

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 23 “OFFENSES AND MISCELLANEOUS PROVISIONS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO ADD ARTICLE II “HABITUAL NUISANCE COMMERCIAL PROPERTIES”; TO ESTABLISH REGULATIONS RELATED TO THE ABATEMENT OF HABITUAL NUISANCES ON COMMERCIAL PROPERTIES; ADDING ARTICLE I “IN GENERAL” AND PLACING SECTIONS 23-1 THROUGH 23-99 OF THE CITY CODE IN ARTICLE I; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Fort Worth, Texas (“City Council”) finds that there are commercial properties within the City where certain criminal activity is prevalent, and it is in the interest of public health, safety, and welfare of the people of the City of Fort Worth for the City to regulate those properties to reduce criminal activity; and

WHEREAS, the City Council finds that there are commercial properties in the City where certain City Code violations are prevalent, which results in a nuisance to neighboring properties, the immediate community, and the entire City, and it is in the interest of public health, safety, and welfare of the people of the City of Fort Worth that the City regulate those properties to reduce the occurrence and secondary effects of City Code violations; and

WHEREAS, the City Council finds that requiring signage, such as placards indicating that a property is the site of criminal activity or City Code violations, will provide notice to the public, provide the City with an essential tool for the effective delivery of public safety services to the City’s residents and visitors, and protect the public health, safety, and welfare; and

WHEREAS, the City Council finds that to reduce and eliminate certain criminal activity and City Code violations, the City needs the cooperation of owners of commercial properties where persons habitually engage in certain criminal activity or where City Code violations exist by requiring the property owners to take affirmative steps to improve the properties; and

WHEREAS, crime prevention through environmental design (“CPTED”) is a proven multi-disciplinary approach to reducing criminal activity that property owners can use to reduce criminal activity on their properties; and

WHEREAS, the City Council seeks to protect the health, safety, and welfare of the citizens and visitors of Fort Worth by establishing a habitual nuisance commercial property ordinance; and

WHEREAS, The City Council finds this Ordinance to be reasonable and necessary; and

WHEREAS, Pursuant to the City’s police power, home-rule authority, and as authorized by state law, the following regulations are hereby adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

Chapter 23, “Offenses and Miscellaneous Provisions,” of the Code of the City of Fort Worth (2015), as amended, is hereby amended to add Article I, “In General” and to place Sections 23-1 through 23-99 of the City Code in Article I.

SECTION 2.

Chapter 23, “Offenses and Miscellaneous Provisions,” of the Code of the City of Fort Worth (2015), as amended, is hereby amended to add Article II, “Habitual Nuisance Commercial Properties” to be and read as follows:

ARTICLE II: HABITUAL NUISANCE COMMERCIAL PROPERTIES

Sec. 23-100 Purpose

- (a) The purpose of this Article is to protect the health, safety, and welfare of the people of the City of Fort Worth by obtaining a Commercial Property Owner's compliance with minimum property standards and conditions, which compliance is likely to reduce certain Code Violations and Criminal Activity on property where those Code Violations or that Criminal Activity is so prevalent as to render the property a Habitual Nuisance Property.
- (b) This Article does not create a private cause of action or expand existing tort liability against a Commercial Property Owner. This article is not a prerequisite to any suit and does not in any way impair the City's ability to file a lawsuit pursuant to Chapter 125 of the Texas Civil Practice and Remedies Code or Chapter 54, Subchapter B of the Texas Local Government Code, as amended, or under any other law. Filing a lawsuit against a Commercial Property Owner shall not be a bar against taking any action against the Owner pursuant to this Article.

Sec. 23-101 Definitions

The following terms, when used in this Article, shall have the meanings ascribed to them by this section:

CHIEF OF POLICE or **CHIEF**. The Chief of the Police Department of the City or the Chief's designee.

CODE VIOLATIONS. Any violations of the following provisions of the Fort Worth City Code:

- (a) Chapter 7 “Buildings,” Article IV “Minimum Building Standards Code,” Division 3 “Minimum Standards for Buildings and Structures”
- (b) Chapter 7 “Buildings,” Article IV “Minimum Building Standards Code,” Division 5 “Criminal Enforcement,” Section 7-121 “Maintaining a Building or Structure in Violation of This Article” and Section 7-122 “Failure To Secure a Vacant Building or Structure”
- (c) Chapter 12.5 “Environmental Protection and Compliance,” Article VIII “Solid Waste and Recycling,” Division 3 “Commercial Services,” Section 12.5-831 “Commercial Waste Containers”
- (d) Chapter 23 “Offenses and Miscellaneous Provisions,” Section 23-8, “Noise”
- (e) Appendix A “Zoning Regulations,” Chapter 4, “District Regulations,” Article 8 “Nonresidential District Use Table”
- (f) Appendix A “Zoning Regulations,” Chapter 4 “District Regulations,” Article 12 “Form-Based District Use Table”
- (g) Appendix A “Zoning Regulations,” Chapter 5, “Supplemental Use Standards,” Article 1 “Standards for Selected Uses”
- (h) Appendix A “Zoning Regulations,” Chapter 5 “Supplemental Use Standards,” Article 2 “Sexually Oriented Businesses”
- (i) Appendix A “Zoning Regulations,” Chapter 6 “Development Standards,” Article 3 “Landscaping, Buffers and Urban Forestry”
- (j) Appendix B “Code Compliance,” Article II “Code Compliance,” Division 2 “High Weeds and Grass,” Section 11A-8 “High Weeds and Grass Prohibited”
- (k) Appendix B “Code Compliance,” Article II “Code Compliance,” Division 3 “Nuisances,” Subdivision A “Generally,” Section 11A-24 “Miscellaneous Sanitation Nuisances”
- (l) Appendix B “Code Compliance,” Article II “Code Compliance,” Division 3 “Nuisances,” Subdivision A “Generally,” Section 11A-26 “Storage of Discarded, Used and Broken Items”
- (m) Appendix B “Code Compliance,” Article II “Code Compliance,” Division 3 “Nuisances,” Subdivision A “Generally,” Section 11A-28 “Duty To Maintain Property Free From Litter” and
- (n) Appendix B “Code Compliance,” Article II “Code Compliance,” Division 3 “Nuisances,” Subdivision A “Generally,” Section 11A-29 “Nuisance Vegetation Prohibited”

COMMERCIAL PROPERTY. A place where goods and commodities or services are provided, displayed, exchanged, sold, or bought, including, but not limited to, motels, hotels, and vacant commercial buildings or structures. This definition includes the land surrounding any building or structure affixed to the Commercial Property.

CPTED. Crime prevention through environmental design is a multi-disciplinary approach to reducing criminal behavior through environmental design by integrating the following concepts on property: natural surveillance and natural access control that eliminates hiding places for people to engage in crime unnoticed, including using signs, locks, fences, barriers, or landscapes (e.g., shrubs, trees, etc.) to clearly indicate the difference between public and private access; using a single, clearly identifiable point of entry and ensure adequate lighting and signage; using structures to divert persons to reception areas like walkways, planters, furniture, or signs; eliminating design features that provide access to roofs or upper levels; and utilizing a locking gate between front and backyards.

CRIMINAL ACTIVITY. Those activities and violations listed in Chapter 125, Section 125.0015, of the Texas Civil Practice and Remedies Code, as amended. The term also includes the following violations of the Texas Penal Code: assault as described by Section 22.01, theft as described by Section 31.03, vehicle burglary as described by Section 30.04, and public intoxication as described by Section 49.02.

DIRECTOR. The Director of the Code Compliance Department or the Environmental Services Department, or their authorized designee.

HABITUAL NUISANCE PROPERTY. A Commercial property that is determined to be a habitual nuisance property by the Chief or Director in accordance with Section 23-104 or affirmed by the hearing officer in accordance with Section 23-105.

OWNER. Any person, agent, operator, firm, trust, corporation, partnership, or any other legal entity who has a legal or equitable interest in the Commercial Property; or who currently holds title to the Commercial Property as reflected in the official records of the county; or who otherwise has control of the Commercial Property, including the guardian of the estate of any person holding title to the Commercial Property, and the executor of the estate of a person holding title to the Commercial Property if the executor has been ordered to take possession by a court.

Sec. 23-102 Authority of the Chief of Police and Director

The Chief of Police or Director shall implement and enforce this Article, and may by written order establish such rules, regulations, or procedures, not inconsistent with this Article, as the Chief of Police or Director determines are necessary to discharge any duty or to effectuate the purpose of this Article.

Sec. 23-103 Presumptions

- (a) A Commercial Property is presumed to be a Habitual Nuisance Property if the property is the site of five or more Criminal Activities within a rolling 365-day period, and the Owner knowingly tolerated the Criminal Activities. Proof of the Criminal Activity may be shown by either a report of a law enforcement agency documenting an investigation or an arrest for Criminal Activity on the Commercial Property, or the issuance of a citation for Criminal Activity. A conviction is not required.
- (b) A Commercial Property is presumed to be a Habitual Nuisance Property if the property is the site of five or more citations issued for Code Violations within a rolling 365-day period, and the Owner knowingly tolerated the Code Violations. A conviction is not required.
- (c) A Commercial Property is presumed to be a Habitual Nuisance Property if the property is the site of five or more combined Criminal Activities or citations issued for Code Violations within a rolling 365-day period, and the Owner knowingly tolerated the Criminal Activities and Code Violations. Proof of the Criminal Activity or Code Violations may be shown as provided in this section.
- (d) An Owner of a Habitual Nuisance Property is presumed to have knowingly tolerated the Criminal Activity or Code Violations at the Commercial Property by failing to take effective measures, including those outlined in Section 23-104(b)(1) of this Article, to abate the Criminal Activity or Code Violations.
- (e) The Owner of a Commercial Property that is presumed to be a Habitual Nuisance Property may rebut the presumption at the presumption hearing held in accordance with Section 23-104 of this Article.

Sec. 23-104 Presumption Hearing

- (a) If the Chief of Police or Director determines that the presumptions in Section 23-103 are met, the Chief or Director shall notify the Owner of the property, in writing, of the Chief's or Director's preliminary determination and shall provide the Owner with notice to attend a presumption hearing where the Owner may provide evidence that they are not knowingly tolerating the Criminal Activity or Code Violations. The notice must include a copy of this Article.
- (b) At the presumption hearing:
 - (1) The presumed Owner may present evidence that the person is not the Owner of the Commercial Property or that the Owner has taken effective measures to abate Criminal Activity or Code Violations, including that the Owner:
 - (i) has implemented CPTED principles at the property;
 - (ii) has implemented monitoring and surveillance systems at the property;

- (iii) is in compliance with all regulations governing the Owner's business;
 - (iv) is reporting Criminal Activity to the Police Department and cooperating with the police, as requested; and
 - (v) is demonstrating to the Director that the Owner is taking proactive steps to abate Code Violations on the property; and
- (2) The City Attorney or an assistant city attorney may attend the hearing as the Chief's or Director's legal counsel and the Owner may bring legal counsel.
- (c) The Chief or Director shall make all reasonable efforts to schedule the presumption hearing during a time when the Owner is available.
- (d) After the presumption hearing, the Chief or Director shall provide the Owner with written notice of the Chief's or Director's final determination as to whether the presumptions under Section 23-103 have been met and if the property is a Habitual Nuisance Property. If the Owner does not appear for the presumption hearing, the Chief's or Director's determination is final as of the date of the presumption hearing provided in the notice.

Sec. 23-105 Appeal From Chief or Director's Determination

- (a) The Chief or Director's determinations made in accordance with Sections 23-103 and 23-104 are final unless the Owner files a written notice of appeal to the clerk of the municipal court. The appeal shall be heard by the City's hearing officer. The notice of appeal must be filed not later than 10 calendar days after the date the Owner receives notice of the Chief or Director's final determination. An Owner who does not attend the presumption hearing is not entitled to an appeal under this section. Only the Owner is entitled to an appeal under this Article.
- (b) If a written notice of appeal is filed under subsection (a) with the municipal court within the 10-day limit, the hearing officer shall hear the appeal. The clerk shall set a date for the hearing and notify the Owner.
- (c) The formal rules of evidence do not apply to an appeal hearing under this Section, and the hearing officer shall make a ruling based on a preponderance of the evidence presented at the hearing.
- (d) In deciding the appeal, the hearing officer shall determine whether the presumptions in Section 23-103 were met at the time of the Chief's or Director's determination. The Owner shall have the burden of proof to rebut the existence of the presumptions by providing evidence that the Owner did not knowingly tolerate the Criminal Activity or Code Violations, including any evidence that the Owner took measures provided under Sec. 23-104(b).
- (e) The hearing officer may affirm or reverse the final determination of the Chief or Director. The decision of the hearing officer is final.

Sec. 23-106 Placarding

- (a) For a property that has been finally determined to meet the presumptions in Section 23-103 and found to be a Habitual Nuisance Property, the following applies:
- (1) The Chief or Director may require the Owner to place a placard provided by the City on or near the front door of any structure on the Commercial Property, at any entrance to the structure, and/or in a conspicuous place in a common area of the Commercial Property. The placard must remain on the Commercial Property for the duration of time the property is a Habitual Nuisance Property.
 - (2) The placard must remain visible at all times and state:

"THE CITY OF FORT WORTH HAS DECLARED THIS SITE A HABITUAL NUISANCE PROPERTY. PLEASE CALL 911 TO REPORT SUSPICIOUS CRIMINAL ACTIVITY. FOR CODE ISSUES CALL 311."

- (b) An Owner commits an offense if the Owner:
- (1) fails to keep the placard posted in the location required by the Chief or Director, or for the duration of time required by this section; or
 - (2) without authority from the Chief or Director, modifies, covers, removes, or destroys the placard.

Sec. 23-107 Conditions

- (a) For a property that has been declared a Habitual Nuisance Property the following applies:
- (1) The Chief or Director shall place conditions on the Commercial Property designed to abate the Criminal activity or Code Violations. The Owner of the property is responsible for compliance with any conditions placed on the property. Some conditions the Chief or Director may place on the property may include, but are not limited to, requiring the Owner to:
 1. Maintain a minimum number of security guards at the property, including parking lots, at all times or at certain times of operation.
 2. Patrol property and adjacent areas to monitor loitering, vandalism, excessive noise, crowd control, and illegal acts.
 3. Bring the property up to Minimum Building Standards according to the Fort Worth City Code.
 4. Bring the property into compliance with Appendix A: Zoning Regulations, as provided in this Article.

5. Abate all open Code Violations on the property.
6. Establish and maintain litter control protocols, remove used and discarded items, mow high grass and weeds, and/or secure vacant structures on the property.
7. Post “No Trespassing Signs”.
8. Post a sign designating a point of contact, including name and contact information for the Commercial Property, who is available during normal operating hours, and non-business hours in cases of emergencies.
9. Post “No Parking” signs on vacant Commercial Properties.
10. Implement appropriate CPTED principles.

- (2) An Owner commits an offense if the Owner fails to take the corrective measures imposed by the Chief or Director as set forth in the final determination notice.

Sec. 23-108 Inspections

The Chief or Director may inspect a Habitual Nuisance Property for compliance with the conditions required under Section 23-107 or any other condition or activity the Chief or Director determines, considering the Chief or Director's training and experience, will abate the Criminal Activity or Code Violations at the property.

Sec. 23-109 Fees

For each Commercial Property that has been declared a Habitual Nuisance Property, the Owner of the Commercial Property shall pay a monthly fee of \$750.00 to the City on the first day of each month until the Chief or Director determines that the property is no longer a Habitual Nuisance Property.

Sec. 23-110 Annual Review

One year after a Commercial Property is determined to be a Habitual Nuisance Property pursuant to this Article, the Chief or Director will determine whether the Commercial Property is compliant with this Article and any conditions placed on the Commercial Property by the Chief or Director. A Commercial Property will cease to be a Habitual Nuisance Property if the Owner has complied with Sections 23-106, 23-107, and 23-109, and the Commercial Property has not been the site of three or more additional Criminal Activities or citations issued for Code Violations during the previous year. Notwithstanding the foregoing, the Chief or Director may, at any time based on good cause, determine that the Commercial Property is no longer a Habitual Nuisance Property.

Sec. 23-111 Revocation of Certificate of Occupancy; Notice; Hearing, Appeal

- (a) If the Chief or Director determines that the Owner has failed to comply with the conditions placed on the Commercial Property in accordance with Sections 23-106 and 23-107, or failed to pay the fee required by Section 23-109, the City may proceed with revocation of the certificate of occupancy for the business as provided by this Section.
- (b) If a property that has been declared a Habitual Nuisance Property is the site of three or more additional Criminal Activities or citations issued for Code Violations during the time it is declared a Habitual Nuisance Property, the City may proceed with revocation of the certificate of occupancy as provided by this Section.
- (c) The Chief or Director shall notify the Owner of the Commercial property in writing of the Chief's or Director's determination that the certificate of occupancy should be revoked and the reason for the revocation. The Chief or Director shall provide the Owner with notice to attend a hearing where the Chief or Director will make a final determination on the revocation of the certificate of occupancy. The notice must include a copy of this Article.
- (d) The Chief or Director shall make all reasonable efforts to schedule the revocation hearing during a time when the Owner is available.
- (e) At the revocation hearing:
 - (1) The Owner may present evidence that the property has not been the site of three or more additional Criminal Activities or citations issued for Code Violations within the time period the property has been declared a Habitual Nuisance Property; and
 - (2) The Owner may present evidence that the Owner complied with the conditions in Sections 23-106, 23-107 or 23-109.
- (f) Not later than 30 days after the date of the revocation hearing, the Chief or Director shall provide the Owner with notice of the Chief or Director's determination as to the revocation of the certificate of occupancy. If the Owner fails to appeal the decision of the Chief or Director revoking the certificate of occupancy, the Chief or Director's determination is final, and the building official shall revoke the certificate of occupancy immediately after receiving written notice from the Chief or Director.
- (g) Any Owner aggrieved by the Chief or Director's determination revoking the certificate of occupancy under this Section may file a written notice of appeal with the clerk of the municipal court. The appeal shall be heard by the City's hearing officer. The notice of appeal must be filed not later than 10 calendar days after the date the Owner receives notice of the Chief or Director's revocation determination. The notice of appeal should briefly state therein the basis for such appeal. If a written notice of appeal is filed with the municipal court within the 10-day limit, the hearing officer shall hear the appeal. The clerk shall set a date for the hearing and notify the Owner.

- (h) The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling based on a preponderance of the evidence presented at the hearing.
- (i) In reviewing the Chief or Director's determination on appeal, the hearing officer is limited to the issues of whether:
 - (1) The property has been the site of three or more additional Criminal Activities or citations issued for Code Violations within the time period the property has been declared a Habitual Nuisance Property; or
 - (2) The Owner failed to comply with the conditions of Sections 23-106, 23-107 or 23-109 at the time of the Chief or Director's decision to revoke the certificate of occupancy.
- (j) The hearing officer may affirm or reverse the revocation determination of the Chief or Director being appealed. The decision of the hearing officer is final.
- (k) If the Chief or Director's revocation determination is affirmed, the Building Official shall revoke the certificate of occupancy immediately after receiving written notice from the Chief or Director.
- (l) A revocation based on Section 23-111(b) shall be for a minimum period of one year. A revocation based on Section 23-111(a) shall remain in effect until the Owner demonstrates compliance with Sections 23-106, 23-107 or 23-109, as applicable. Once a certificate of occupancy is revoked under this Section, the Owner must request a new certificate of occupancy be issued in accordance with the procedures established by the City of Fort Worth. Prior to issuing a new certificate of occupancy, the Building Official must confirm with the Chief or Director, as applicable, that the Owner is in compliance with Sections 23-106, 23-107 or 23-109, as applicable.

Sec. 23-112 Delivery of Notices

- (a) Any notice provided by the City pursuant to this Article shall be deemed effective if:
 - (1) personally delivered to the Owner; or
 - (2) mailed to the Owner by certified U.S. mail, with return receipt requested, at the last address provided in the appraisal district records, the address of the Commercial Property, and the address listed on the certificate of occupancy. Mailed notice shall be deemed received and effective three days after the date of mailing, whether the notice was actually received or whether the notice was returned "refused," "unclaimed," or "undeliverable."

Sec. 23-113 Violation and Penalty

- (a) An offense under this Article is a Class C misdemeanor punishable by a fine not to exceed \$500.00.
- (b) Each day an offense occurs is a separate violation.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Fort Worth, Texas, (2015) as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

SECTION 6.

The City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption, penalty provisions and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Texas Local Government Code, Section 52.013.

SECTION 7.

This ordinance shall take effect upon adoption and publication as required by law, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Amarna Muhammad
Assistant City Attorney

Jannette Goodall
City Secretary

Date: _____

ADOPTED: _____

EFFECTIVE: _____