

ARTICLE 12. CHRONIC PROBLEM PROPERTY REGULATIONS

Sec. 13-155. Findings of the council and purposes of regulations.¹

- (a) The Common Council finds that excessive calls for service to problem areas, trouble spots, or high-activity areas, place an undue burden on public safety resources, which may result in decreased public safety services being provided to other geographic areas of the City of South Bend, Indiana.
- (b) The Council further finds that by utilizing enforcement problem-oriented policing strategies that a corresponding reduction in calls for service and crime prevention should result.
- (c) The regulations set forth in this Article are designed to protect the overall public health, safety and welfare of the City. They are further designed to help prevent and assist in abating repeat calls for service to the same property or location, which may result in diminished public safety services being provided to other residents and areas of the City. Repeat nuisance service call fees are authorized to be imposed and collected from the owner of the property designated as a chronic problem property. Such fees are intended to help cover costs incurred by the City which are over and above the cost of providing services to properties not so designated.
- (d) The regulations set forth in this Article are supplemental to other regulations codified in the South Bend Municipal Code and are designed to address chronic problem properties.

(Ord. No. 10232-13, § I, 6-10-13)

¹IC 36-1-3-1 et seq., sets forth the "Home Rule" legislation which authorizes and grants municipalities all the powers they need for the effective operation of government as to local affairs.

Sec. 13-156. Definitions.

As used in this Article:

- (a) *Abate* shall mean to remedy a condition which constitutes a violation of this Article which is necessary and in the interest of the general health, safety and welfare of the City.
- (b) *Chronic Problem Property* is a property which meets the following criteria:
 - 1. Has had not less than five (5) valid complaints in sixty (60) calendar days for any criminal offense governed in IC tit. 35, and/or ordinance citations being issued for a violation of the South Bend Municipal Code which occurred on the property and resulted in a police response and police documented call for service; or
 - 2. Has had not less than five (5) letters issued by the Department of Code Enforcement, the Fire Department, and/or the Law Department in sixty (60) calendar days which sought compliance by the property owner with section(s) of this Code²; or
 - 3. A combination of valid complaints and/or ordinance citations issued by a sworn member of the Police Department as further addressed in ¶ 1 herein, and/or has been issued letters by the Department of Code Enforcement as further addressed in ¶ 2 herein, which together total not less than five (5) in number issued in a sixty (60) calendar day period.

However, in the event that a property consists of more than fifty (50) dwelling units which are rented or intended to be rented and are located on a single parcel or lot for which a postal address exists or may exist for each individual unit including residential rental properties, hotels, motels, or other similar properties offering overnight lodging, such address for a property shall not be considered as a chronic problem property until it has been issued more than twelve (12) valid complaints, ordinance citations, letters seeking compliance involving public nuisance activity, as further addressed in ¶ 1 through ¶ 3 herein, in any ninety (90) day period per parcel identification key number of real property.³

If a property is zoned commercial as defined in Article 3 of Chapter 21 of this Code; or is zoned industrial as defined in Article 4 of this Code, or is zoned as a Planned Unit Development (PUD) as defined in Article 5 of Chapter 21 of this Code, the provisions of (b) 1, 2, and 3 of this Section are the criteria for a chronic problem property.

- (c) *Citation* shall mean an act which is prohibited or an offense which is punishable under this Code for which a written ordinance violation citation was issued by the Police Department requiring payment of a fine to the Ordinance Violations Bureau.
- (d) *City* means the City of South Bend, Indiana.
- (e) *Key Number* has the meaning set forth in IC 6-1.1-1-8.5.
- (f) *Public Nuisance* has the meaning set forth in Section 13-75.5 of this Code.
- (g) *Police documented call for service* shall mean when a sworn member of the Police Department is dispatched or deployed to respond to an incident at a specific location as a police response.
- (h) *Police response* shall mean any and all police action needed to protect the health, safety and welfare of inhabitants of a property or location where valid complaint(s) have been documented, with such police response being subject to the governing rules and regulations of the Police Department.
- (i) *Valid complaint* shall refer to a police documented call for service that an incident involving a public nuisance took place at a specific property requiring sworn police personnel to be dispatched or caused to respond. If more than one (1) valid complaint occurs within a twenty-four (24) hour time period, then each valid complaint is considered a separate and distinct event. The term does not include incidents involving an occupant of the premises as the victim of the crime⁴ or any incident governed by the Health Insurance Portability and Accountability Act (HIPAA) regulations.⁵
- (j) *Warning notice* shall be a written document sent by the South Bend Police Department to any property owner, and the applicable property address, who has received a minimum of three (3) citations and/or valid complaints from the City warning said owner, and the manager/operator who is doing business at that location that upon receiving five (5) such citations and/or valid complaints in a sixty (60) day period that their property would be deemed a chronic problem property.

(Ord. No. 10232-13, § I, 6-10-13; Ord. No. 10338-14, § I, 11-11-14; Ord. No. 10483-16, § I, 11-28-16)

² Pursuant to Section 9-2 of Article 1 of Chapter 9 of the South Bend Municipal Code, the official fire prevention code of the South Bend Fire Department has been adopted by reference.

³ Pursuant to Section 153.010 of Chapter 153 of the St. Joseph County Code of Ordinances, definition of Lot to include "a parcel or portion of land separated from other parcels or portions by description".

⁴ Pursuant to IC 35-40-4-8, definition of a victim "a person that has suffered harm as a result of a crime that was perpetrated directly against the person".

⁵ Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") issued by the U.S. Department of Health and Human Services ("HHS") establishes a set of national standards for the protection of certain health information.

Sec. 13-157. Violations; notification and limited appeals of being designated by the city as a chronic problem property.⁶

- (a) The owner of any property within the City of South Bend which is designated by the City as a chronic problem property, as defined in Section 13-56, is in violation of this Article. The property owner of any designated chronic problem property shall be responsible for bringing such property into compliance with all governing regulations. However, in the event that such chronic problem property is zoned as commercial, industrial or planned unit development as defined in Section 13-56 the manager/owner/operator who is doing business at that location are jointly and severally responsible for bringing such property into compliance with all governing regulations.
- (b) The South Bend Police Department shall send a warning notice letter to any property owner, and the applicable property address, and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at the location, when the property address has been subject to a minimum of three (3) valid complaints and/or ordinance citations and/or letters issued by the Police Department, the Fire Department, the Department of Code Enforcement and/or the Law Department, advising said person that when the City verifies that said number increases to the thresholds in the definition of a chronic problem property, it shall be so designated. The Police Department, the Fire Department, the Department of Code Enforcement and the Law Department shall update their data on a regular and consistent basis and electronically transmit it to the assigned police officer(s) of the South Bend Police Department whose responsibilities include overseeing the warning notice letter process.
- (c) When designating a specific property as a chronic property, the assigned police officer(s) in the South Bend Police Department, shall review and verify:
 - 1. The number of police documented calls for service, the number of valid complaints and ordinance citations issued by the Police Department to a property address in the applicable sixty (60) or ninety (90) day period; and
 - 2. The number of ordinance citations and/or compliance letters sent by the Department of Code Enforcement and the Fire Department. As well as, the number of compliance letters sent by the Police Department and the Law Department to a property address in the applicable sixty (60) or ninety (90) day period;

Once designated as a chronic problem property by the assigned police officer(s) in the South Bend Police Department, said property shall remain so designated and tracked on a publicly available data set for compliance/enforcement purposes for one (1) year from the date of designation. The Office of Innovation and Technology shall see that the publicly available data set shall be regularly updated and prominently posted on the City's Open Data Portal. Said designation shall only be removed upon action by the Law Department after reviewing documentation from the Police Department, the Fire Department and the Department of Code Enforcement confirming that the subject property has not been the subject of a valid complaint or code violation for a period of not less than three hundred sixty-five (365) continuous days, unless credited per the regulations set forth in Section 13-158.

- (d) The South Bend Police Department shall notify in writing to the property owner, and in the case of the property being zoned commercial, industrial or planned unit development to the manager/owner/operator who is doing business at that location, that his/her property location has been designated as a chronic problem property. Said notification shall be mailed to the applicable property address and delivered in person by an individual designated by the City, by leaving a copy of the notification personally to the person to be notified, by leaving a copy of the notification as set forth below, with such notification being documented by the City in their records; or by sending the notice to the property owner, and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location, by priority mail which is tracked on line with the City tracking the date said

notification was delivered. The notification shall be sent to the property owner's residence or usual place of business, or in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location which is on record in the Assessor's office or other public office including but not limited to the Area Plan Commission, Office of the City Clerk, and/or the Department of Administration and Finance Business Licensing Division. This notification shall identify:

1. The property owner, and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location, and list the specific address that has been designated as a chronic problem property;
 2. The number of Police documented calls for service involving valid complaints, the number of ordinance citations issued, the number of letters issued by the Police Department, the Fire Department, the Department of Code Enforcement, and/or the Law Department, or any combination thereof which have occurred on said property in the applicable sixty (60) or ninety (90) calendar day period;
 3. The cost(s) which may be incurred if there are any future valid Police documented calls for service to the property;
 4. The cost(s) which may be incurred for any future background investigations and/or issuance of letter(s) by the Police Department, the Fire Department, the Department of Code Enforcement, and/or the Law Department;
 5. The individual and his/her city contact information including the name, position, mailing address, telephone, fax numbers and email address to whom the property owner and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location designated as a chronic problem property may contact if he/she has questions regarding the notification; and
 6. The time period which the designation as a chronic problem property will last and the terms and conditions which must be met for the removal of such designation. If deemed necessary, a satisfactory inspection of the property by the Department of Code Enforcement and/or the Fire Department, may be included in the terms and conditions. Any and all fines and repeat public nuisance service call fees associated with the designated chronic problem property must have been paid in full for removal from the publicly available data set.
- (e) Copies of the written notice sent by the South Bend Police Department on each proper address designated as a chronic problem property shall be simultaneously sent electronically to the Law Department, the Fire Department, the Department of Code Enforcement, Office of the City Clerk, the District Council Member who represents the District where the subject property is located, and all At Large Council Members.
- (f) The City deems the owner of the property and the residential occupants of the property, and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location responsible for any and all prohibited conduct occurring upon the premises after receipt of the written notice designating the property as a chronic problem property.⁷
- (g) A Hearing Officer is authorized to hear limited appeals from owners of a property, and in the case of the property being zoned commercial, planned unit development to the manager/owner/operator who is doing business at that location who have been designated by the City as a chronic problem property. Said appeal shall be limited to the verification of whether said person has reached the requisite and applicable number set forth in subsection 13-56(b) to be designated as a chronic problem property. A hearing before the Hearing Officer for such limited appeals must be held within thirty (30) calendar days of the appeals being filed. Written notice of the date, time and location shall be mailed or personally delivered by the City to said person of record and the applicable property address. The decision of the Hearing Officer shall be the final administrative action for purpose of judicial review. The Hearing Officer may recuperate costs or fees

associated with a hearing from the Law Enforcement Continuing Education Fund (Fund #220) through a submitted claim form.

(Ord. No. 10232-13, § I, 6-10-13; Ord. No. 10338-14, § II, 11-11-14; Ord. No. 10483-16, § II, 11-28-16)

⁶IC 36-1-6 sets forth the governing state law provisions for the enforcement of municipal ordinances. Section 2-13 of the South Bend Municipal Code identifies the City's nine (9) executive departments and specifically lists the Law Department, the Police Department, the Fire Department, and the Department of Code Enforcement.

⁷The wording in this paragraph is similar to that set forth in Section 13-75.5 of the South Bend Municipal Code addressing disorderly house regulations.

Sec. 13-158. Remediation agreements—Proactive measures to reduce time designated as a chronic problem property.

- (a) In the event that a property consists of more than fifty (50) dwelling units which are rented or intended to be rented and are located on a single parcel or lot for which a postal address exists or may exist for each individual unit including residential rental properties, hotels, motels, or other similar properties offering overnight lodging; or if a property is a business establishment required to have a license or permit to sell alcoholic beverages under IC tit. 7.1, and has been designated as a chronic problem property, the owner of such property shall be required to enter into a Remediation Agreement. Such Remediation Agreement shall:
1. Be in writing and signed by the owner or the owner's duly authorized agent of the property designated as a chronic problem property and the South Bend Police Department's sworn police officer(s) assigned to oversee said property's compliance measures;
 2. Set forth immediate remedial measures which must be implemented within fourteen (14) days of signing the Remediation Agreement, which establishes thereafter monthly thresholds and needed corrective actions which will be monitored by the Police Department's sworn police officer(s) who were assigned to negotiate the Remediation Agreement with the owner of the subject property or the property's duly authorized agent;
 3. Remediation Agreements shall also include but not be limited to including policy reforms, additional staff, additional training, and other proactive measures determined necessary to abate the public health, safety and welfare violations identified; and
 4. Identify specific action plan(s) whereby the owner or his/her duly authorized agent is required to complete by the last Friday of each month and transmit to the Police Department's assigned sworn police officer(s) who shall evaluate compliance. All remediate agreements shall be for a term of not less than six (6) months.⁸
- (b) Copies of all Remediation Agreements entered into shall be electronically sent by the assigned sworn police officer to the Chief of Police, the Corporation Counsel of the Law Department, the Director of the Department of Code Enforcement, the Fire Chief, and the District Council Member who represents the District in which the chronic problem property is located, all Council Members at Large, and the Office of the City Clerk, with such electronic correspondence taking place the same day that the Remediation Agreement is signed by both parties.
- (c) In the event that the owner, or the owner's duly authorized agent fails or refuses to enter into a Remediation, or if the owner or owner's duly authorized agent fails to meet the obligations set forth in the Remediation Agreement, the Corporation Counsel of the Law Department, or his or her official designee, shall commence legal action pursuant to Section 1-23 of the South Bend Municipal Code as soon as practicable. Notice of non-compliance shall be electronically sent by the Corporation Counsel to the Chief of Police, the Fire Chief, the Director of the Department of Code Enforcement, the District Council Member who represents the District in which the chronic problem is located, all Council Members at Large, and the Office

of the City Clerk of his/her action to commence such legal action as soon as practicable, upon being notified by the sworn police officer assigned to the case.

- (d) So long as the owner or the owner's duly authorized agent is in compliance with the Remediation Agreement, no additional action by the Law Department is to be commenced on the items addressed in said Agreement. However, any new violation(s) which are in addition to the items addressed in the Remediation Agreement, may be pursued by the Law Department.
- (e) In the event that the owner or the owner's duly authorized agent complies with the Remediation Agreement in its entirety and if the property has no new ordinance citations issued against it and no new valid complaints for a period of thirty (30) consecutive calendar days, fifteen (15) days shall be subtracted from the time said property has been designated as a chronic problem property; with this process continuing through the duration of the Remediation Agreement. The South Bend Police Department shall be charged with maintaining accurate records and sending monthly updates to the individuals listed in paragraph (b) herein.
- (f) In the event that a property is zoned commercial, industrial, or planned unit development and has been designated as a chronic problem property, the manager /owner/operator who is doing business at that location shall be required to enter into a Remediation Agreement consistent with the provisions of the Section.

(Ord. No. 10232-13, § I, 6-10-13; Ord. No. 10338-14, § III, 11-11-14; Ord. No. 10483-16, § III, 11-28-16)

⁸ The Center for Problem-Oriented Policing publication entitled Shifting and Sharing Responsibility for Public Safety Problems, Response Guide No. 3, sets forth a variety of methods including but not limited to educating about responsibilities in addressing problems, charging for police services when there are excessive calls in an attempt to have partial cost recovery. Those methods and the SARA Model problem-solving model (Scanning, Analysis, Response and Assessment) would be used by the South Bend Police Department when implementing Remediation Agreements addressed in this section. Copies of both of these documents are on file in the Office of the City Clerk and the South Bend Police Department.

Sec. 13-159. Repeat nuisance service call fees for chronic problem properties; notice.⁹

- (a) The South Bend Police Department and the Code Enforcement Department shall file semi-annually with the Office of the City Clerk, a record of the cost to respond to a call for service based on the type of call for service, type of property, type of personnel and equipment. The first filing of said records shall be made on or before September 15, 2013, with all filings thereafter being made on or before the first Monday in January and the first Monday in July. Each department shall use reasonable and uniform criteria in developing such data and fees for such services. The record of costs shall remain in effect until a new record of costs is filed with the Office of the City Clerk.
- (b) The property owner shall incur repeat nuisance service call fees for a property designated by the South Bend Police Department as a chronic problem property if the property owner has first been provided written notice of that designation, with such fees being consistent with the record of costs on file as provided in subsection (a) of this section. All fees are due and payable within thirty (30) days of the date of such notice.

(Ord. No. 10232-13, § I, 6-10-13)

⁹ IC 36-1-3-8 requires fees to be related to the cost of the service so that they are "reasonable and just".

Sec. 13-160. Consequences of failure to comply; civil penalties; continuous abatement; action by law department/dedication of fees/fines to the Law Enforcement Continuing Education Fund (Fund #220).¹⁰

- (a) *[Civil Penalties, Fees and Procedures:]* Any property owner violating the provisions of this article shall be subject to the following civil penalties, fees and procedures:
1. *Collection of Repeat Public Nuisance Service Call Fees:* In addition to the collection of fines resulting from the issuance of citation(s), the Law Department is authorized to bring civil action against any alleged violator of this article for all unpaid repeat public nuisance service call fees.
 2. *Civil Penalties:* After a property has been designated as a chronic problem property and placed on the publicly available data set, if the property receives any subsequent citation or valid complaint, then the owner will be subject to a civil penalty of two hundred fifty dollars (\$250.00) per citation or valid complaint which shall be payable through the Office of the City Clerk.

(b) *Continuous Abatement Notice:*

1. *[Previously Designated Chronic Problem Properties:]* Any property that has previously been designated a chronic problem property, and subsequently removed from the listed publicly available data set due to compliance, shall be subject to continuous abatement procedures governed by this section. This will serve as notice to the owner that the property will be listed as a continuous abatement property upon a subsequent violation occurring within a six (6) month period, since the date of removal from the publicly available data set. Such notice is in compliance with IC 36-1-6, Enforcement of Ordinances.
2. *Continuous Abatement Civil Penalties/Fees:* Any owner of real estate whose property becomes listed as a continuous abatement property shall be fined the sum of five hundred dollars (\$500.00) for the first violation. Thereafter, each violation shall be fined and assessed administrative fees related to costs incurred by the City for inspections, abatement and administration, and a civil penalty which shall be as follows:

Subsequent Violations	Fine Per Violation	Continuous Abatement Fee for Administrative Expenses
2nd Violation	\$750.00	\$400.00
3rd Violation	\$1,000.00	\$450.00
4th Violation and thereafter	\$1,500.00	\$500.00

This subsection supplements and does not limit any other remedy or action available in law or in equity being pursued by the Department of Law.

- (c) *Effective Date:* Continuous Abatement procedures shall take effect on January 1, 2017.
- (d) *Separate Offense:* Each violation of this article shall be deemed a separate offense.
- (e) *Dedication of Fines/Fees Collection:* One hundred percent (100%) of all fines and fees collected for any violation of this article shall be deposited into the Law Enforcement Continuing Education Fund (Fund #220).
- (f) *Data Available on City's Open Data Portal:* Data addressed in this section shall be summarized on the publicly available data set required in Section 13-157 of this Code which is to be placed, maintained, and regularly updated on the City's Open Data Portal by the Office of Innovation and Technology.

(Ord. No. 10232-13, § I, 6-10-13; Ord. No. 10483-16, § IV, 11-28-16)

¹⁰ IC 36-1-4-17 authorizes the City to collect any money that is owed the City, including reasonable attorney fees.

Editor's note(s)—Ord. No. 10483-16 , § IV, adopted Nov. 28, 2016, changed the title of § 13-160 from Penalties; civil action by law department/dedication of portion of fees/fines to the Law Enforcement Continuing Education Fund (Fund # 220) to Consequences of failure to comply; civil penalties; continuous abatement; action by law department/dedication of fees/fines to the Law Enforcement Continuing Education Fund (Fund #220).

Sec. 13-161. Intimidation and threats by property owner prohibited.¹¹

If any person reports to a City employee or agent that he or she believes that he/she has been intimidated or threatened by the owner or owner's agent, manager or operator of a business doing business in the city, if he or she files a complaint or reports an alleged violation of this Article, the City employee or agent shall encourage the person to report such alleged intimidation or threat the South Bend Police Department for further action.

(Ord. No. 10232-13, § I, 6-10-13; Ord. No. 10338-14, § IV, 11-11-14)

¹¹ IC 35-45-2 addresses "Offenses Relating to Communications" including but not limited to intimidation, harassment and the interference with the reporting of a crime.

Secs. 13-162—13-164. Reserved.