

ORDINANCE NO. 16-2021

**AN ORDINANCE OF THE COMMON COUNCIL OF
THE CITY OF VALPARAISO TO ESTABLISH A PROCESS TO ADDRESS
CHRONIC DISORDERLY PROPERTY**

WHEREAS, the Common Council of the City of Valparaiso 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, Police Department and Code Enforcement time and resources 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 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. Steps have been taken to monitor the application of this Ordinance and to ensure those most vulnerable are not adversely impacted.

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AS FOLLOWS:

Section 1. That Ordinance 16-2021 of the Municipal Code of the City of Valparaiso, Indiana, shall be read as follows: Disorderly Property Ordinance

Section 1. Definitions.

(A) “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 collectively to all dwelling units, rooms or suites of rooms in which 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.

(B) "Owner" shall mean the Owner of record of the Property, as identified by the records of the Porter County Auditor's Office.

(C) "Prohibited Conduct" shall mean activities occurring in violation of the statutes or ordinances relating to any of the following:

- 1) Gambling, as defined in IC 35-45-5-1;
- 2) Battery, as defined in IC 35-42-2-1;
- 3) Contributing to the delinquency of a minor, as defined in IC 35-46-1-8;
- 4) Resisting law enforcement, as defined in IC 35-44.1-3-1;
- 5) Disorderly conduct, as defined in IC 35-45-1-3;
- 6) Criminal recklessness, as defined in IC 35-42-2-2;
- 7) Discharge of firearms, as prohibited by City Code §130.05-.06;
- 8) Harassment as defined in IC 35-45-2-2;
- 9) Unreasonable noise, as prohibited by City Code §130.02;
- 10) Failure to keep vacant property secured against entry, in violation of IC 36-7-9-1 et seq. (Unsafe Building Law).
- 11) Violations of any of the following Indiana statutes governing the sale, possession, delivery or receipt of alcoholic beverages:
 - a) Sales, delivery or possession in violation of IC 7.1-5-1-1;
 - b) Illegal possession by a minor in violation of IC 7.1-5-7-7;
 - c) Furnishing alcohol to a minor in violation of IC 7.1-5-7-8;
 - d) Inducing a minor to possess alcohol in violation of IC 7.1-5-7-15;
 - e) Sale or delivery of alcoholic beverages to intoxicated persons in violation of IC 7.1-5-10-15;
 - f) Receipt of alcoholic beverages from a person who does not hold a permit in violation of IC 7.1-5-10-5;
 - g) Public Intoxication in violation of IC 7.1-5-1-3
 - h) Purchase of alcoholic beverages from a person who does not hold a permit in violation of IC 7.1-5-10-7; or
 - i) Visiting or maintaining a common nuisance or any other violation of IC 35-45-1-5.
- 12) Violations of any of the following Indiana statutes governing:
 - a) Prostitution in violation of IC 35-45-4-2;
 - b) Making an unlawful proposition in violation of IC 35-45-4-3; or
 - c) Promoting prostitution or juvenile prostitution in violation of IC 35-45-4-4.
- 13) Violations of any of the following Indiana statutes governing:
 - a) Criminal gang activity in violation of IC 35-45-9-3;
 - b) Criminal gang intimidation in violation of IC 35-45-9-4; or
 - c) Criminal gang recruitment in violation of IC 35-45-9-5.

- 14) Violations of any of the following Indiana statutes governing:
- a) Dealing in cocaine or a narcotic drug in violation of IC 35-48-4-1;
 - b) 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;
 - c) Dealing in a schedule I, II or III controlled substance or controlled substance analog in violation of IC 35-48-4-2;
 - d) Dealing in a schedule IV controlled substance or controlled substance analog in violation of IC 35-48-4-3;
 - e) Dealing in a schedule V controlled substance or controlled substance analog in violation of IC 35-48-4-4;
 - f) 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 35-48-4-10. The distribution of low THC hemp extract in full compliance with IC 24-4-21-1 et seq. is excluded from this subpart.
 - g) Use or possession of any of the substances described in subsections (a) through and including (f), above, or the sale, use or possession of any other illicit narcotics or dangerous controlled substances; or
 - h) Dealing in a controlled substance by a practitioner in violation of IC 35-48-4-1.5.

Section 2. Public Nuisance.

a) For Property with **less than six (6)** separate residential units, whenever Prohibited Conduct occurs in or upon the Property on **three (3) or more separate occasions during a 60-day period**, the City deems the Property to be a Disorderly Property and a public nuisance.

b) For Property between **six (6) and forty-nine (49)** separate residential units, whenever Prohibited Conduct occurs in or upon the Property on **four (4) or more separate occasions during a 30-day period**, the City deems the Property to be a Disorderly Property and a public nuisance.

c) For Property with **fifty (50) or more** separate residential units, whenever Prohibited Conduct occurs in or upon the Property on **seven (7) or more separate occasions during a 30-day period**, the City deems the Property to be a Disorderly Property and a public nuisance.

d) This Ordinance shall not be applicable to offices, commercial retail establishments, restaurants, and bars. Other provisions of Indiana law and the City's Municipal Code address public nuisances created at these locations.

