

AN ORDINANCE ADDING CHAPTER 103: COMMERCIAL CHRONIC
PROBLEM PROPERTY REGULATIONS TO THE CITY OF FORT WAYNE,
INDIANA, CODE OF ORDINANCES

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

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

WHEREAS, in 2017 and 2020, these issues were addressed by the creation and passage of Chapter 103: Commercial Chronic Problem Property Regulations, but a sunset provision was included and the regulations have since expired; and

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

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

CHAPTER 103: COMMERCIAL CHRONIC PROBLEM PROPERTY REGULATIONS

Section

103.01 Intent

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2 of commercial chronic problem property

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4 a commercial chronic problem property

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6 103.07 Intimidation and retaliation prohibited

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9
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11 the Law Enforcement Training Fund #153

12
13 § 103.01 INTENT.

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

18 (B) The regulations set forth in this chapter are designed to protect the overall public
19 health, safety and welfare of the city. They are further designed to help prevent and
20 assist in abating repeat calls for service to the same property or location, which may
21 result in diminished public safety services being provided to other residents and areas
22 of the city. Repeat nuisance service call fees are authorized to be imposed and
23 collected from the owner, commercial tenant, occupant and/or operator of the property
24 designated as a commercial chronic problem property. Such fees are intended to help
25 cover costs incurred by the city which are over and above the cost of providing services
26 to properties not designated as a commercial chronic problem property.

27
28 § 103.02 DEFINITIONS.

29 For the purpose of this chapter, the following definitions shall apply unless the context
30 clearly indicates or requires a different meaning.

31 ABATE. To remedy a condition which constitutes a violation of federal, state and/or
32 local law which is necessary and in the interest of the general health, safety, and
33 welfare of the city.

34 CITATION. A written ordinance violation notice or penalty issued by the Fort Wayne
35 Police Department, Fort Wayne Fire Department, Neighborhood Code Compliance or
36 Animal Care and Control requiring payment of a fine to the Office of the City Clerk.

1 CITY. The City of Fort Wayne, Indiana.

2 COMMERCIAL BUSINESS PROPERTY. A property used for commercial or industrial
3 purposes, whether or not such property is zoned commercial or industrial pursuant to
4 Chapter 157 of the Fort Wayne City Code. The term shall specifically exclude all
5 portions of a property used for residential purposes.

6 COMMERCIAL CHRONIC PROBLEM PROPERTY. A commercial business property
7 that has, within any 90 day period:

8 (1) Been the subject of 12 or more valid complaints for any offense under federal,
9 state or local law which occurred on the property; or

10 (2) Been the subject of 12 or more compliance letters/orders and/or citations for
11 violations of state or local law issued by the Fort Wayne Fire Department, Fort Wayne-
12 Allen County Department of Health, Neighborhood Code Compliance, Animal Care and
13 Control and/or the City of Fort Wayne Law Department; or

14 (3) Been the subject of a combination of valid complaints, citations, and/or
15 compliance letters/orders issued by the Fort Wayne Police Department, the Fort Wayne
16 Fire Department, Fort Wayne-Allen County Department of Health, Neighborhood Code
17 Compliance, Animal Care and Control and/or the City of Fort Wayne Law Department,
18 which together total 12 or more in number.

19 Multiple valid complaints, citations, and/or letters/orders issued under one incident
20 shall only count once towards designation as a COMMERCIAL CHRONIC PROBLEM
21 PROPERTY.

22 COMMERCIAL TENANT. An individual or entity that occupies a rental unit for
23 commercial purposes with the landlord's consent and for consideration agreed upon by
24 the landlord and tenant.

25 COMPLIANCE OFFICER(S). An employee of the Fort Wayne Police Department
26 assigned to oversee the administration and implementation of this chapter.

27 OPERATOR. Any person who has charge, care or control of a commercial business
28 property. The term shall include a person who leases property to a commercial tenant, if
29 such person is not otherwise the owner of said property.

30 OWNER. Any person, agent, firm, operator, trust, partnership, limited liability
31 company, corporation or other individual or legal entity having a legal or equitable
32 interest in a parcel of property which constitutes a commercial business property; or
33 recorded in the official records of the state, county or municipality as holding title to such
34 commercial business property; or otherwise having control of the commercial business
35 property, including a receiver, trustee, conservator or the guardian of the estate of any
36 such person, and the executor or administrator of the estate of such person if ordered to
37 take possession of real property by a court. Service on the registered agent shall be
38 good service as to the owner.

1 POLICE DOCUMENTED CALL FOR SERVICE. Any time when a sworn member of
2 the Fort Wayne Police Department is dispatched, deployed or responds to an incident at
3 a specific location as a police response which results in the issuance of a citation or
4 valid complaint. This term does not include calls made by or on behalf of a victim or
5 potential victim of abuse, a victim or potential victim of a crime, or an individual in an
6 emergency if (1) at the time the call is made, the person making the call reasonably
7 believes that law enforcement assistance or other emergency assistance is necessary
8 to prevent the perpetration or escalation of the abuse, crime, or emergency, or (2) law
9 enforcement assistance/other emergency assistance was needed to address abuse, a
10 crime, or an emergency that has occurred.

11 POLICE RESPONSE. Any and all police action needed to protect the health, safety
12 and welfare of inhabitants of a property or location with such response being subject to
13 the governing rules and regulations of the Fort Wayne Police Department.

14 REMEDIATION AGREEMENT. A written agreement between an owner, commercial
15 tenant, and/or operator and a compliance officer that outlines actions the owner,
16 commercial tenant, and/or operator will take to abate a nuisance or condition occurring
17 on a commercial business property.

18 VALID COMPLAINT. A police documented call for service for violation of any federal,
19 state or local law which occurred at a commercial business property. The term does not
20 include incidents involving an occupant of the premises who is the victim of the crime,
21 including, but not limited to, victims of domestic violence, stalking, sexual abuse and/or
22 persons with mental or physical disabilities pursuant to all applicable local, state and
23 federal laws.

24 WARNING NOTIFICATION. A written document sent by the Fort Wayne Police
25 Department to any owner, commercial tenant, and/or operator who has received six (6)
26 valid complaints, citations and/or compliance letters/orders under this chapter.

28 § 103.03 WARNING NOTIFICATION PROCESS.

29 The Fort Wayne Police Department shall issue a warning notification to the owner,
30 commercial tenant, and/or operator advising said person(s) to contact the compliance
31 officer to begin the process of working with the Fort Wayne Police Department to abate
32 nuisances and avoid designation as a commercial chronic problem property. Such
33 warning notification shall be sent within seven (7) calendar days after the sixth (6th) valid
34 complaint, citation and/or compliance letter/order is issued against the commercial
35 business property. The warning notification shall be delivered by one of the following
36 methods: (1) leaving a copy of the warning notification at the commercial business
37 property address, followed by sending a copy through first class United States mail; or
38 (2) sending the warning notification by certified mail, return receipt requested. In the
39 case of a rental property, a copy of the warning notification shall also be delivered to the
40 owner by personal service, electronically, or by first class United States mail if such
41 notice was not already provided to the owner as outlined above.

1 § 103.04 REVIEW FOR DESIGNATION OF COMMERCIAL CHRONIC PROBLEM
2 PROPERTY; DESIGNATION OF COMMERCIAL CHRONIC PROBLEM PROPERTY.

3 (A) When reviewing documentation to designate a commercial business property as
4 a commercial chronic problem property, the compliance officer shall review and verify:

5 (1) The number of police documented calls for service, valid complaints and
6 citations issued by the Fort Wayne Police Department in the applicable 90 day period;
7 and

8 (2) The number of citations and/or compliance letters/orders issued by the Fort
9 Wayne Fire Department, Fort Wayne-Allen County Department of Health, Neighborhood
10 Code Compliance, Animal Care and Control and/or the City of Fort Wayne Law
11 Department to a commercial business property in the applicable 90 day period; and

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

13 (B) If the Compliance Officer determines that the commercial business property has
14 been the subject of 12 or more valid complaints, citations, and/or compliance
15 orders/letters within the applicable 90 day period, the Compliance Officer shall
16 designate the commercial business property as a commercial chronic problem property.

17 (C) The Fort Wayne Police Department shall notify in writing the owner, commercial
18 tenant, and/or operator that his/her/its commercial business property has been
19 designated as a commercial chronic problem property. Said notification shall be
20 delivered by the following methods: (1) leaving a copy of the notification at the
21 commercial business property address, followed by sending a copy of the notice
22 through first class United States mail; or (2) sending notification to the owner,
23 commercial tenant, and/or operator by certified mail, return receipt requested. This
24 notification shall identify:

25 (1) The owner, commercial tenant, and/or operator and the specific address that
26 has been designated as a commercial chronic problem property;

27 (2) The number of valid complaints, citations, and compliance letters/orders
28 pertaining to said commercial business property in the applicable 90 day period;

29 (3) The cost(s) which may be incurred if there are any future valid complaints,
30 citations, or compliance letters/orders pertaining to the commercial business property;

31 (4) The cost(s) which may be incurred for any future background investigations
32 and/or issuance of letter(s)/orders;

33 (5) The name, title, and contact information (i.e., mailing address, telephone and
34 fax numbers and email address) of the individual whom the owner, commercial tenant,
35 and/or operator may contact if he/she has questions regarding the notification; and

36 (6) The time period which the commercial chronic problem property designation will
37 last and the terms and conditions which must be met for the removal of such
38 designation.

1 (D) Copies of the written designation shall be simultaneously sent electronically to
2 the Fort Wayne Fire Department, Fort Wayne-Allen County Department of Health,
3 Neighborhood Code Compliance, Animal Care and Control, City of Fort Wayne Law
4 Department, Office of the City Clerk, the Common Council Member who represents the
5 district where the subject commercial business property is located, and the Common
6 Council Office. In the case of a rental property, a copy of the written designation shall
7 also be sent to the owner, if the owner was not the primary intended recipient of the
8 designation as outlined above.

9 (E) Once designated as a commercial chronic problem property by the Compliance
10 Officer, said property shall remain so designated and tracked on a computerized matrix
11 for compliance/enforcement purposes for one (1) year from the date of designation.
12 Said designation shall be removed upon action by the City of Fort Wayne Law
13 Department after reviewing documentation from the Fort Wayne Fire Department, Fort
14 Wayne-Allen County Department of Health, Neighborhood Code Compliance, Animal
15 Care and Control and/or the City of Fort Wayne Law Department that said property has
16 not been the subject of a valid complaint, citation, or compliance letter/order for a period
17 of not less than 365 continuous days, unless credited per the regulations set forth in §
18 103.05. Additionally, any and all fines and repeat nuisance service call fees associated
19 with said commercial chronic problem property must have been paid in full for removal
20 from the matrix.

21 (F) The city deems the owner, commercial tenant, and/or operator responsible for
22 any and all prohibited conduct occurring at the commercial business property after
23 receipt of the written notice designating the property as a commercial chronic problem
24 property.

25
26 § 103.05 REMEDIATION AGREEMENTS; PROACTIVE MEASURES TO REDUCE
27 TIME DESIGNATED AS A COMMERCIAL CHRONIC PROBLEM PROPERTY.

28 (A) The owner, commercial tenant, and/or operator of a commercial chronic problem
29 property shall be required to enter into a remediation agreement. Such remediation
30 agreement shall:

31 (1) Be in writing and signed by the owner, commercial tenant, and/or operator of
32 the commercial chronic problem property and the Compliance Officer;

33 (2) Set forth immediate remedial measures which must be initiated within 14
34 calendar days of signing the remediation agreement, and thereafter establish monthly
35 thresholds and needed corrective actions which will be monitored by the Compliance
36 Officer;

37 (3) Include proactive measures determined necessary to abate the public health,
38 safety and welfare violations identified; and

39 (4) Identify specific actions the owner, commercial tenant, and/or operator is
40 required to complete by the last Friday of each month and transmit to the Compliance
41 Officer.

1 (B) Within ten calendar days after a remediation agreement is executed by the
2 parties described above, the Compliance Officer shall send an electronic copy of the
3 executed remediation Agreement to the Chief of Police, the Fort Wayne Fire
4 Department, the Fort Wayne-Allen County Department of Health, Neighborhood Code
5 Compliance, Animal Care and Control, the City of Fort Wayne Law Department, the
6 Common Council member who represents the district in which the commercial chronic
7 problem property is located, and Common Council Office. In the case of a commercial
8 rental property, the Fort Wayne Police Department shall also send a copy of the
9 remediation agreement to the owner, electronically or by first class United States mail, if
10 such notice was not already provided to the owner.

