESIGNATED AS A COMMERCIAL CHRONIC PROBLEM PROPERTY**

7
8 (A) The Owner, Commercial Tenant, and/or Operator of a Commercial Chronic
9 Problem Property shall be required to enter into a Remediation Agreement.
10 Such Remediation Agreement shall:

- 11 1. Be in writing and signed by the Owner, Commercial Tenant,
12 and/or Operator of the Commercial Chronic Problem Property
13 and the Compliance Officer;
- 14 2. Set forth immediate remedial measures which must be initiated
15 within fourteen (14) calendar days of signing the Remediation
16 Agreement, and thereafter establish monthly thresholds and
17 needed corrective actions which will be monitored by the
18 Compliance Officer;
- 19 3. Include proactive measures determined necessary to abate the
20 public health, safety and welfare violations identified; and
- 21 4. Identify specific actions the Owner, Commercial Tenant, and/or
22 Operator is required to complete by the last Friday of each month
23 and transmit to the Compliance Officer.

24 (B) Within ten (10) calendar days after a Remediation Agreement is executed by
25 the parties described above, the Compliance Officer shall send an electronic
26 copy of the executed Remediation Agreement to the Chief of Police, the Fort
27 Wayne Fire Department, the Fort Wayne-Allen County Department of

1 Health, Neighborhood Code Compliance, Animal Care & Control, the City of
2 Fort Wayne Law Department and the Common Council member who
3 represents the district in which the Commercial Chronic Problem Property is
4 located. In the case of a commercial rental property, the Fort Wayne Police
5 Department shall also send a copy of the Remediation Agreement to the
6 Owner, electronically or by first class United States mail, if such notice was
7 not already provided to the Owner.

8 (C) In the event that the Owner, Commercial Tenant, and/or Operator complies
9 with the Remediation Agreement in its entirety, then for every thirty (30)
10 calendar days that the Commercial Chronic Problem Property has no new
11 Valid Complaints, Citations and/or compliance letters/orders issued against
12 it, fifteen (15) calendar days shall be subtracted from the time said property
13 is scheduled to be designated as a Commercial Chronic Problem Property;
14 this process shall continue through the duration of the Remediation
15 Agreement. The Fort Wayne Police Department shall be responsible for
16 maintaining accurate records and sending monthly updates to the individuals
17 listed in paragraph (B) herein and to allow such records to be available to
18 stakeholders in the community.

19 (D) In the event that the Owner, Commercial Tenant, and/or Operator fails or
20 refuses to enter into a Remediation Agreement, or fails to meet the
21 obligations set forth in the Remediation Agreement, the Law Department or
22 his/her official designee, shall commence legal action pursuant to Section
23 103.99 of this Chapter. Notice of non-compliance shall be electronically sent
24 by the Law Department to the Chief of Police, the Fort Wayne Fire
25 Department, the Fort Wayne-Allen County Department of Health,
26 Neighborhood Code Compliance, Animal Care & Control, the Common
27 Council Member who represents the district in which the Commercial
28 Chronic Problem Property is located. In the case of a rental property, the
29 Law Department shall also send a copy of the notice of non-compliance to
30 the Owner electronically or by first class United States mail, if such notice
was not already provided to the Owner.

(E) Any new violations which are in addition to the items addressed in the Remediation Agreement may be pursued by the Law Department.

§ 103.06 LIMITED APPEALS OF COMMERCIAL CHRONIC PROBLEM PROPERTY DESIGNATION

An administrative hearing officer designated by Neighborhood Code Compliance is authorized to hear limited appeals from Owners, Commercial Tenants, and/or Operators of Commercial Business Properties that have been designated as a Commercial Chronic Problem Property. The appeal shall be filed within fifteen (15) calendar days of designation and be limited to the verification of whether said property has reached the requisite number of Valid Complaints, Citations, and/or compliance letters/orders set forth in Section 103.04. A hearing before the hearing officer for such limited appeals must be held within thirty (30) calendar days of the appeals being filed. Written notice of the date, time and location shall be sent certified mail to said person of record. The decision of the hearing officer shall be the final administrative action for purpose of judicial review.

§ 103.07 INTIMIDATION AND RETALIATION PROHIBITED

If any person reports to a City employee or agent that he/she believes that they have been intimidated or threatened by the Owner, Commercial Tenant, and/or Operator of a Commercial Business Property in the City due to filing a complaint or reporting an alleged violation of this Chapter or under federal, state or local law, the City employee or agent shall encourage the person to report such alleged intimidation or retaliation to the Fort Wayne Police Department for further action.

§ 103.08 DISCRIMINATION PROHIBITED

1 Nothing in this Chapter shall be construed to encourage or authorize the
2 discrimination by Owner, Commercial Tenant, and/or Operator against any persons
3 based upon race, creed, religion, sex, disability, age, sexual orientation or national
4 origin.

5 **§ 103.09 SUNSET PROVISION**

6
7 The provisions of Chapter 103 will sunset three (3) years following adoption of this
8 Chapter unless ratified by the Common Council.

9 **§ 103.99 PENALTIES; CIVIL ACTION BY LAW DEPARTMENT/DEDICATION OF**
10 **PORTION OF FEES/FINES TO THE LAW ENFORCEMENT TRAINING FUND**
11 **#153**

12 (A) Any Owner, Commercial Tenant, and/or Operator violating the provisions
13 of this Chapter shall be subject to the following penalties:

- 14
- 15 1. *Citations:* After a property has been designated as a
16 Commercial Chronic Problem Property, any subsequent
17 violations (i.e. Valid Complaints, Citations, and/or
18 compliance letters/orders) shall result in a fine of two
19 hundred fifty dollars (\$250) in addition to any other penalty
20 imposed by ordinance and shall be payable through the
21 Office of the City Clerk.
 - 22 2. In addition to the collection of fines resulting from the
23 issuance of citation(s), the Law Department is authorized
24 to bring civil action against any alleged violator of this
25 Chapter for all unpaid repeat nuisance service call fees.

26 (B) Each violation of this Chapter shall be deemed a separate offense.

1 (C) *Dedication of Fines/Fees Collection*: Fifty percent (50%) of all fines and
2 fees collected for any violation of this Chapter shall be deposited into the
3 Law Enforcement Training Fund #153.

4 **SECTION 2.** That this Ordinance shall be in full force and effect from and
5 after its passage and any and all necessary approval by the Mayor.

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7 _____
8 Tom Didier, Council Member

9 APPROVED AS TO FORM AND LEGALITY
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13 _____
14 Carol Helton, City Attorney
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