Section 3. Notice to Abate. Whenever the Valparaiso Police Department receives **two** police reports documenting the occurrence of Prohibited Conduct in or upon a Property within the periods identified in **Section 2(a) – (c)**, the City shall notify the Owner that the Property is in danger of becoming a Disorderly Property. The Notice shall reference all police reports and

request the Owner, or its designee, to meet with the Valparaiso Police Department and discuss the matter. At such meeting, the Owner, or its designee, shall outline ways it intends to mitigate the Prohibited Conduct. Issuance of a Notice to Abate shall not be a condition to establishing a Disorderly Property and a public nuisance.

Section 4. Notice of Violation. Upon satisfaction of the conditions contained in **Section 2**, such Property shall be deemed a Disorderly Property and a public nuisance. The Notice of Violation shall reference all relevant police reports and the amount of the fine as outlined in section 6.

Section 5. Manner of serving notice. The City shall provide notice to the Owner in the manner provided by IC § 36-7-9-25. The City deems the Owner responsible for any and all Prohibited Conduct.

Section 6. Penalty, injunctive relief. Whenever a Property is deemed a Disorderly Property and a public nuisance, the City may file an action in any court of general jurisdiction against the Owner to enjoin the nuisance and to recover the 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. The fine shall be **\$500** for the first violation (the applicable number of police reports documenting the occurrence of Prohibited Conduct within the period identified in Section 2(a) – (c) and each day with no significant attempt to abate the violation constituting a separate offense. For the second separate violation (the applicable number of additional police reports documenting the occurrence of Prohibited Conduct within the period identified in Section 2(a) – (c) at the same Property within a 12 month period after the first violation, a fine of **\$1,000.00** shall be assessed to the Owner and each day with no significant attempt to abate the violation constituting a separate offense. For the third and each succeeding separate violation (the applicable number of additional police reports documenting the occurrence of Prohibited Conduct within the period identified in Section 2(a)) at the same Property within the same 12 month period after the second violation, a fine of **\$7,500.00** or the maximum allowed under Indiana law shall be assessed to the Owner and each day with no significant attempt to abate the violation constituting a separate offense. In addition, should the City be successful in any judicial enforcement action, the City shall be entitled to reimbursement of its court costs and attorneys' fees from the Owner.

Section 7. Cooperation with Owner/Items Excluded from the Definition of "Prohibited Conduct" An Owner of Property identified as a Disorderly Property is encouraged to communicate and cooperate with the Valparaiso Police Department and the City's Code Enforcement Department. It is not the intent of this Ordinance to discourage anyone from requesting police assistance – especially any victim of domestic violence and/or child abuse or neglect. Indiana Code 35-31.5-2-78 (Crime of domestic violence), 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 1(C). In addition, ambulance calls, welfare checks, routine traffic stops, and motor vehicle accidents are also specifically excluded from Section 1(C).

Section 8. Reduction/Elimination of Fine. Upon request by an Owner of a Disorderly Property, the Board of Works shall have the authority to reduce or eliminate any fine upon: i) a

showing of a good faith effort to mitigate the conditions that caused the Property to be identified as a Disorderly Property; and, ii) recommendation from the Valparaiso Police Department.

Section 9. Compilation and delivery of data. Advocacy groups for fair housing, mental/physical disabilities, and victims of domestic violence have expressed concerns that this ordinance will adversely impact those populations. It is expressly not the intent of the City to adversely impact any vulnerable population. The Valparaiso Police Department will notify the City Attorney whenever a Notice to Abate and Notice of Violation are issued. The City Attorney will compile this information and make it available to the City Council and public.

Section 10. 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.

Section 2 **Conflicting Ordinances.** Any ordinance or provision of any ordinance of the City of Valparaiso, Indiana, in conflict with the provisions of this Ordinance is hereby repealed.

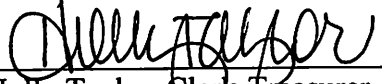
Section 3. **Severability.** The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Section 4. **Effective Date.** This Ordinance shall be in full force and effect after its passage, approval by the Mayor of the City of Valparaiso and publication as required by law. **The effective date of Section 6 shall be delayed until October 1, 2021.** At the last City Council meeting in September 2021, the Valparaiso Police Chief and City Attorney will appear and provide the City Council with information as to how the Ordinance has been applied and how many Disorderly Properties were identified and would have been fined. At that time, the City Council will determine if any amendments to this Ordinance are necessary and/or whether any further delay in the effective date of Section 6 is warranted.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Porter County, Indiana, by a 5-2 vote of all members present and voting, this 26th day of July, 2021.

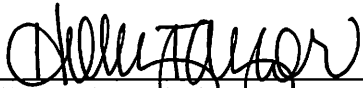

Matthew R. Murphy, Mayor

ATTEST:



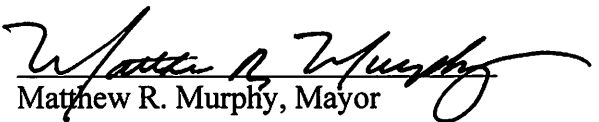
Holly Taylor, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana this 26th day of July 2021.



Holly Taylor, Clerk-Treasurer

This Ordinance approved and signed by me this 26th day of July, 2021 at 6:00 o'clock
PM.



Matthew R. Murphy, Mayor