

CITY OF CLEVELAND
DISORDERLY BUSINESS ORDINANCE
Adopted: November 1st, 2021

SECTION 1. TITLE.

This Ordinance shall be known as the “City of Cleveland Disorderly Business Ordinance.”

SECTION 2. PURPOSE.

The purpose of this Ordinance is to protect the health, safety, and welfare of the residents of the City of Cleveland by eliminating the proliferation of properties with occupants who disturb the peace and tranquility of the City. Nothing contained in this Ordinance is intended to dissuade, discourage or prohibit any person whose safety is in jeopardy, or who is a victim of domestic violence, from contacting the appropriate authorities, including, but not limited to, the Cleveland Police Department.

SECTION 3. LEGISLATIVE FINDINGS.

The Board of Aldermen hereby finds that:

- (a) The City 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 as well as in not dissuading, discouraging or prohibiting any person whose safety is in jeopardy, or who is a victim of domestic violence, from contacting the appropriate authorities.
- (b) Chronic unlawful or nuisance activity of various kinds on and near disorderly businesses adversely affects the health, safety and welfare of citizens and diminishes the quality of life in the areas where this chronic activity occurs. Chronic unlawful or nuisance activity constitutes a public nuisance and should be subject to abatement.
- (c) The existing ordinances and enforcement processes of the City do not adequately control chronic unlawful or nuisance activity or its detrimental effects on citizens in commercial areas of the City where such chronic activity occurs.
- (d) Establishing the regulatory framework contained herein will alleviate the problems created by chronic unlawful or nuisance activity through early intervention by the Police Department.

SECTION 4. DISORDERLY BUSINESSES PROHIBITED.

- (a) No person shall occupy as owner-occupant or shall allow another to occupy any business of any kind whether said business is open to the public or for rental or use by lessees (hereinafter jointly and severally “building”) which is a disorderly business as defined herein. This ordinance applies to the owner of buildings in fee simple or otherwise, lessees of the subject property or any other

person or entity actually occupying any building within the City limits.

(b) A “disorderly business” is any building which:

(1) The Police Department has visited a minimum number of 3 times in any rolling ninety (90) day period or (5) times in any rolling twelve (12) month period in response to situations that are created by the owner, tenants, lessees or owner’s or tenants’/lessee’s cohabitees, guests or invitees and that would have a tendency to unreasonably disturb the community, the neighborhood or an ordinary individual in the vicinity of said building, including, but not limited to: loud music; boisterous parties; sounds emanating from within the structure which are audible outside the building; loud noise or fights within the building or in its vicinity involving tenants of the building or their invitees (excluding any request for police protection or any police intervention in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the request for assistance or other police intervention arises from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building); owners, tenants, or invitees of owners or tenants being intoxicated on public ways in the vicinity of the building; other similar activities in the building or outside the building itself; or

(2) The police have visited three (3) or more times in any rolling ninety (90) day period or (5) times in any rolling twelve (12) month period in response to situations which are created by the owner, tenants, lessees or owner’s or tenants’/lessees cohabitees, guests or invitees and involve the arrest or summons of owners or lessees/tenants or their invitees for activities which constitute either a crime or civil infraction under either state or local law (excluding arrests or summonses arising from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building), or create a reasonable suspicion that illegal drug use or sales prostitution or public indecency has occurred at the property.

(3) The police have responded to any business/building where there has been a reported and documented situation involving gun violence or any violence with a deadly weapon (defined herein as “any apparatus or material used for the purposes of causing serious bodily harm”; any one incident involving gun violence or any violence with a deadly weapon shall immediately result in the business being deemed “disorderly.”

(c) The situation to which the visit pertains shall be documented by the Police Department. Such documentation may include sworn affidavits by named citizens that may be sufficient to create a reasonable suspicion said disorderly and/or illegal activity has occurred.

SECTION 5. NOTICE OF DISORDERLY BUSINESS.

(a) Whenever the Police Department has identified a building as a disorderly business, it shall cause written notification of the events that form the basis for that designation to be given to the owner(s) of the building and the owner(s) of any subject business occupied therein. The notice shall require the owners of both the building itself and the business being operated to meet with representatives of the City (including the Police Department) within five (5) business days from the

date of the written notification, or such other time as is agreed upon by the Police Chief or his/her designee, to identify ways in which the problems that have been identified will be eliminated.

(b) At the time of said meeting, the owners (of the building and the business) shall be obligated to provide to the City the following documentation:

(1) A list of the names of all tenants or other persons authorized to occupy the building and the unit(s) they occupy;

(2) Copies of all leases or occupancy agreement(s) with lessees/tenants or other persons occupying the building (confidential personal or financial information may be omitted);

(3) Contracts with any property manager or other person responsible for the orderly operation of the building; and

(4) Proof of building ownership.

In addition, the owners of both the building and the business shall agree to take effective measures to address the disorderly business, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the City and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the Police Department.

These measures may contain, but are not limited to the following provisions:

- 1.) Tenant/owner provided security that is clearly visible to the public both inside and outside of the premises.
- 2.) Active head counts to limit occupancy at or below their fire code limits.
- 3.) Immediate contact with Police Department when patrons become unruly.
- 4.) Additional assurances there are no sales of alcohol to patrons who are noticeably intoxicated.

The Police Chief or his or her designee has authority to execute such agreements on behalf of the City. Failure to enter into such an agreement at the conclusion of the meeting will be deemed a violation of this Ordinance, and the City may file a complaint in municipal court seeking all remedies permitted by law as set forth in Section 7 of this Ordinance.

(c) If the same building should be classified as a disorderly business by the Police Department on a subsequent occasion within three (3) years, then the City is under no obligation to meet with the owners (of the building and business) but may, after notice and hearing before the Board of Aldermen, seek injunctive relief through chancery, circuit or county court preventing against occupancy as set forth in Section 7(a), and/or proceed directly with a complaint in court seeking all remedies permitted by law as set forth in Section 7(a).

(d) The notices provided for in this section may be given to any person, including any legal entity having the right of legal title to the subject property and/or the beneficial interest in the disorderly business or any portion thereof, as that interest is recorded in the assessing records of the Bolivar County, which shall be sufficient for all legal purposes. Notice shall be provided to the owner of the building and land it is situated thereon and any non-owner occupants of the building, including any lessees (if known).

SECTION 6. APPEAL PROCESS.

The owner and/or any non-owner occupant(s) of a building that has been classified as a disorderly business by the Police Department may appeal such classification in writing to the Zoning Board of Appeals within fourteen (14) days of notification of such classification or within seven (7) days of any meeting with representatives of the City pursuant to Section 5. In the event of a timely appeal, the Zoning Board of Appeals will provide the property owner, non-owner occupants (if known), and the Police Chief with seven (7) days' advance notice of a hearing date and time. At such hearing, the appellant and the Police Chief shall have the right to present oral or documentary evidence for the Zoning Board of Appeals' consideration. The owner and any non-owner occupants shall have the right to explain the events or any mitigating circumstances surrounding the alleged violation(s) and to present oral or documentary evidence for the Zoning Board of Appeals consideration. The Zoning Board of Appeals shall issue a written decision on the appeal, determining whether the violation(s) occurred, within fourteen (14) days of the hearing.

SECTION 7. ENFORCEMENT.

(a) It shall be the duty of the Police Department or its designee (which may include Code Compliance officers) to administer and enforce the provisions of this Ordinance. If the owner and/or non-owner occupant (a) refuses to meet with representatives of the City as set forth in Section 5 above, (b) refuses to agree to take effective measures to address the disorderly business, (c) takes ineffective measures to address the disorderly business as determined by the City, or (d) fails to implement the agreement reached with the City to address the disorderly business, the owner or non-owner occupant of the business shall, after all grace periods pursuant to this ordinance and appeal times have run, be ticketed pursuant to Section 8 and 9 below for every day of a violation. The filing of an appeal shall suspend said ticketing process until the appeal is heard and decided by the City.

Additionally, if, in the discretion of the City, the disorderly business requires immediate posting in order to protect the public health, safety or welfare, the City may file a legal action to prevent the operation and/or occupation of the building/business seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief. This relief shall also be sought if the business has been deemed an ongoing disorderly business pursuant to Section 5(c).

(b) In the event of legal action against an owner and/or occupant for a disorderly business violation, the City shall name both the owner and non-owner occupants of the building (if known) as parties-in-interest to said legal action.

SECTION 8. VIOLATIONS.

Any person violating any of the provisions of this Ordinance or failing or neglecting or refusing to obey any order or notice of the Police Department issued hereunder shall be subject to a penalty as provided herein.

SECTION 9. CIVIL PENALTIES.

Any person who is found to be in violation of any provision of this Ordinance shall be subject to a civil penalty of not less than one thousand dollars (\$1,000.00) per day for every day this ordinance is violated. Penalties shall be assessed to each violator, owners and non-owner occupants alike, for each day of the violation following the running of appeal times and conclusion of any said appeal. Each violation of a separate provision of this Ordinance, and each day of violation, shall constitute separate offenses. In addition, if the City is the prevailing party in an enforcement action, said person shall also be liable for all reasonable expenses incurred by the City in the enforcement of this Ordinance, including, but not limited to, staff time, attorney's fees, and costs. All civil penalties shall inure to the benefit of the City of Cleveland.

So RESOLVED, ADOPTED, AND APPROVED this the 1st day of November, 2021.

s/Billy Nowell
BILLY NOWELL, Mayor

Attest:

s/Dominique Green
Dominique Green, City Clerk

It is hereby certified that the foregoing ordinance was offered and introduced in writing and its adoption was moved by Alderman Povall, and seconded by Alderman Gainspoletti and the vote was taken on final passage by both "AYE" and "NAY" as follows:

Alderman Zinnia Howze-Wince voted "AYE"
Alderman Robert Sanders voted "AYE"
Alderman Danny Abraham voted "AYE"
Alderman J. Kirkham Povall voted "AYE"
Alderman Brian Bishop voted "AYE"
Alderman Gary Gainspoletti voted "AYE"
Alderman Theodore R. "Ted" Campbell voted "AYE"

WHEREUPON, the Mayor declared said ordinance was duly, legally, and unanimously adopted, and he signed the same in open session at this meeting on this the 1st day of November, 2021.

s/Billy Nowell
BILLY NOWELL, Mayor

Attest:
Dominique Green
DOMINIQUE GREEN, City Clerk