

**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 commercial chronic problem property

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4 commercial chronic problem property

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8 103.09 Sunset provision

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11 Enforcement Training Fund #153

13 § 103.01 INTENT

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

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

26 § 103.02 DEFINITIONS.

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

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

31 CITATION. A written ordinance violation notice or penalty issued by the Fort Wayne Police
32 Department, Fort Wayne Fire Department, Neighborhood Code Compliance or Animal Care and
33 Control requiring payment of a fine to the City of Fort Wayne Violations Bureau.

34 CITY. The City of Fort Wayne, Indiana

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

5 COMMERCIAL CHRONIC PROBLEM PROPERTY. A commercial business property that
6 has, within any 60 day period:

7 (1) Been the subject of 5 or more valid complaints for any offense under federal, state or
8 local law which occurred on the property; or

9 (2) Been the subject of 5 or more compliance letters/orders and/or citations for violations of
10 state or local law issued by the Fort Wayne Fire Department, Fort Wayne-Allen County
11 Department of Health, Neighborhood Code Compliance, Animal Care and Control and/or the
12 City of Fort Wayne Law Department; or

13 (3) Been the subject of a combination of valid complaints, citations, and/or compliance
14 letters/orders issued by the Fort Wayne Police Department, the Fort Wayne Fire Department,
15 Fort Wayne-Allen County Department of Health, Neighborhood Code Compliance, Animal Care
16 and Control and/or the City of Fort Wayne Law Department, which together total 5 or more in
17 number.

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

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

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

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

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

36 POLICE DOCUMENTED CALL FOR SERVICE. Any time when a sworn member of the
37 Fort Wayne Police Department is dispatched, deployed or responds to an incident at a specific
38 location as a police response which results in the issuance of a citation or valid complaint. This
39 term does not include calls made by or on behalf of a victim or potential victim of abuse, a
40 victim or potential victim of a crime, or an individual in an emergency if (1) at the time the call

1 is made, the person making the call reasonably believes that law enforcement assistance or other
2 emergency assistance is necessary to prevent the perpetration or escalation of the abuse, crime,
3 or emergency, or (2) law enforcement assistance/other emergency assistance was needed to
4 address abuse, a crime, or an emergency that has occurred.

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

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

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

17 WARNING NOTIFICATION. A written document sent by the Fort Wayne Police Department
18 to any owner, commercial tenant, and/or operator who has received three (3) valid complaints,
19 citations and/or compliance letters/orders under this chapter.

20 21 § 103.03 WARNING NOTIFICATION PROCESS.

22 The Fort Wayne Police Department shall issue a warning notification to the owner, commercial
23 tenant, and/or operator advising said person(s) to contact the compliance officer to begin the
24 process of working with the Fort Wayne Police Department to abate nuisances and avoid
25 designation as a commercial chronic problem property. Such warning notification shall be sent
26 within seven (7) calendar days after the third (3rd) valid complaint, citation and/or compliance
27 letter/order is issued against the commercial business property. The warning notification shall be
28 delivered by one of the following methods: (1) leaving a copy of the warning notification at the
29 commercial business property address, followed by sending a copy through first class United
30 States mail; or (2) sending the warning notification by certified mail, return receipt requested. In
31 the case of a rental property, a copy of the warning notification shall also be delivered to the
32 owner by personal service, electronically, or by first class United States mail if such notice was
33 not already provided to the owner as outlined above.

34 35 § 103.04 REVIEW FOR DESIGNATION OF COMMERCIAL CHRONIC PROBLEM 36 PROPERTY; DESIGNATION OF COMMERCIAL CHRONIC PROBLEM PROPERTY.

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

1 (1) The number of police documented calls for service, valid complaints and citations issued
2 by the Fort Wayne Police Department in the applicable 60 day period; and

3 (2) The number of citations and/or compliance letters/orders issued by the Fort Wayne Fire
4 Department, Fort Wayne-Allen County Department of Health, Neighborhood Code Compliance,
5 Animal Care and Control and/or the City of Fort Wayne Law Department to a commercial
6 business property in the applicable 60 day period; and

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

8 (B) If the Compliance Officer determines that the commercial business property has been the
9 subject of 5 or more valid complaints, citations, and/or compliance orders/letters within the
10 applicable 60 day period, the Compliance Officer shall designate the commercial business
11 property as a commercial chronic problem property.

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

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

21 (2) The number of valid complaints, citations, and compliance letters/orders pertaining to
22 said commercial business property in the applicable 60 day period;

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

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

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

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

32 (D) Copies of the written designation shall be simultaneously sent electronically to the Fort
33 Wayne Fire Department, Fort Wayne-Allen County Department of Health, Neighborhood Code
34 Compliance, Animal Care and Control, City of Fort Wayne Law Department, Office of the City
35 Clerk, the Common Council Member who represents the district where the subject commercial
36 business property is located, and the Common Council Office. In the case of a rental property, a
37 copy of the written designation shall also be sent to the owner, if the owner was not the primary
38 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 and 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 365 continuous days, unless credited per the regulations set forth in § 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.

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

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

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

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

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

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

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

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

(C) In the event that the owner, commercial tenant, and/or operator complies with the remediation agreement in its entirety, then for every 30 calendar days that the commercial chronic problem property has no new valid complaints, citations and/or compliance letters/orders

1 issued against it, 15 calendar days shall be subtracted from the time said property is scheduled to
2 be designated as a commercial chronic problem property; this process shall continue through the
3 duration of the remediation agreement. The Fort Wayne Police Department shall be responsible
4 for maintaining accurate records and sending monthly updates to the individuals listed in
5 division (B) of this section and to allow such records to be available to stakeholders in the
6 community.

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

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

19 20 § 103.06 LIMITED APPEALS OF COMMERCIAL CHRONIC PROBLEM PROPERTY 21 DESIGNATION.

22 An administrative hearing officer designated by Neighborhood Code Compliance is authorized
23 to hear limited appeals from owners, commercial tenants, and/or operators of commercial
24 business properties that have been designated as a commercial chronic problem property. The
25 appeal shall be filed within 15 calendar days of designation and be limited to the verification of
26 whether said property has reached the requisite number of valid complaints, citations, and/or
27 compliance letters/ orders set forth in § 103.04. A hearing before the hearing officer for such
28 limited appeals must be held within 30 calendar days of the appeals being filed. Written notice of
29 the date, time and location shall be sent certified mail to said person of record. The decision of
30 the hearing officer shall be the final administrative action for purpose of judicial review.

31 32 § 103.07 INTIMIDATION AND RETALIATION PROHIBITED.

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

1 § 103.08 DISCRIMINATION PROHIBITED.

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

6 § 103.09 SUNSET PROVISION.

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

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

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

14 (1) Citations: after a property has been designated as a commercial chronic problem
15 property, any subsequent violations (i.e. valid complaints, citations, and/or compliance
16 letters/orders) shall result in a fine of \$250 per citation in addition to any other penalty imposed
17 by ordinance and shall be payable through the City of Fort Wayne Violations Bureau.

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

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

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

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28 _____
Russell Jehl, Council Member

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30 APPROVED AS TO FORM AND LEGALITY

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32 _____
33 Joseph G. Bonahoom, Council Attorney