



City of Madison

City of Madison
Madison, WI 53703
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Master

File Number: 04196

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File Type: Ordinance

Status: Items Referred

Version: 3

Reference:

Controlling Body: EQUAL
OPPORTUNITIES
COMMISSION

Requester: PUBLIC SAFETY
REVIEW BOARD

Cost:

Introduced: 07/20/2006

File Name: SECOND SUBSTITUTE - Creating Section 25.09 of
the Madison General Ordinances to establish that
certain premises may be declared Chronic Nuisance
Premises.

Final Action:

Title: SECOND SUBSTITUTE - Creating Section 25.09 of the Madison General Ordinances to
establish that certain premises may be declared Chronic Nuisance Premises.

Notes: 3982chronic

INTRO FROM FLOOR

Code Sections:

Agenda Date: 04/17/2007

Indexes:

Agenda Number: 115.

Sponsors: Tim Bruer and Jed Sanborn

Enactment Date:

Attachments:

Enactment Number:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	COMMON COUNCIL	07/18/2006	Refer	PUBLIC SAFETY REVIEW BOARD		04/10/2007	Pass
1	Attorney's Office/Approval Group	07/20/2006	Approved As To Form				
1	Attorney's Office	07/20/2006	Fiscal Note Required / Approval	Comptroller's Office/Approval Group		04/11/2007	
1	Comptroller's Office/Approval Group <i>Notes: Bohrod</i>	07/26/2006	Fiscal Note Pending	PUBLIC SAFETY REVIEW BOARD		07/26/2006	
1	PUBLIC SAFETY REVIEW BOARD	03/13/2007	Refer	Attorney's Office		04/03/2007	Pass

Verbose Action: Pasha asked how prospective tenants will learn of this ordinance and will it be part of the lease? Jennifer Zilavy of the City Attorney's Office responded that most of the behaviors in this ordinance are already those for which one can be arrested, but there will also be an educational component for both tenants and landlords. Landlords can add to the standard state lease as they see fit. The ordinance is to hold landlords accountable for the activities on their properties. King asked if there was case law on #3 - Zilavy said there was some. He also asked about #21 - violations of minimum housing codes - Zilavy replied that the police department has guidelines with discretionary enforcement. Health, safety and welfare of citizens is the concern. There is a trust that the Police Department and Building Inspection Unit will not go after landlords on trivial issues (wrong light bulbs for example). Scott asked if this ordinance was modelled after another community's. Lt. Strasburg and Zilavy stated they had used those of Appleton, Wausau and Green Bay and also looked at Milwaukee and Beloit. Scott was very much in favour of this type of ordinance but had several concerns with the wording of the proposed ordinance. Would it be more correct to have a body outside of the Police Department before whom complaints are brought since the police will be ones also doing the enforcement? Perhaps a Nuisance Abatement Board? The current appeal board has no experience in this subject. There are three options for "punishment" in the current ordinance: fine, cost recovery and injunctive relief (shut down establishment). Does the cost recovery really belong in this category? Moen wondered about the cost of enforcement - how much the tracking of this system compilation of statistics would cost. Captain Klubertanz replied that the system is already streamlined with accounting and would simply be a matter of looking at the report to get officers' names and how much time was involved, then taking those hours times their hourly wage. Accounting Division estimated about a ten minute process for them so minimal time would be needed. Strasburg added that a very small number actually go the enforcement level. Assistant Police Chief Davenport said that in the overall process this was a "last resort" and would follow the in-between steps first. The focus is on changing the bad practices of the few bad apples. Statistics are now gathered from Records Section and once a prescribed level of violations is reached, the landlord is contacted and asked to come in to discuss a plan of action to correct problems. Some don't respond - this ordinance would solve that problem. It is significant that landlords are supporting this measure. Scott felt that the current proposed ordinance puts the city in the position of micro-managing. Pasha asked if there was the potential for liability exposure for the city. At this point Skidmore moved and King seconded for the purpose of discussion, to adopt the ordinance. After further discussion and consideration of the issues raised, it was felt that the item should be tabled for a future meeting. The concept is supported but needs updated with some drafting changes in the details. This would require a referral back to the City Attorney's Office for fine tuning. Skidmore/King withdrew their earlier move to approve. Members were encouraged to forward their comments/concerns to Jennifer Zilavy in the City Attorney's Office. The clear focus is on behavior which is good - ordinance just needs some modifications.

Excused: Lichtenheld and Smith

Aye: Skidmore, King, Pasha, Bell, Scott and Moen

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|---|---|------------|--|-------------------------------------|------------|
| 2 | Attorney's Office/Approval Group | 04/03/2007 | Approved As To Form | 04/04/2007 | |
| | Notes: <i>Substitute.</i> | | | | |
| 2 | Attorney's Office | 04/03/2007 | Fiscal Note Required / Approval | Comptroller's Office/Approval Group | 04/11/2007 |
| 3 | PUBLIC SAFETY REVIEW BOARD | 04/10/2007 | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | | Pass |
| | Verbose Action: Jennifer Zilavy of the City Attorney's Office had incorporated last month's suggestions in the Substitute Ordinance. A friendly amendment was made and approved to add SS 961.42 as part of this ordinance. Police staff felt that this ordinance would have minimal implementation - only for the few landlords who refuse to work with the police to correct problems. It has not been made to create an adversarial relationship with landlords - just as a tool to use with those few who refuse to cooperate with police. | | | | |
| 2 | Comptroller's Office/Approval Group | 04/11/2007 | Approved Fiscal Note By The Comptroller's Office (SUBSTITUTES) | PUBLIC SAFETY REVIEW BOARD | 04/11/2007 |
| | Notes: <i>Bohrod</i> | | | | |
| 3 | Attorney's Office/Approval Group | 04/11/2007 | Approved As To Form | | |
| | Notes: <i>2nd Substitute.</i> | | | | |

Master Continued (04196)

3	Attorney's Office	04/11/2007	Fiscal Note Required / Approval	Comptroller's Office/Approval Group	04/11/2007
3	Comptroller's Office/Approval Group	04/11/2007	Approved Fiscal Note By The Comptroller's Office (SUBSTITUTES)	PUBLIC SAFETY REVIEW BOARD	04/11/2007

Notes: Bohrod

3	COMMON COUNCIL	04/17/2007	Refer	EQUAL OPPORTUNITIES COMMISSION	06/05/2007	Pass
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Notes: Due back at the 6/5/07 Common Council Meeting.

Text of Legislative File 04196

..Fiscal Note

The City Attorney's Office estimates that, under the provisions of the Ordinance, there may be 10 to 20 designations of Chronic Nuisance Premises annually. The City Attorney's Office has allocated a .75 FTE dedicated to the administration of nuisance cases. Funding for the position is included in the City Attorney operating budget. No additional appropriation is required for the City Attorney or the other City agencies to administer the provisions of the Ordinance, although there may some future need for additional resources for costs such as court fees and service of papers if there is a significant increase in court actions . There may be some modest increase in General Fund revenues derived from forfeitures, penalties and fines associated with violations under the Chronic Nuisance Ordinance.

..Title

SECOND SUBSTITUTE - Creating Section 25.09 of the Madison General Ordinances to establish that certain premises may be declared Chronic Nuisance Premises.

..Body

DRAFTER'S ANALYSIS: This ordinance is another tool for the City Attorney's office, the Madison Police Department and the Building Inspection Unit to use to combat public nuisance activities. This ordinance clearly defines what constitutes nuisance activity and it allows for a faster and more efficient response time from the City regarding enforcement and abatement. The ordinance places the responsibility of abating nuisance activities on the property owner and establishes a cost recovery system for police and building inspection services for those properties deemed to be chronic nuisance properties. There is also a forfeiture provision for chronic nuisance premises.

The Common Council of the City of Madison do hereby ordain as follows:

Section 25.09 entitled "Chronic Nuisance Premises" of the Madison General Ordinances is created to read as follows:

"25.09 CHRONIC NUISANCE PREMISES.

