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BILL NO. G-10-12-27

GENERAL ORDINANCE NO. G-3-11

AN ORDINANCE AMENDING CHAPTER 130:
"OFFENSES AGAINST CITY
REGULATIONS" SECTION 130.06 REAL
ESTATE USED FOR ILLEGAL USE OR
SALE OF NARCOTICS, CONTROLLED
DANGEROUS SUBSTANCES, GAMBLING,
PROSTITUTION OF THE CITY OF FORT
WAYNE, INDIANA CODE OF ORDINANCES.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Chapter 130: §103.06 of the City of Fort Wayne,
Indiana Code of Ordinances be amended as follows:

**130.06 REAL ESTATE USED FOR ILLEGAL USE OR SALE OF
NARCOTICS, CONTROLLED DANGEROUS SUBSTANCES, GAMBLING,
PROSTITUTION.**

(A) *Purpose.* The Common Council of the city finds it to be in the best
interests of the residents of the city and the general public to provide for the
regulation of conduct it deems to be offensive, to prevent vice, disorder and
immorality; and to promote public peace, health and safety, and to this end,
the Common Council enacts this section.

(B) *Permitting the use of real estate for illegal drug activity, gambling or
prostitution.* No owner of real estate located in the city shall knowingly allow
that real estate to be used as a site for any use or sale of illegal narcotics or

1 controlled dangerous substances, gambling or prostitution. For the purposes
2 of this section, an owner of real estate is defined as any person who, alone,
3 jointly or severally with others, shall have legal or equitable title or other
4 possessory interest to any dwelling or dwelling unit, including a purchaser
5 under a Contract for Conditional Sale of Real Estate commonly known as a
6 Land Contract, and a lessee, sub-lessee, renter, or tenant who is allowing
7 another person to occupy the dwelling or dwelling unit. The definition of
8 owner shall not include a mortgage lien holder or other lien holder holding an
9 interest which secures a debt or judgment.
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12 (C) *Discrimination forbidden.* Nothing in this section shall be construed
13 to encourage or authorize the discrimination by lessors against any persons
14 based upon race, creed, religion, sex, age or national origin.
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16 (D) *Reports, investigations and notices by the Police Department.*
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18 (1) A complaint or report of suspected illegal activities constituting
19 the use or sale of narcotics or controlled substances, or gambling,
20 prostitution, or conduct constituting a nuisance pursuant to state law, by
21 tenants, occupants and/or their visitors, guests or invitees as observed by the
22 lessor, third persons such as other tenants of the property, or persons
23 residing or working in the vicinity of the property, or city officials, and/or
24 representatives of agencies and/or departments of the city shall be submitted
25 to the office of Narcotics and Vice Division of the Police Department of the
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1 city and each such report or complaint shall be individually logged in that
2 office.

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4 (2) Upon receipt of any report or complaint of such suspected illegal
5 activities on real estate premises, the Police Department may conduct a
6 further investigation.

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8 (3) Upon completion of investigation by the Police Department
9 revealing that such suspected illegal activity is taking place at a particular
10 premises, the Police Department may send a Notice of Investigation to the
11 owner of the real estate and a copy to the tenant/occupant whose premises
12 is the subject of the investigation, by certified mail, return receipt requested,
13 informing the owner that the investigation revealed suspected illegal activity
14 and the fact that there is an on-going investigation. The Notice of
15 Investigation shall inform the owner that it is a violation of the Fort Wayne
16 Code for the owner of real estate to knowingly permit its real estate to be
17 used as a site for any use or sale of illicit narcotics or controlled dangerous
18 substances, gambling or prostitution. The Notice of Investigation shall also
19 state that the City may initiate enforcement proceedings against the owner of
20 the real estate if the suspected illegal activity does not cease. Finally, the
21 Notice of Investigation shall advise that it is a defense to a proceeding to
22 enforce this section if the owner of real estate institutes and completes
23 eviction proceedings in compliance with part (F) of this section against the
24 person suspected of engaging in the criminal conduct giving rise to the
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Notice of Investigation. The Notice of Investigation shall further include a request of the property owner to whom the letter is addressed to specify in writing information concerning the existence of any Contract for Conditional Sale of Real Estate, commonly known as a Land Contract, setting forth the name, address, and phone number of the purchaser under the Land Contract, and further specifying any other person who has a legal, equitable, or possessory interest in the dwelling or dwelling unit and the pertinent information, including, but not limited to, name, address, and phone number with respect to those individuals.