11 (C) In the event that the owner, commercial tenant, and/or operator complies with the
12 remediation agreement in its entirety, then for every 30 calendar days that the
13 commercial chronic problem property has no new valid complaints, citations and/or
14 compliance letters/orders issued against it, 15 calendar days shall be subtracted from
15 the time said property is scheduled to be designated as a commercial chronic problem
16 property; this process shall continue through the duration of the remediation agreement.
17 The Fort Wayne Police Department shall be responsible for maintaining accurate
18 records and sending monthly updates to the individuals listed in division (B) of this
19 section and to allow such records to be available to stakeholders in the community.

20 (D) In the event that the owner, commercial tenant, and/or operator fails or refuses to
21 enter into a remediation agreement, or fails to meet the obligations set forth in the
22 remediation agreement, the Law Department or his/her official designee, shall
23 commence legal action pursuant to § 103.99 of this chapter. Notice of non-compliance
24 shall be electronically sent by the Law Department to the Chief of Police, the Fort
25 Wayne Fire Department, the Fort Wayne-Allen County Department of Health,
26 Neighborhood Code Compliance, Animal Care and Control, the Common Council
27 Member who represents the district in which the commercial chronic problem property is
28 located, and the Common Council Office. In the case of a rental property, the Law
29 Department shall also send a copy of the notice of non-compliance to the owner
30 electronically or by first class United States mail, if such notice was not already provided
31 to the owner.

32 (E) Any new violations which are in addition to the items addressed in the
33 remediation agreement may be pursued by the Law Department.

34
35 § 103.06 LIMITED APPEALS OF COMMERCIAL CHRONIC PROBLEM PROPERTY
36 DESIGNATION.

37 An administrative hearing officer designated by Neighborhood Code Compliance is
38 authorized to hear limited appeals from owners, commercial tenants, and/or operators
39 of commercial business properties that have been designated as a commercial chronic
40 problem property. The appeal shall be filed within 15 calendar days of designation and
41 be limited to the verification of whether said property has reached the requisite number
42 of valid complaints, citations, and/or compliance letters/ orders set forth in § 103.04. A
43 hearing before the hearing officer for such limited appeals must be held within 30

1 calendar days of the appeals being filed. Written notice of the date, time and location
2 shall be sent certified mail to said person of record. The decision of the hearing officer
3 shall be the final administrative action for purpose of judicial review.

4
5 § 103.07 INTIMIDATION AND RETALIATION PROHIBITED.

6 If any person reports to a city employee or agent that he/she believes that they have
7 been intimidated or threatened by the owner, commercial tenant, and/or operator of a
8 commercial business property in the city due to filing a complaint or reporting an alleged
9 violation of this chapter or under federal, state or local law, the city employee or agent
10 shall encourage the person to report such alleged intimidation or retaliation to the Fort
11 Wayne Police Department for further action.

12
13 § 103.08 DISCRIMINATION PROHIBITED.

14 Nothing in this chapter shall be construed to encourage or authorize the discrimination
15 by owner, commercial tenant, and/or operator against any persons based upon race,
16 creed, religion, sex, disability, age, sexual orientation or national origin.

17
18 § 103.09 SUNSET PROVISION.

19 The provisions of Chapter 103 will sunset on December 31, 2027 following adoption of
20 this chapter unless ratified by the Common Council.

21
22 § 103.99 PENALTIES; CIVIL ACTION BY LAW DEPARTMENT/DEDICATION OF
23 PORTION OF FEES/FINES TO THE LAW ENFORCEMENT TRAINING FUND #153.

24 (A) Any owner, commercial tenant, and/or operator violating the provisions of this
25 chapter shall be subject to the following penalties:

26 (1) Citations: after a property has been designated as a commercial chronic
27 problem property, any subsequent violations (i.e. valid complaints, citations, and/or
28 compliance letters/orders) shall result in a fine of \$250 in addition to any other penalty
29 imposed by ordinance and shall be payable through the Office of the City Clerk.

30 (2) In addition to the collection of fines resulting from the issuance of citation(s), the
31 Law Department is authorized to bring civil action against any alleged violator of this
32 chapter for all unpaid repeat nuisance service call fees.

33 (B) Each violation of this chapter shall be deemed a separate offense.

34 (C) Dedication of fines/fees collection: 50% of all fines and fees collected for any
35 violation of this chapter shall be deposited into the Law Enforcement Training Fund
36 #153

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

Russell Jehl, Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph G. Bonahoom, Council Attorney