The Madison Common Council finds that any premises that, within a ninety (90) day period, has generated three (3) or more calls for police services on three (3) separate days, and/or has generated five (5) or more cases from building inspection from at least five building inspections occurring within a one (1) year period, and such calls resulted in enforcement action for nuisance activities, is deemed to have received and required more than the general, acceptable level of police services and building inspection services, and places an undue and inappropriate burden on the taxpayers of the City of Madison. Nuisance activity contributes to the general decay of an affected neighborhood and negatively impacts law-abiding residents in these neighborhoods. The vast majority of properties with chronic nuisance activity are non-owner occupied. This ordinance is enacted to encourage property owners to recognize their responsibility to ensure that activities occurring on their property conform to the law and do not unduly burden the City's police resources and to provide a mechanism for the City to take action against property owners who fail to ensure premises they own do not require a disproportionate level of police resources to be devoted to such premises. Therefore, the Common Council authorizes the Chief of Police or his or her designee, and the Director of the Building Inspection Unit or his or her designee, to charge the owners of such premises with the costs associated with abating the violations at premises where nuisance activities chronically occur. This subsection is not intended to discourage crime victims or a person in legitimate need of police services from requesting them.

(1) Definitions. For the purposes of this section:

(a) "Chronic Nuisance Premise" means a premise that meets any of the following criteria:

1. Has generated three (3) or more calls for police services that have resulted in enforcement action for nuisance activities on three (3) separate days within a ninety (90) day period and/or has generated five (5) or more cases from building inspection for nuisance activities from at least five (5) building inspections occurring within a one (1) year period, with such calls resulting in enforcement action. Three (3) or more calls for police services resulting in enforcement action for nuisance activities includes enforcement action taken against any person associated with the premises while at or within two

- hundred feet (200) of the premises for a nuisance activity; or
2. Premises for which a Dane County Court of law has determined that, pursuant to a search warrant request, probable cause exists that possession, manufacture, distribution or delivery of a controlled substance has occurred on or in association with the premises within thirty (30) days prior to the date of the search warrant application; or
 4. Has had one (1) enforcement action associated with the premises resulting from the manufacture, delivery or distribution of a controlled substance(s) as defined in Chapter 961 of the Wisconsin Statutes.
- (b) "Enforcement action" means any of the following: The physical arrest of an individual(s), the issuance of a citation for a law violation and/or referral of charges by the police or building inspection to the City Attorney or District Attorney for prosecution for nuisance activities.
- (c) "Nuisance Activities" means any of the following activities, behaviors or conduct:
1. An act of harassment as defined in s. 947.013, Wis. Stats.
 2. Disorderly conduct as defined in s. 24.02, MGO or s. 947.01, Wis. Stats.
 3. Battery, substantial battery or aggravated battery as defined in sc. 940.19, Wis. Stats.
 4. Indecent exposure as prohibited by Sec. 26.01, MGO or s. 944.20(1)(b) Wis. Stats.
 5. Depositing rubbish as prohibited by Sec. 10.17, MGO.
 6. Keeping a place of prostitution as defined in or s. 944.34, Wis. Stats.
 7. Loitering for the purposes of prostitution as prohibited by Sec. 26.08, MGO.
 8. Loitering for purposes of soliciting prostitutes, as prohibited by Sec. 26.085, MGO.
 9. Possessing an open container which contains alcohol beverages or consuming alcohol beverages upon any public street as prohibited by Sec. 38.08(7) of these ordinances.
 10. Theft as defined in s. 943.20, Wis. Stats.
 11. Arson as defined in s. 943.02, Wis. Stats.
 12. Possession, manufacture, distribution or delivery of a controlled substance or related offenses as defined in ch. 961, W is. Stats.
 13. Illegal gambling as defined in s. 945.02, Wis. Stats.
 14. Owning, keeping or harboring a dangerous animal, as defined in Sec. 25.22, MGO.
 15. Trespass to land as defined in s. 943.13, Wis. Stats. or criminal trespass to dwelling as defined in s. 943.14, Wis. Stats, or unlawful trespass as prohibited in Sec. 23.07, MGO.
 16. Damage to property as prohibited by Sec. 23.06, MGO.
 17. Discharge of a firearm as prohibited by Sec. 25.06, MGO.
 18. The production or creation of noises disturbing the peace, as prohibited by sec. 24.04, MGO.
 19. Obstructing a street or sidewalk, as prohibited by Sec. 10.23(1), MGO.
 20. Selling, offering for sale or giving away of any intoxicating liquors or fermented malt beverages without a license as provided in Sec. 38.05(1), MGO, or s. 125.04(1), Wis. Stats.
 21. Violations of the Minimum Housing Code, as prohibited by Sec. 27, MGO.
 22. Maintaining a drug dwelling as defined in Sec. 961.42 of the Wisconsin Statutes.
- (c) "Person" means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using Property in the City of Madison.
- (d) "Person Associated With" means any person who, on the occasion of a Nuisance Activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner of a property.
- (e) "Person in Charge" means any person, in actual or constructive possession of a property including but not limited to an owner or occupant of property under his or her ownership or control.
- (f) "Chief of Police" means the City of Madison Police Department Chief of Police or designee.
- (g) "Director of Building Inspection" means the City of Madison Building Inspection Unit

director or designee.

- (h) "Property" means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure of any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, Property may be limited to the unit or the portion of the Property on which any Nuisance Activity has occurred or is occurring, but includes areas of the Property used in common by all units of the Property.

(2) Procedure.

- (a) Whenever the Chief of Police or the Director of Building Inspection declares a Property a Chronic Nuisance Property under subsection (1), the Chief of Police or the Director of Building Inspection shall provide written notice of his or her determination to the Property owner identified by the City of Madison Assessor's records for that Property. The notice shall be deemed delivered if sent either by first class mail to the Property owner's last known address or if delivered in person to the Property owner. If the Property owner cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the Property owner's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by first class mail to the last known address of the owner as identified by the records of the City Assessor. The notice shall contain the following information:
 - 1. Street address, parcel number or a legal description sufficient to identify the property.
 - 2. A concise statement, including a description of the relevant activities supporting the determination that the Property is a Chronic Nuisance Property. In reaching a determination that a Property is a Chronic Nuisance Property, activities that were reported to the police or Building Inspection by the Property owner or on-site property manager shall not count as nuisance activities.
 - 3. A statement that the owner shall immediately notify the Chief of Police or Director of Building Inspection of any change in address to ensure receipt of future notices.
 - 4. A statement that the cost of future enforcement may be assessed as a special charge against the premises.
 - 5. A statement that the owner shall, within ten (10) days of receipt of the notice, respond to the Chief of Police or the Director of Building Inspection either with an appeal or to propose a written course of action to abate the nuisance activities. If the owner responds to the notice in Subdivision (a) with a nuisance abatement proposal, the Chief of Police or the Director of Building Inspection may accept, reject or work with the owner to modify the proposal in his or her discretion. The plan is acceptable if it can reasonably be expected to result in abatement of the nuisance activities described in the Notice, within sixty (60) days. Failure by owner to respond within ten (10) days as directed in this subdivision may result in a forfeiture on one thousand dollars (\$1,000) plus court costs and fees.
 - 6. A statement that the property owner may be subject to a forfeiture action for permitting a chronic nuisance property and may be subject to imprisonment for failure to pay such forfeiture.
 - 7. Any property owner who has been notified by the Chief of Police or the Director of Building Inspection that their non-owner occupied premise is a Chronic Nuisance Premise must attend a landlord training approved by the Office Of The City Attorney within thirty (30) days of said notification. The fee for any landlord training program administered by the City of Madison shall be fifty dollars (\$50.00) and shall be paid by the property owner prior to attending the training. Failure to attend the approved landlord training shall result in a forfeiture of two hundred fifty dollars (\$250) plus court costs and fees.
- (b) Whenever the Chief of Police or the Director of Building Inspection determines that:
 - 1. The owner has failed to respond to the Notice in subdivision (a), or
 - 2. Enforcement action for an additional nuisance activity has occurred at a property for which Notice has been issued pursuant to Subdivision (a) and