(E) *Effect of Giving Notice of Investigation.*

(1) If a proceeding to enforce a violation of this section is commenced against an owner of real estate at least 30 days after the land owner's receipt of a Notice of Investigation and within 60 days of the owner's receipt of a Notice of Investigation, the landowner's receipt of the Notice of Investigation creates a presumption that the landowner has knowledge that the tenant/occupant suspected to have been engaged in illegal activity has in fact engaged in such activity. Therefore, under such circumstances, the owner of real estate will bear the burden of proving by a preponderance of the evidence that the owner lacked knowledge of the suspected illegal behavior.

1 (F) *Eviction proceedings as a defense under certain circumstances.*

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3 (1) An enforcement action against a person charged with a
4 violation of this section after having received a Notice of Investigation shall
5 be subject to an affirmative defense as set forth in subsection (2) below:
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7 (2) The affirmative defense shall be established if the person
8 charged with a violation:
9

10 (a) Has, within 30 days of receipt of a Notice of Investigation
11 instituted eviction proceedings against the tenant whose suspected
12 criminal activities would otherwise give rise to potential liability under
13 this section;
14

15 (b) Has completed the eviction proceedings within 30 days of
16 commencement of the proceedings.
17

18 (3) An affirmative defense shall also be available to a person who
19 has instituted an eviction proceeding within 30 days of receipt of a Notice of
20 Investigation and has completed the eviction proceeding within 60 days of
21 the commencement of the proceedings, so long as the person initiating the
22 eviction proceedings does not, by requesting a continuance, failing to appear
23 at a hearing, or otherwise delaying the proceedings cause the eviction
24 proceedings to remain open for a period of more than 30 days.
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(G) *Filing of criminal charges.* Charging an owner of real estate with a violation of this section shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to state law.

(H) *Limited indemnification of owners of real estate.* The city shall provide a limited indemnification to an owner of real estate located in the city, subject to the following conditions:

(1) That the owner of real estate shall have received a Notice of Investigation from the Police Department as described in part (D).

(2) That the owner of real estate has instituted eviction proceedings within 30 days of receipt of a Notice of Investigation a tenant whose suspected criminal activities would otherwise give rise to potential liability under this section.

(3) That the owner of real estate shall give no less than 30 days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.

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(4) That the City Attorney, upon receipt of the notice and list of witnesses, shall have the right to provide the owner of real estate with the names and addresses of additional witnesses including but not limited to witnesses from the Police Department whose presence shall be required at the hearing on the eviction proceedings.

(5) All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by the owner of real estate in proper and legal fashion, and be allowed to testify.

(6) The tenant involved as a defendant in the eviction proceedings shall prevail on the merits, not by reason of procedural irregularities but by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to division (B) of this section, did not, in fact, take place.

(7) The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with subdivision (6) above.

(8) The owner of real estate completes whatever steps he/she chooses to undertake to seek review of the judgment by Motion to Correct Errors and/or appeal.

Read the first time in full and on motion by Harper and duly adopted, read the second time by title and referred to the Committee on Regulation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____ the _____ day of _____, 2011, at _____ o'clock _____ M.E.S.T.

DATED: 12-14-10

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____ and duly adopted, placed on its passage. PASSED by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
<u>BENDER</u>	<u>✓</u>	_____	_____	_____
<u>BROWN</u>	<u>✓</u>	_____	_____	_____
<u>DIDIER</u>	<u>✓</u>	_____	_____	_____
<u>GOLDNER</u>	<u>✓</u>	_____	_____	_____
<u>HARPER</u>	<u>✓</u>	_____	_____	_____
<u>HINES</u>	<u>✓</u>	_____	_____	_____
<u>PAPE</u>	<u>✓</u>	_____	_____	_____
<u>SHOAFF</u>	<u>✓</u>	_____	_____	_____
<u>SMITH</u>	<u>✓</u>	_____	_____	_____

DATED: 1-11-11

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. D 3-11 on the 11th day of January, 2011

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Matthew Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of January, 2011, at the hour of 3:00 o'clock PM M.E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 18TH day of JANUARY, 2011, at the hour of 8:00 o'clock _____ M.E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR