

ORDINANCE No. 2016-OR- 07

AN ORDINANCE PROHIBITING PUBLIC NUISANCES

WHEREAS, the City of Charlestown, Indiana (hereinafter the "City") is a third class city organized under the laws of the state of Indiana; and,

WHEREAS, pursuant to Indiana's *Home Rule* Statute, Indiana Code §36-1-3-8, the City has the ability and authority to adopt legislation that protects and/or promotes the health, welfare and interests of the City and its residents; and,

WHEREAS, IC §36-8-2-4 authorizes local governments to enact legislation that regulates conduct, or use or possession of property, that might endanger the public health, safety, or welfare; and

WHEREAS, there are certain behaviors which, when they occur within the City, degrade the quality of life within the City, by diminishing peace, public health, safety, welfare, and well-being. Such behaviors are undesirable and should be discouraged; and,

WHEREAS, the City of Charlestown Council desires to enact an Ordinance to be more effective in responding to and eliminating repeated behavior that is contrary to the health, safety, welfare or interests of the City, and are undesirable.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF CHARLESTOWN, INDIANA AS FOLLOWS:

Section 1 - Definitions

Board. Means the City of Charlestown, Indiana, *Board of Public Works and Safety*.

City. Means the City of Charlestown, Indiana.

Contraband. Means any substance or item that is illegal for a person to possess, under the circumstances, including but not limited to controlled substances, illegal drugs, or legal drugs possessed in an illegal manner.

Council. Means the Common Council of the City of Charlestown, Indiana.

City Official. Means any person representing the City in an employment or appointive capacity, that has any legal authority to investigate, inspect, record, install utilities, disconnect utilities, order the disconnection of utilities, or who has arrest powers, or that person's designee.

Enforcement Officer. Means any City official or his appointee, whose responsibility it is to

conduct inspections or report Nuisance Behavior deemed illegal by this Ordinance, or who has been assigned the responsibility to levy fines or other enforcement action by a City Official.

Habitually. Means a frequency of an action that occurs at least three (3) times within any twelve (12) month period.

Notice. Means a written advisement that a condition or event has occurred, may have occurred, will occur, or could occur. Notices described herein are deemed delivered as follows:

Notice to Owners. *Notice* is deemed given to the Owner of any Premises when provided by any one of the following means:

- A. When personally delivered to any Owner or the Owner's legal representative;
- B. If the Owner is a corporation, LLC, partnership or other legal entity, by delivery or mailing a written notice by Certified US Post, to any representative or agent authorized to receive service of process on behalf of the Owner or entity;
- C. By mailing a written notice by Certified US Post, to the Owner's tax mailing address for the Premises in question on file at the office of the Auditor of Clark County, Indiana;
- D. By mailing a written notice by Certified US Post, to the Owner's address provided to the City in writing by the Owner; or
- E. If no address for mailing (as described above) is readily apparent, or for other good cause, then notice is provided by posting a written Notice in a conspicuous location on the exterior of the Premises in question owned by the Owner.

Notice to Occupants. Notice is deemed given to the Occupant of any Premises when provided by any of the following means:

- A. When personally delivered to any adult occupant of the Premises;
- B. By mailing a written Notice by Certified US Post, addressed to "*Occupant*" to the street or mailing address of the Premises; or
- C. By posting a *Notice* in a conspicuous location on the exterior of the Premises after unsuccessfully attempting to deliver a notice personally.

Notice to Others. Notice is deemed given to Persons other than Owners or Occupants by any of the following means:

- A. When personally delivered to the Person or to the Person's legal representative;
- B. If the Person is a corporation, LLC, partnership or other legal entity, by delivery or mailing a written notice by Certified US Post, to any representative or agent authorized to receive service of process on behalf of the Owner or entity;
- C. By mailing a written Notice by Certified US Post, addressed to the business address, residential mailing address, or other address provided by the Person to a City Official of Enforcement Officer; or
- D. By legal publication at least two (2) times in the *News and Tribune*, at least thirty (30) days apart, after unsuccessfully attempting to deliver a notice another way.

Nuisance Behavior. Means the following circumstances or behavior, when it occurs at Premises within the municipal limits of the City:

- A. Disturbances of the peace occur to the extent that the police department or another City Official is dispatched to the Premises at the request of Owners, Occupants, or others;
- B. Criminal activity takes place at the Premises, whether or not a disturbance of the peace occurs, and whether or not police or other City Officials are dispatched;
- C. Premises are not maintained in accordance with the requirements of the City's *Property Maintenance Code* (City Ordinance No. 2008-OR-1), with each separate violation of that ordinance being a different instance of Nuisance Behavior.
- D. A violation of any other City Ordinance takes place at the Premises, with each separate violation of an ordinance being a different instance of Nuisance Behavior.
- E. Dogs or cats that habitually run at large are owned, housed, harbored or fed at the Premises.
- F. Dogs routinely barking in violation of City Ordinances are owned, housed, harbored or fed at the Premises.
- G. Contraband is manufactured, possessed, stored, found, sold, or purchased at the Premises.
- H. City Owned Utility services are received and/or consumed at the Premises, but are not paid for in a timely manner.
- I. Utility services to the Premises that have been discontinued by a utility provider are re-connected without the knowledge or authorization of the utility provider.

Occupant. Means a person that lives in, occupies, is routine found at, or has quarters or space in or at any Premises within the City.

Owner. Means a Person having legal or equitable title to Premises within the City.

Person. Means an individual, tenants by the entirety, a corporation, partnership, trustee, lessee, agent or assignee or any other legal entity, or any other group acting as a legal entity.

Premises. Means any building, structure, parking lot, parcel of land, common area, driveway, open space or any portion thereof, or the ground itself.

Public Nuisance. Means Premises within the City where Nuisance Behavior habitually occurs. Each time a separate incidence of Nuisance Behavior subsequently occurs on the Premises in a twelve (12) month period after the Premises are initially deemed a Public Nuisance is considered a separate Public Nuisance and can be punished as set out herein.

Examples:

- A. If Nuisance Behavior occurs on a Premises on January 1, 2016, then again on April 1, 2016, then for a third (3rd) time on December 31, 2016, the Premises can be deemed a Public Nuisance. Fines can be imposed and other authorized enforcement action set out herein can be undertaken.
- B. If Nuisance Behavior occurs on a Premises on January 1, 2016, then again on April 1, 2016, and a third (3rd) incidence of Nuisance Behavior occurs on December 31, 2016 (with the Person that

is the Owner and/or Occupant of the Premises being fined and/or other enforcement action taken), then afterwards, a fourth (4th) incidence of Nuisance Behavior occurs on March 31, 2017, the Premises can be deemed a Public Nuisance a second (2nd) time, in which case additional fines and enforcement action can be imposed.

- C. If Nuisance Behavior occurs on a Premises on January 1, 2016, then again on April 1, 2016, a third (3rd) incidence of Nuisance Behavior occurs on December 31, 2016 (with the Person that is the Owner and/or Occupant of the Premises being fined and/or other enforcement action taken), then afterwards a fourth (4th) incidence of Nuisance Behavior occurs on April 2, 2017, the Premises will not be deemed a Public Nuisance again, unless a fifth (5th) incidence of Nuisance Behavior occurs by December 31, 2017.

Section 2 - Maintaining A Public Nuisance, Defenses, Notices

2.1. Offense. No Person shall allow any Premises within the City to become, or remain, a Public Nuisance. A Person that is the Owner or Occupant of Premises where Nuisance Behavior habitually occurs is deemed to have engaged in *Maintaining a Public Nuisance*, which is punishable by fines and/or other remedies set out herein.

2.2. Abatement. All Nuisance Behavior at the Premises must be abated within thirty (30) calendar days of the provision of the initial Notice that the Premises is a Public Nuisance.

2.3. Defenses. The following may be defenses to the charge of *Maintaining a Public Nuisance*:

- A. It shall be a defense to the allegation that a Person has *Maintained a Public Nuisance* if the Owner or Occupant of the Premises can prove that when a call for police assistance was made and police were dispatched to the Premises, that a criminal offense was committed but that all of the Occupants of the Premises were acting lawfully.
- B. It shall be a defense to the allegation that a Person has *Maintained a Public Nuisance* if the Owner or Occupant of the Premises can prove that when a call for police assistance was made and police were dispatched to the Premises, that the particular Occupant of the Premises was acting lawfully and is the victim of a criminal offense.
- C. It may be a defense to the Owner of Premises if within fifteen (15) calendar days after Nuisance Behavior that is a violation of this section occurs, the Owner has instituted an eviction proceeding against the offending Occupants of the subject Premises, and the Owner completes the eviction process of those Occupants within seventy-five (75) calendar days of commencement.
- D. It may be a defense to an Occupant (but not Owner) if, in the case of multi-unit dwellings, apartment buildings or mixed use buildings, there is clear and convincing evidence that the only parties participating in the Nuisance Behavior were not Occupants of the Premises where the Nuisance Behavior actually occurred. However, this defense shall not apply if dwellings are different structures.
- E. It may be a defense to an Owner of Premises if reasonable steps were immediately taken to abate all Nuisance Behavior, including but not limited to removing the offending Occupant, notifying police of violation(s) of criminal laws, and/or securing vacant property.
- F. No Person shall be deemed to have maintained a Public Nuisance unless at least one (1) incident of Nuisance Behavior occurs after this Ordinance takes effect.

2.4. Notice. Whenever a City Official or Enforcement Officer becomes aware of information that causes the City Official or Enforcement Officer to reasonably believe that a Public Nuisance exists on any Premises in the City, the Owner or Occupant of that property should be notified at the first convenience, with a request that all Nuisance Behavior be immediately abated. However, failure of a City Official or Enforcement Officer to provide such a Notice shall not be a defense against a finding that Nuisance Behavior has occurred or is occurring, or that a Public Nuisance exists.

2.5. Removal of Notices. It is a violation of this Ordinance to destroy, remove or deface any order or Notice relating to a Public Nuisance that is posted by a City Official or Enforcement Officer prior to the time the activity, event, or hearing described on the Notice has occurred.

Section 3 - Penalties and Remedies

3.1. Fines. Each Person guilty of violating this Ordinance, including but not limited to *Maintaining a Public Nuisance*, shall be fined in an amount of not less than one hundred and fifty dollars (\$150.00) and not more than twenty-five hundred dollars (\$2,500.00). The amount of fines imposed shall be at the discretion of the City's Enforcement Officer. A determination that a Person has violated this Ordinance may be appealed as provided in §4 below.

3.2. Notice of Determination. Upon a determination made by the City's Enforcement Officer that Premises located within the City is a Public Nuisance, a Notice of that determination may be provided to the Owner and/or Occupant of the Premises. The Owner and/or Occupant shall have ten (10) business days from being provided with such a Notice to initiate an appeal of that determination to the City's *Board Of Public Works And Safety* (the "Board").

3.3. Close and Vacate Order. Should no appeal be initiated as set out in §4 below, and if all of the conditions which have caused Premises deemed to be a Public Nuisance have not be fully abated within thirty (30) calendar days of service of the initial Notice that the Premises has been deemed Public Nuisance, a City Official shall be authorized to issue an *Close and Vacate* order revoking any *Certificate Of Occupancy* for the Premises, thereby deeming the Premises unfit for habitation, and further ordering discontinuation of utility services to the Premises. In such a case the cost of utility service disconnection/reconnection shall be borne by the Owner and/or Occupant of the Premises, and not the City. These actions shall be for such period as the Enforcement Officer reasonably directs, but in no event shall the action be in effect for a period of more than one (1) year from the original date a *Close and Vacate* order goes into effect, unless further Nuisance Behavior continues.

3.4. Rescinding Close and Vacate Orders. A *Close and Vacate* order issued by the Enforcement Officer pursuant to this Ordinance is not an act of possession, ownership or control by City of Charlestown. A *Close and Vacate* order of the Enforcement Officer should be rescinded within ten (10) business days, or as soon thereafter as practical, after reliable proof is provided to the Enforcement Officer showing complete abatement of all of the Nuisance Behavior at the Premises has been accomplished, unless such Premises is the site of further Nuisance Behavior.

Section 4 - Appeals

4.1. Parties Who may Appeal. Any party aggrieved by any action taken by a City Official or

Enforcement Officer under this Ordinance may appeal that action by delivering a written *Notice of an Appeal* within ten (10) business days of the time that the Person is provided with Notice of the action by a City Official or Enforcement Officer. The *Notice of an Appeal* shall be delivered to the City Clerk/Treasurer at **304 Main Cross, Charlestown, Indiana 47111** during regular business hours, whereupon the Board shall set a hearing to consider evidence presented by the aggrieved party. Decisions of the Board may be appealed to the Clark Circuit Court within thirty (30) calendar days of Notice of a decision being provided by the Board to the aggrieved party.

4.2. Contents of Notice of Appeal. The *Notice of an Appeal* provided for in §4.1 must be in writing and shall be written in type or legible printing, stating, at a minimum, the following:

- A. The name of the aggrieved party;
- B. The relationship of the aggrieved party to Premises deemed a Public Nuisance (e.g. Owner, Occupant, mortgagee, etc...);
- C. The mailing address of the aggrieved party;
- D. The specific action or inaction of the City Official or Enforcement Officer from which an appeal is being taken;
- E. The date(s) that the action or inaction of the City Official or Enforcement Officer described above occurred;
- F. The location of the Premises deemed a Public Nuisance;
- G. The date(s) that any Notices were provided to the aggrieved party by a City Official or Enforcement Officer;
- H. Each reason the aggrieved party disagrees with the determination of the City Official or Enforcement Officer; and,
- I. The name and address of all persons the aggrieved party is aware of that have information or personal knowledge to support the aggrieved party's appeal.

4.2. Appeal Hearing. An appeal of any action taken by the Enforcement Officer or City Official taken under this Ordinance should be heard by the *Board* within thirty (30) calendar days after the filing of the Notice of an aggrieved party's intent to appeal such action(s), or as soon thereafter as practical under the circumstances. The issues on appeal are limited to:

- A. Whether the aggrieved party is the Owner or Occupant of Premises deemed to be a Public Nuisance;
- B. Whether there was a preponderance of evidence that Nuisance Behavior habitually took place on Premises within the City;
- C. Whether or not Notice was served or provided to the Owner and/or Occupant of the Premises that was deemed Public Nuisance;
- D. Whether the Owner and Occupant of the Premises abated all of the Nuisance Behavior at the Premises;
- E. Whether fines or other enforcement action that were imposed were reasonable under the circumstances;
- F. Whether a preponderance of evidence exists to justify a *Close and Vacate* order and/or order requiring disconnection from utility services to the Premises deemed a Public Nuisance; and,
- G. Such other issues as may be necessary to conduct a just appeal.

4.3. Appeal of Board Action. Any person aggrieved by a determination of the *Board* concerning any appeal made to the Board may appeal the Board's final decision to the Clark Circuit Court in Jeffersonville, Indiana. Such appeals are to determine if the Board's record contained sufficient evidence to support the Board's determinations and are not in the nature of a *trial de novo*.

Section 5 - Miscellaneous

5.1. Severability. Each section of this Ordinance is deemed to have been adopted separately. If any part of this Ordinance, including the application of such part or provision to other persons or circumstances, shall be deemed illegal, and if the remainder will not be affected thereby, it shall continue in full force and effect. The Common Council of the City of Charlestown hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

5.2. Effective Date. This Ordinance shall take effect and be in force on and after June 1, 2016.

ALL OF WHICH IS ORDAINED on the 15th day of February, 2016.

	Voted In Favor	Voted Against	Abstained	Absent
<u>Eric Vaughn</u> Eric Vaughn	✓	_____	_____	_____
<u>Tina Barnes</u> Tina Barnes	_____	✓	_____	_____
<u>Ted Little</u> Ted Little	✓	_____	_____	_____
<u>Ben Ledbetter</u> Ben Ledbetter	✓	_____	_____	_____
<u>Brian Hester</u> Brian Hester	✓	_____	_____	_____

Presented to Mayor G. Robert Hall on the 15th day of February 2016.

Donna S. Coomer
Donna Coomer, City Clerk/Treasurer

SEEN AND APPROVED BY ME THIS ON THE 15th DAY OF February, 2016.

G. Robert Hall
Mayor G. Robert Hall

ATTEST:

2-15-14
Date

Donna Coomer
Donna Coomer, City Clerk/Treasurer