3. Either this enforcement action for nuisance activity has occurred not less than 15 days after notice has been issued or a course of action submitted pursuant to Paragraph (a)5 has not been completed, the Chief of Police and/or the Director of Building Inspection may calculate the cost of enforcement to abate this and any subsequent nuisance activities and may refer such cost to the City Comptroller. The Chief of Police and/or the Director of Building Inspection shall notify the property owner of the decision to refer the cost of enforcement. Delivery of this notice, along with a copy of the Chief's or Building Inspection Director's referral letter to the City Comptroller, shall be made as set forth in Subdivision (a). The notice shall contain:
 - a. The street address or legal description sufficient for identification of the premises.
 - b. A Statement that the Chief of Police and/or the Director of Building Inspection has referred the cost of enforcement to the City Comptroller with a concise description of the nuisance activities and the relevant sections of the ordinances.
 - c. A notice of the premises owner's right to appeal pursuant to subsection 3.
 4. Violation. Each subsequent incident of enforcement action for nuisance activity shall be deemed a separate violation and costs will continue to be assessed pursuant to sub. (3) until the nuisance is abated.
- (3) Penalties and Remedies.
- (a) Cost Recovery. The Chief of Police and the Director of Building Inspection shall keep an accurate account of the cost of enforcement and shall report it to the City Comptroller. The Comptroller shall establish a reasonable charge for the costs of enforcement of this section. Upon receipt of a notice from the Chief of Police or Building Inspection Director issued pursuant to sub. 2(b), the Comptroller shall charge any premises owner found to be in violation of this section the costs of enforcement in full or in part. Such costs shall be billed to the owner by invoice sent by regular mail and must be paid within thirty (30) days of the date on the invoice. Any unpaid invoice shall be a lien on such premises and may be assessed and collected as a special charge pursuant to Sec. 66.0627, Wis. Stats. A one hundred dollar (\$100) administrative fee shall be added to the special charge against the benefited property any time the property is declared a chronic nuisance property.
 - (b) Forfeiture. A forfeiture action may be commenced by the Office Of The City Attorney for each enforcement action for nuisance activity occurring after the premises has been declared a chronic nuisance premises. The forfeiture shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each enforcement action. Upon default of payment, the premises owner shall be imprisoned in the county jail or house of correction for a period of not less than 10 days nor more than 60 days.
- (4) Appeal. Appeal of the determination of the Chief of Police and/ or the Director of Building Inspection pursuant to either Subdivision 2(a), or the action of the City Comptroller imposing special charges pursuant to subsection 3(a) against the property, may be submitted in writing to the Administrative Review Board in accordance with the procedures set forth in Sec. 9.49 of these ordinances.
- (5) Eviction or Retaliation Prohibited. It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant because that tenant complained to the chief of police or building inspection director about nuisance activities on the landlord's premises. It shall be unlawful for a landlord or any person acting as an agent for the landlord, to intimidate or actively discourage a tenant and/or persons associated with a tenant, from calling the police to report nuisance activity associated with a property. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the 12-month period following receipt of the complaint by the chief of police or building inspection director constitutes unlawful retaliation under this subsection. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. "Good cause" as used in this subsection means that a landlord must show good cause for his or her actions,

other than one related to or caused by the operation of this section. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing nuisance activity as defined in sub. 1(c); for the commission of waste upon the premises; violating the terms and conditions of the lease agreement or periodic tenancy or as otherwise provided in ch. 704, Wis. Stats. and ch. Ag. 134, Adm. Code. A landlord's failure to renew a lease agreement or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this subsection.

Penalty. Any person violating sub. (4) shall be subject to a forfeiture of not less than \$100 nor more than \$2000 for each violation and upon failure to pay said forfeiture, may be imprisoned in the county jail for a period of not less than four days nor more than 60 days.

- (6) The director of Building Inspection is authorized to cause the abatement, including summary abatement, of any nuisance found on any premises, according to the procedure prescribed in Sec. 27.05(3), MGO.
- (7) This section may be enforced by injunction.
- (8) Abatement In Accordance With State Law. Nothing in this section shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State.
- (9) When Nuisance Is Deemed Abated. The public nuisance created by a chronic nuisance premises shall be deemed abated when no enforcement action to address nuisance activities occurs for a period of six (6) consecutive months from the date stated on the notice declaring the premise a chronic nuisance premise and/or there are no building inspection cases generated for a period of six (6) consecutive months from the date stated on the notice declaring the premise a chronic nuisance premise.
- (10) Severability. The provisions of any part of this section are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this section that the same would have been adopted had such invalid provisions, if any, not been included herein."