

ORDINANCE NO. 5185 - DRAFT

An Ordinance of the Common Council of the City of Goshen to
Establish a Process to Address Chronic Disorderly Properties

WHEREAS, the Common Council of the City of Goshen has a substantial and compelling interest in protecting the health, safety, property, and welfare of its citizens and the neighborhoods affected by chronic unlawful or nuisance activity;

WHEREAS, Chronic unlawful or nuisance activity of various kinds within the City adversely affects the health, safety, and welfare of citizens and diminishes the quality of life in neighborhoods where this chronic activity occurs. Chronic unlawful or nuisance activity constitutes a public nuisance and is subject to abatement;

WHEREAS, existing City ordinances and enforcement processes do not adequately control chronic unlawful or nuisance activity, or its detrimental effects on citizens and neighborhoods where such activity occurs;

WHEREAS, time and resources of the Police Department and other City officials responsible for code enforcement are disproportionately allocated towards chronic unlawful and/or nuisance activity;

WHEREAS, establishing a regulatory framework contained herein will help alleviate the problems created by chronic unlawful or nuisance activity through early intervention by the Police Department and/or other City officials responsible for code enforcement;

WHEREAS, nothing in this ordinance shall limit any other civil and/or criminal action against the Property owner and/or Occupant;

WHEREAS, the City is aware of the potential punitive impact this Ordinance could have on victims of criminal activities and individuals suffering from physical and mental impairments.

NOW, THEREFORE, BE IT ORDAINED by the City of Goshen Common Council that:

1. Title.

1.1. Ordinance No. _____ shall be known as the “Disorderly Property Ordinance.”

2. Definitions.

2.1. “Disorderly Property” shall mean a building, dwelling, establishment, premises, or place (collectively “Property”) where Prohibited Conduct occurs. It includes the outside area contiguous to and surrounding the Property such as a yard, parking lot or lot under the same ownership. If the Property has multiple dwelling units or residences, or is a hotel or motel, this definition applies to all dwelling units, rooms or suites of rooms in which

DRAFT

Prohibited Conduct occurs. If the Property is part of a larger apartment complex, this definition applies collectively to all buildings connected to the apartment complex in which Prohibited Conduct occurs. This definition specifically includes both owner and nonowner occupied Properties.

- 2.2. "Occupant" shall mean any person(s) residing at or having actual possession of any Property.
- 2.3. "Ordinance Citation" shall mean any citation issued by a City of Goshen Code Enforcement Officer or other official charged with enforcement of city ordinances.
- 2.4. "Owner" shall mean the Owner of record of the Property, as identified by the records of the Elkhart County Auditor's Office.
- 2.5. "Prohibited Conduct" shall mean activities occurring in violation of the statutes or ordinances relating to any of the following:
 - 2.5.1. Gambling, as defined in I.C. § 35-45-5-1;
 - 2.5.2. Battery, as defined in I.C. § 35-42-2-1;
 - 2.5.3. Contributing to the delinquency of a minor, as defined in I.C. § 35-46-1-8;
 - 2.5.4. Resisting law enforcement, as defined in I.C. § 35-44.1-3-1;
 - 2.5.5. Disorderly conduct, as defined in I.C. § 35-45-1-3;
 - 2.5.6. Criminal recklessness, as defined in I.C. § 35-42-2-2;
 - 2.5.7. Harassment as defined in I.C. § 35-42-2-2;
 - 2.5.8. Violations of any of the following Indiana statutes governing:
 - 2.5.8.1. Prostitution in violation of I.C. § 35-45-4-2;
 - 2.5.8.2. Making an unlawful proposition in violation of I.C. § 35-43-4-3; or
 - 2.5.8.3. Promoting prostitution or juvenile prostitution in violation of I.C. § 35-45-4-4;
 - 2.5.9. Violations of any of the following Indiana statutes governing:
 - 2.5.9.1. Criminal gang activity in violation of I.C. § 35-45-9-3;
 - 2.5.9.2. Criminal gang intimidation in violation of I.C. § 35-45-9-4; or
 - 2.5.9.3. Criminal gang recruitment in violation of I.C. § 35-45-9-5;
 - 2.5.10. Violations of the following Indiana statutes governing:
 - 2.5.10.1. Dealing in cocaine or a narcotic drug in violation of I.C. § 35-48-4-1;
 - 2.5.10.2. Dealing in methamphetamine in violation of I.C. § 35-48-4-1.1 and/or manufacturing methamphetamine in violation of I.C. § 35-48-4-1.2;
 - 2.5.10.3. Dealing in a schedule I, II, or III controlled substance or controlled substance analog in violation of I.C. § 35-48-4-2;
 - 2.5.10.4. Dealing in a schedule IV controlled substance or controlled substance analog in violation of I.C. § 35-48-4-3;
 - 2.5.10.5. Dealing in a schedule V controlled substance or controlled substance analog in violation of I.C. § 35-48-4-4'
 - 2.5.10.6. Dealing in marijuana, hash oil, hashish, salvia, a synthetic drug, as defined by I.C. § 35-31.5-2-321 or I.C. § 25-26-13-4.1, as those statutes are from time to time amended, or a controlled substance analog, as defined in I.C. § 35-48-

DRAFT

- 1-9.3 and/or I.C. § 35-48-4-10. The distribution of law THC hemp extract in full compliance with I.C. § 24-4-21-1 *et seq.* is excluded from this subpart.
- 2.5.10.7. Use of possession of any of the substances described in subsections 2.3.10.1 through and including 2.3.10.6 above, or the sale, use, or possession of any other illicit narcotics or dangerous controlled substances; or
- 2.5.10.8. Dealing in a controlled substance by a practitioner in violation of I.C. § 35-48-4-1.5.
- 2.5.11. Failure to keep vacant property secured against entry, in violation of I.C. § 36-7-9-1 *et seq.* and Goshen City Code § 6.3.1.1(ff);
- 2.5.12. Accumulation of Materials Creating a Fire, Health, or Safety Hazard, as prohibited by Goshen City Code § 6.10.1.1 *et seq.*;
- 2.5.13. Graffiti, as prohibited by Goshen City Code § 6.11.1.1 *et seq.*;
- 2.5.14. Excessive Noise and Sound, as prohibited by Goshen City Code § 3.3.1.1 *et seq.*;
- 2.5.15. Discharge of firearms, as prohibited by Goshen City Code § 3.5.1.1;
- 2.5.16. Use, discharge, or ignition of fireworks, as prohibited by Goshen City Code § 3.6.1.1
- 2.6. “Verified Complaint” shall mean a law enforcement documented call for service that an incident took place at a specific property address requiring sworn law enforcement personnel to be dispatched or caused to respond. The term does not include incidents involving an occupant of the premises who is the victim of the crime, or any ambulance or medical service response.
3. Public Nuisance.
- 3.1. For Property with less than four (4) separate residential units, whenever Prohibited Conduct, as documented by Verified Complaint or Ordinance Citation, occurs in or upon the Property on three (3) or more separate occasions during a sixty (60) day period, the City deems the Property to be a Disorderly Property and a public nuisance.
- 3.2. For a Property between four (4) and twenty (20) separate residential units, whenever Prohibited Conduct, as documented by Verified Complaint or Ordinance Citation, occurs in or upon the Property on four (4) or more separate occasions during a thirty (30) day period, the City deems the Property to be a Disorderly Property and a public nuisance.
- 3.3. For Property with twenty (20) or more separate residential units, whenever Prohibited Conduct, as documented by Verified Complaint or Ordinance Citation, occurs in or upon the Property on six (6) or more separate occasions during a thirty (30) day period, the City deems the Property to be a Disorderly Property and a public nuisance.
- 3.4. For Property used for commercial or industrial purposes, whether or not such property is zoned commercial or industrial pursuant to the Goshen City Zoning Ordinance, whenever Prohibited Conduct, as documented by Verified Complaint or Ordinance Citation, occurs in or upon the Property on six (6) or more separate occasions during a thirty (30) day period, the City deems the Property to be a Disorderly Property and a public nuisance.

DRAFT

4. Penalty, Injunctive Relief.

- 4.1. Whenever Prohibited Conduct constituting a public nuisance occurs at a property as specified in Section 3, the matter shall be referred to the City Attorney. If the City Attorney, after review, determines that sufficient and proper cause exists to deem the property a Disorderly Property and a public nuisance, and that enforcement will not be unduly punitive on victims of criminal activities or individuals suffering from physical and mental impairments, the City may file an action in any court of general jurisdiction against the Owner and/or occupants to enjoin the nuisance and to recover a fine. In the case of a rental property, apartment or multi-unit rental dwelling, enjoinder of the nuisance may include the suspension of all future rental activities, including revocation of a rental registration receipt under Goshen City Code.
- 4.2. The fine shall be Two Thousand Five Hundred Dollars (\$2,500.00) for the first violation (the applicable number of incidents of Prohibited Conduct within the period identified in Section 3.1, 3.2, or 3.3). For a second and each subsequent succeeding separate violation (the applicable number of incidents of Prohibited Conduct within the period identified in Section 3.1, 3.2, or 3.3 at the same Property subsequent to the date of the incident of Prohibited Conduct establishing a first violation), a fine of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be assessed to Owner and/or occupants.

5. Cooperation with Owner/Items Excluded from Definition of “Prohibited Conduct”.

- 5.1. An Owner of Property identified as a Disorderly Property is encouraged to communicate and cooperate with the Goshen Police Department and other City officials responsible for code enforcement.
- 5.2. It is not the intent of this Ordinance to discourage anyone from requesting police assistance – especially the victim of domestic violation and/or child abuse or neglect. Indiana Code § 35-31.5-2-78 (crime of domestic violation), Indiana Code § 31-33-1-1 (reporting of suspected or known incidents of child abuse or neglect), Indiana Code § 35-46-1-4 (neglect of a dependent), and other related statutes are specifically excluded from Section 2.3. In addition, ambulance calls, welfare checks, routine traffic stops, and motor vehicle accidents are also specifically excluded from Section 2.3.
- 5.3. It is also not the intent of this Ordinance to resolve disagreements or disputes between neighbors. Rather, it is to alleviate the impact on City resources created by chronic unlawful or nuisance activity and minimize the detrimental effects on citizens and neighborhoods through early intervention.

6. Miscellaneous.

- 6.1. Nothing in this Ordinance shall limit the City’s ability to otherwise declare any particular action or activity a public nuisance and/or pursue any other remedy allowed by law.

DRAFT

- 6.2. Any ordinance or provision of any ordinance of the City of Goshen, Indiana in conflict with the provisions of this Ordinance is hereby repealed.
- 6.3. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance that can be given effect without such invalid part or parts.
- 6.4. This Ordinance shall be in full force and effect from and after its passage, approval, and adoption according to the laws of the State of Indiana.

PASSED by the Goshen Common Council on _____, 2024.

Presiding Officer

ATTEST:

Richard R. Aguirre, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2024 at the hour of _____:_____ .m.

Richard R. Aguirre, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2024.

Gina M. Leichty, Mayor