

**RESOLUTION AMENDING THE CITY OF SOUTHAVEN CODE OF ORDINANCES
BY ADDING THE COMMERCIAL ESTABLISHMENT CHRONIC NUISANCE
ORDINANCE**

WHEREAS, the City of Southaven (“City”) Board finds that Commercial Establishments that allow and/or facilitate nuisance activities present grave health, safety and welfare concerns, specifically, where the persons responsible for such Commercial Establishments have created conditions for the nuisance activities and failed to take corrective action to abate the nuisance condition; and

WHEREAS, Commercial Establishments where nuisance activities occur on an on-going basis have a tremendous negative impact upon the quality of life, safety and health in areas where they are located; and

WHEREAS, this Ordinance is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at Commercial Properties by providing a process for abatement; and

WHEREAS, Chronic Nuisance Commercial Establishments are a financial burden to the City by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property; and

WHEREAS, pursuant to Miss. Code 21-17-5, the City Governing Authorities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi,

WHEREAS, this Ordinance may be used in conjunction with the City’s Ordinances and any other state law or regulation; and

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF SOUTHAVEN, MISSISSIPPI, BY RESOLUTION TO AMEND THE CITY OF SOUTHAVEN CODE OF ORDINANCES, TITLE X, CHAPTER 5, AS FOLLOWS:

SECTION 1. The prefatory clauses are hereby incorporated herein as findings of the City Governing Authorities of the City of Southaven.

SECTION 2. The City Code of Ordinances is amended to add Title X, Chapter 5 “Chronic Commercial Establishment Nuisance Property Ordinance” as follows:

Title.

This article may be cited as the "City of Southaven Chronic Nuisance Commercial Establishment Ordinance."

Purpose.

(a) Chronic Nuisance Commercial Establishments present grave health, safety and welfare concerns, where the persons responsible for such properties allow and/or facilitate nuisance activities and have failed to take corrective action to abate the nuisance condition. Chronic Nuisance Commercial Establishment have a tremendous negative impact upon the quality of life, safety, and health of areas where they are located. This ordinance is enacted to remedy Nuisance Activities that are particularly disruptive to quality of life and repeatedly occur or exist at Commercial Establishments by providing a process for penalizing such Commercial Establishments. This remedy is not an exclusive remedy and the City may, in addition, utilize all available state or local laws.

(b) Also, Chronic Nuisance Commercial Establishments are a financial burden to the City by the repeated calls for service to the properties because of the Nuisance Activities that repeatedly occur or exist on such property. This ordinance is a means to improve those conditions and hold accountable those persons responsible for Commercial Establishments.

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chronic Nuisance Commercial Establishment means a Commercial Establishment where the City Police have responded to three (3) separate and distinct incidents for a Nuisance Activity and made an arrest for the Nuisance Activity at the Commercial Establishment and the Commercial Establishment has neglected to implement and execute reasonable management practices and other measures to deter nuisance activity during a continuous six (6) month period.

Commercial Establishment means public or private facilities open to the general public, including but not limited to, restaurants, lounges, or any place that charges a direct or indirect fee for admission. For purposes of this Ordinance, Commercial Establishment shall include the building, parking lot, parcel, or land or portion thereof.

Control means the ability to regulate, restrain, dominate, counteract or govern the Commercial Establishment, or conduct that occurs at the Commercial Establishment.

Nuisance Activity means any criminal conduct as defined by Mississippi law or City of Southaven Ordinance occurring at a Commercial Establishment where City Police respond and make an arrest. The term "Nuisance Activity" shall not include conduct where the Commercial Establishment or Person Responsible is the victim of a crime and had no control over the criminal act.

Person means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them.

Person Responsible for the Commercial Establishment or *Person Responsible* means, unless otherwise defined, any person or entity who has titled ownership of the Commercial Establishment, which is subject to this article, an occupant in control of the Commercial Establishment, which is subject to this article, a developer, builder, or business operator or owner who is developing, building or operating a Commercial Establishment, which is subject to this article and/or any person who has control over the Commercial Establishment and allows a violation of this article to continue.

Violation.

- (a) Any Commercial Establishment within the City of Southaven, which is a Chronic Nuisance Commercial Establishment, is in violation of this article and subject to its remedies.
- (b) Any Person Responsible for Commercial Establishment, who permits property to be a Chronic Nuisance Commercial Establishment, shall be in violation of this Ordinance and subject to its remedies.

Procedure and Penalty.

- (a) The police chief or his designee shall report any Nuisance Activity at Commercial Establishments on an ongoing basis to the City Planning Director or his/her designee. The City Planning Director or his/her designee shall review and confirm the occurrence of three (3) or more Nuisance Activities within a six (6) month period. Upon such finding, the City Planning Director shall notify the Person Responsible for the Commercial Establishment of the City Court date to determine if the Commercial Establishment is adjudicated to be a Chronic Nuisance Commercial Establishment.
- (b) The notice of violation shall contain:
 - (1) The street address or legal description sufficient enough for identification of the Commercial Establishment;
 - (2) A concise description of the Nuisance Activities, along with the incident reports, that have occurred at the Commercial Establishment;
 - (3) A copy of this Ordinance. The notice shall also include a summons for the City Court date and that upon conviction for misdemeanor violation of this Ordinance and declaration of the Commercial Establishment being a Chronic Nuisance Commercial Establishment, the Person Responsible shall be assessed a \$1,000.00 penalty and may result in a temporary closure of the Commercial Establishment and suspension of the Person Responsible certificate of occupancy for the Commercial Establishment.
- (c) The City Planning Director or designee shall serve or cause to be served written notice upon the Person Responsible by the following means of delivery:
 - (1) Delivered in person by a City Police Officer to the Person Responsible for the Commercial Establishment.

- (2) By first class United States mail, postage prepaid, addressed to the Person Responsible for the Commercial Establishment. Service by mail is deemed complete upon deposit in the U.S. mail.
- (d) It is a defense to an action for Chronic Nuisance Commercial Establishment that the Person Responsible, at all material times, could not, in the exercise of reasonable care or diligence, prohibit and/or prevent the Commercial Establishment from becoming a Chronic Commercial Establishment and reported the Nuisance Activity to the City Police.
- (e) As part of the City Court proceedings, the City shall submit official police reports and other Nuisance Activity occurring or existing at the Commercial Establishment.
- (f) Once the City Court determines the Commercial Establishment to be a Chronic Nuisance Commercial Establishment under this Ordinance, the City Court may impose a penalty in an amount not to exceed \$1,000.00 against any or all the Persons Responsible for the Property and may order any other relief deemed appropriate, including but not limited to temporary closure of the Commercial Establishment; suspension of the Responsible Person's certificate of occupancy for the Premises or Property; and/or imprisonment not exceeding ninety (90) days.

Summary closure.

Nothing in this article prohibits the City from taking any emergency action for the summary closure of the Commercial Establishment or other available remedies when it is necessary to avoid an immediate threat to public welfare and safety.

SECTION 3. *Severability.* If any term or provision of this Ordinance is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms and provisions of this Ordinance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 4. *Conflict.* If the provisions of this Ordinance are inconsistent with one another or if they conflict with provisions found in other adopted ordinances or regulations of the City in the context of Commercial Establishments, the provisions in this Ordinance shall govern.

SECTION 5. The City Clerk is hereby directed to cause a summary of this ordinance in a form allowed by law to be published one time in the *Desoto Times Tribune*.

SECTION 6. The effective date of this ordinance shall be thirty (30) days after passage and publication required by law.

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After a full discussion of this matter, Alderman Gallagher moved that the foregoing Resolution to adopted and said motion was seconded by Alderman Payne and the vote thereupon was as follows:

Alderman George Payne	YES
Alderman Kristian Kelly	YES
Alderman Charlie Hoots	YES
Alderman William Jerome	YES
Alderman Joel Gallagher	YES
Alderman John David Wheeler	YES
Alderman Raymond Flores	YES

RESOLVED AND DONE, this 2nd day of April, 2024.

DARREN MUSSELWHITE, MAYOR

ATTEST:

CITY CLERK