

BILL NO.G-17-09-20

BILL NO. G-_____

**AN ORDINANCE AMENDING SECTION 130.06
REAL ESTATE USED FOR ILLEGAL USE OR
SALE OF NARCOTICS, CONTROLLED
DANGEROUS SUBSTANCES GAMBLING,
PROSTITUTION OF THE CITY OF FORT
WAYNE, INDIANA CODE OF ORDINANCES**

**NOW, THEREFORE BE IT ORDAINED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE;**

**SECTION 1. That Section 130.06 REAL ESTATE USED FOR
ILLEGAL USE OR SALE OF NARCOTICS, CONTROLLED DANGEROUS
SUBSTANCES, GAMBLING, PROSTITUTION of the City of Fort Wayne,
Indiana Code of Ordinances is amended as follows:**

**§ 130.06 REAL ESTATE USED FOR ILLEGAL USE OR SALE OF
NARCOTICS, CONTROLLED DANGEROUS SUBSTANCES, GAMBLING,
PROSTITUTION.**

AMEND (B):

(B) Permitting the use of real estate for illicit drug activity, gambling or prostitution. No owner of real estate located in the city shall knowingly allow the real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to state law. For the purposes of this section, an owner of real estate is defined as any person who, alone, jointly or severally with others, shall have legal or equitable title or other possessory interest in any real property on which residential, commercial or industrial improvements of any kind or nature are located, including a purchaser under a Contract for Conditional Sale of Real Estate commonly known as a Land

1 Contract, and a lessee, sub-lessee, renter, or tenant who is allowing another
2 person to occupy the dwelling or dwelling unit. The definition of owner shall
3 not include a mortgage lien holder or other lien holder holding an interest
4 which secures a debt or judgement, or third party non-employees using real
5 estate for illicit drug activity, gambling or prostitution before or after the
6 company's regular business hours.

7 **AMEND (D) (1)**

8 (D) *Reports, investigations and notices by the Police Department.*

9 (1) A complaint or report of suspected illegal activities constituting the
10 use or sale of narcotics or controlled substances, or gambling, prostitution, or
11 conduct constituting a nuisance pursuant to state law, by tenants, occupants
12 and/or their visitors, guests or invitees as observed by the lessor, third
13 persons such as other tenants of the property, or persons residing or working
14 in the vicinity of the property, or city officials, and/or representatives of
15 agencies and/or departments of the city shall be submitted to the office of
16 Narcotics Division of the Police Department of the city and each such report
or complaint shall be individually logged in that office.

17 **AMEND (D) (3)**

18 (3) Upon completion of investigation by the Police Department revealing
19 that such suspected illegal activity is taking place at a particular premises,
20 the Police Department may send a Notice of Investigation to the owner of
21 the real estate and a copy to the tenant/occupant, if applicable, whose
22 premise is the subject of the investigation, by certified mail, return receipt
23 requested, informing the owner that the investigation revealed suspected
24 illegal activity and the fact that there is an on-going investigation. The Notice
25 of Investigation shall inform the owner that it is a violation of the Fort Wayne
26 Code for the owner of real estate to knowingly permit its real estate to be
27 used as a site for any use or sale of illicit narcotics or controlled dangerous
28 substances, gambling, prostitution and/or conduct constituting a nuisance
29 under state law. The Notice of Investigation shall also state that the city may
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1 initiate enforcement proceedings against the owner of the real estate if the
2 suspected illegal activity does not cease. Finally, the Notice of Investigation
3 shall advise that it is a defense to a proceeding to enforce this section if the
4 owner of real estate institutes and completes eviction proceedings in
5 compliance with division (F) of this section against the person suspected of
6 engaging in the criminal conduct giving rise to the Notice of Investigation,
7 unless the property is owner occupied. The Notice of Investigation shall
8 further include a request of the property owner to whom the letter is
9 addressed to specify in writing information concerning the existence of any
10 Contract for Conditional Sale of Real Estate, commonly known as a Land
11 Contract, setting forth the name, address, and phone number of the
12 purchaser under the Land Contract, and further specifying any other person
13 who has a legal, equitable, or possessory interest in the dwelling or dwelling
unit and the pertinent information, including, but not limited to, name,
address, and phone number with respect to those individuals.

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

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17 _____
Council Member

18 Approved As To Form And Legality

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21 Carol Helton, City Attorney
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§ 130.06 REAL ESTATE USED FOR ILLEGAL USE OR SALE OF NARCOTICS, CONTROLLED DANGEROUS SUBSTANCES, GAMBLING, PROSTITUTION, NUISANCE.

(A) *Purpose.* The Common Council of the city finds it to be in the best interests of the residents of the city and the general public to provide for the regulation of conduct it deems to be offensive, to prevent vice, disorder and immorality; and to promote public peace, health and safety, and to this end, the Common Council enacts this section.

(B) *Permitting the use of real estate for illicit drug activity, gambling or prostitution.* No owner of real estate located in the city shall knowingly allow the real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, gambling, or prostitution or conduct constituting a nuisance pursuant to state law. For the purposes of this section, an owner of real estate is defined as any person who, alone, jointly or severally with others, shall have legal or equitable title or other possessory interest in any real property on which residential, commercial or industrial improvements of any kind or nature are located, including a purchaser under a Contract for Conditional Sale of Real Estate commonly known as a Land Contract, and a lessee, sub-lessee, renter, or tenant who is allowing another person to occupy the dwelling or dwelling unit. The definition of owner shall not include a mortgage lien holder or other lien holder holding an interest which secures a debt or judgement, or third party non-employees using real estate for illicit drug activity, gambling or prostitution before or after the company's regular business hours.

(C) *Discrimination forbidden.* Nothing in this section shall be construed to encourage or authorize the discrimination by lessors against any persons based upon race, creed, religion, sex, age or national origin.

(D) *Reports, investigations and notices by the Police Department.*

(1) A complaint or report of suspected illegal activities constituting the use or sale of narcotics or controlled substances, or gambling, prostitution, or conduct constituting a nuisance pursuant to state law, by tenants, occupants and/or their visitors, guests or invitees as observed by the lessor, third persons such as other tenants of the property, or persons residing or working in the vicinity of the property, or city officials, and/or representatives of agencies and/or departments of the city shall be submitted to the office of Narcotics and Vice-Division of the Police Department of the city and each such report or complaint shall be individually logged in that office.

(2) Upon receipt of any report or complaint of such suspected illegal activities on real estate premises, the Police Department may conduct a further investigation.

(3) Upon completion of investigation by the Police Department revealing that such suspected illegal activity is taking place at a particular premises, the Police Department may send a Notice of Investigation to the owner of the real estate and a copy to the tenant/occupant, if applicable, whose premise is the subject of the investigation, by certified mail, return receipt requested, informing the owner that the investigation revealed suspected illegal activity and the fact that there is an on-going investigation. The Notice of Investigation shall inform the owner that it is a violation of the Fort Wayne Code for the owner of real estate to knowingly permit its real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous

substances, gambling, or prostitution. *and or conduct constituting a nuisance under state law.* The Notice of Investigation shall also state that the city may initiate enforcement proceedings against the owner of the real estate if the suspected illegal activity does not cease. Finally, the Notice of Investigation shall advise that it is a defense to a proceeding to enforce this section if the owner of real estate institutes and completes eviction proceedings in compliance with division (F) of this section against the person suspected of engaging in the criminal conduct giving rise to the Notice of Investigation, unless the property is owner occupied. The Notice of Investigation shall further include a request of the property owner to whom the letter is addressed to specify in writing information concerning the existence of any Contract for Conditional Sale of Real Estate, commonly known as a Land Contract, setting forth the name, address, and phone number of the purchaser under the Land Contract, and further specifying any other person who has a legal, equitable, or possessory interest in the dwelling or dwelling unit and the pertinent information, including, but not limited to, name, address, and phone number with respect to those individuals.

(E) *Effect of giving Notice of Investigation.*

(1) If a proceeding to enforce a violation of this section is commenced against an owner of real estate at least 30 days after the land owner's receipt of a Notice of Investigation and within 60 days of the owner's receipt of a Notice of Investigation, the landowner's receipt of the Notice of Investigation creates a presumption that the landowner has knowledge that the tenant/occupant suspected to have been engaged in illegal activity has in fact engaged in such activity. Therefore, under such circumstances, the owner of real estate will bear the burden of proving by a preponderance of the evidence that the owner lacked knowledge of the suspected illegal behavior.

(F) *Eviction proceedings as a defense under certain circumstances.*

(1) An enforcement action against a person charged with a violation of this section after having received a Notice of Investigation shall be subject to an affirmative defense as set forth in subdivision (2) below.

(2) The affirmative defense shall be established if the person charged with a violation:

(a) Has, within 30 days of receipt of a Notice of Investigation instituted eviction proceedings against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this section;

(b) Has completed the eviction proceedings within 30 days of commencement of the proceedings.

(3) An affirmative defense shall also be available to a person who has instituted an eviction proceeding within 30 days of receipt of a Notice of Investigation and has completed the eviction proceeding within 60 days of the commencement of the proceedings, so long as the person initiating the eviction proceedings does not, by requesting a continuance, failing to appear at a hearing, or otherwise delaying the proceedings cause the eviction proceedings to remain open for a period of more than 30 days.

(G) *Filing of criminal charges.* Charging an owner of real estate with a violation of this section shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate