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## Sec. 13-75.5. Disorderly houses; prohibited.

(a) *Definitions.*

- (1) For purposes of this section, disorderly house means a building, dwelling, establishment, premises or place where prohibited conduct occurs and it includes the outside area contiguous to and surrounding the structure such as a yard or lot under the same ownership. If the building, dwelling, establishment, premises or place is a multiple-unit dwelling or residence, hotel or motel, or commercial or office building, this definition applies only to that dwelling unit, room or suite of rooms in the hotel or motel, office rooms or suite, store, lot or yard in or on which prohibited conduct occurs.
- (2) For purposes of this section, owner means:
  - a. The recorded owner of the property, as determined by the records of the St. Joseph County Assessor's Office;
  - b. Any party with an equitable interest in the property, provided that such equitable interest is recorded; and
  - c. The trustee of a land trust, if the land trust holds title to such property.
- (3) For purposes of this section, occupant means any person over sixteen (16) years of age whose domicile is the property upon which the prohibited conduct has been found to have occurred.
- (4) For purposes of this section, vacant means a building which is lacking the habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased.
- (5) For purposes of this section, prohibited conduct means activities occurring in violation of the statutes or ordinances relating to any of the following:
  - a. Gambling, as defined in IC 35-45-5-1;
  - b. Battery, as defined in IC 35-42-2-1;
  - c. Contributing to the delinquency of a minor, as defined in IC 35-46-1-8;
  - d. Resisting law enforcement, as defined in IC 35-44-3-3;
  - e. Disorderly conduct, as defined in IC 35-45-1-3;
  - f. Criminal recklessness, as defined in IC 35-42-2-2;
  - g. Discharge of firearms, as prohibited by Section 13-58 of the South Bend Municipal Code;
  - h. Unreasonable noise, as prohibited by Section 13-57 of the South Bend Municipal Code;
  - i. Failure to keep vacant property secured against entry, in violation of Section 6-37 or 9-2 of the South Bend Municipal Code, or IC 36-7-9-1 et seq. (Unsafe Building Law) or any other fire or property maintenance codes constitutes prohibited conduct regardless of whether the City has issued a citation for the violation, issued an order to secure, or taken action to abate the condition;
  - j. Failure to comply with Section 16-53, (Conditions Constituting Public Nuisances), Section 16-58, (Duties of Owners or Persons in Control of Vacant Lots), or Section 16-59, (Removal of Vegetation) of the South Bend Municipal Code constitutes prohibited conduct whenever the City has verified with the Department of Code Enforcement that such violation has occurred at the property three (3) or more times within a calendar year. Such violation constitutes prohibited

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conduct regardless of whether the City has taken action to abate the condition or conduct and regardless of whether the City has issued a citation for the violation;

- k. Violations of any of the following Indiana statutes governing the sale, possession, delivery or receipt of alcoholic beverages:
  - 1. Sales, delivery or possession in violation of IC 7.1-5-1-1;
  - 2. Illegal possession by a minor in violation of IC 7.1-5-7-7;
  - 3. Furnishing alcohol to a minor in violation of IC 7.1-5-7-8;
  - 4. Inducing a minor to possess alcohol in violation of IC 7.1-5-7-15;
  - 5. Sale or delivery of alcoholic beverages to intoxicated persons in violation of IC 7.1-5-10-15;
  - 6. Receipt of alcoholic beverages from a person who does not hold a permit in violation of IC 7.1-5-10-5;
  - 7. Purchase of alcoholic beverages from a person who does not hold a permit in violation of IC 7.1-5-10-7; or
  - 8. Visiting or maintaining a common nuisance or any other violation of IC 35-45-1-5.
- l. Violations of any of the following Indiana statutes governing:
  - 1. Prostitution in violation of IC 35-45-4-2;
  - 2. Making an unlawful proposition in violation of IC 35-45-4-3; or
  - 3. Promoting prostitution or juvenile prostitution in violation of IC 35-45-4-4.
- m. Violations which constitute "racketeering activity" as defined by IC 35-45-6-1.
- n. Violations of any of the following Indiana statutes governing:
  - 1. Criminal gang activity in violation of IC 35-45-9-3;
  - 2. Criminal gang intimidation in violation of IC 35-45-9-4; or
  - 3. Criminal gang recruitment in violation of IC 35-45-9-5.
- o. Violations of any of the following Indiana statutes governing:
  - 1. Dealing in cocaine or a narcotic drug in violation of IC 35-48-4-1:
  - 2. Dealing in methamphetamine in violation of IC 35-48-4-1.1 and/or manufacturing methamphetamine in violation of IC 35-48-4-1.2;
  - 3. Dealing in a schedule I, II or III controlled substance or controlled substance analog in violation of IC 35-48-4-2;
  - 4. Dealing in a schedule IV controlled substance or controlled substance analog in violation of IC 35-48-4-3;
  - 5. Dealing in a schedule V controlled substance or controlled substance analog in violation of IC 35-48-4-4-4; or
  - 6. Dealing in marijuana, hash oil, hashish, salvia, a synthetic drug, as defined by IC 35-31.5-2-321 or IC 25-26-13-4.1 as those statutes are from time to time amended, or a controlled substance analog, as defined in IC 35-48-1-9.3 and/or IC 35-48-4-0.5 as from time to time amended, IC 35-48-4-4.6, IC 35-48-4-5, or IC 35-48-4-10. The distribution of low THC hemp extract in full compliance with IC 24-4-21-1 et seq. is excluded from this subpart.

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7. Use or possession of any of the substances described in subsections o.1. through and including o.6., above, or the sale, use or possession of any other illicit narcotics or dangerous controlled substances.
  8. Dealing in a controlled substance by a practitioner in violation of IC 35-48-4-1.5
- (b) *Public nuisance.* Whenever prohibited conduct as defined in subsection (a) of this section occurs in or upon a building, dwelling, establishment, premises or place, the City deems the building, dwelling, establishment, premises or place to be a disorderly house and a public nuisance.
  - (c) *Notice to abate.* Whenever the South Bend Police Department, or the Department of Code Enforcement, when acting alone or upon information from the Fire Department, the St. Joseph County Health Department, or other reliable source has a reasonable belief that prohibited conduct has occurred in or upon a building, dwelling, establishment, premises or place, the City shall notify the owner of the property, and the occupants of the property that the building, dwelling, establishment, premises or place is a disorderly house and as such constitutes a public nuisance and that they must abate the public nuisance.
  - (d) *Manner of serving notice.* The City shall provide notice to the owner of the property and the occupants of the property in the manner provided by IC 36-7-9-25. The City deems the owner of the property and the occupants of the property responsible for any and all prohibited conduct occurring upon the premises after receipt of the notice.
  - (e) *Penalty, injunctive relief, and business license action.* Whenever prohibited conduct occurs upon a property after the City has provided notice to abate the public nuisance, 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 of not less than two hundred fifty dollars (\$250.00) and not more than two thousand five hundred dollars (\$2,500.00) with each day of violation constituting a separate offense. In determining the amount of the fine to be imposed, the court may consider the attempts of the property owners or occupants to address the public nuisance. The City may also suspend, revoke, or deny renewal of the business license of the owner and/ or occupant of the building, dwelling, establishment, premises or place where a violation of this section has occurred, as more specifically provided in Chapter 4, Article 2, Section 4-16 of this Code.
  - (f) *Eviction proceedings as a defense.* No owner shall be liable for a violation of this section if such owner initiates an eviction proceeding within thirty (30) days of receipt of notice of the prohibited conduct set forth in this section, and diligently pursues eviction proceedings to completion.

(Ord. No. 8427-93, § I; Ord. No. 9240-01, § I; Ord. No. 9602-05, § I, 7-25-05; Ord. No. 10168-12, § I, 7-9-12; Ord. No. 10533-17, § I, 8-14-17; Ord. No. 10604-18, § I, 7-23-18; Ord. No. 10670-19, 9-23-19)