



Legislation Details (With Text)

File #: 110635 **Version:** 1

Type: Ordinance **Status:** Passed

File created: 9/1/2011 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 1/18/2012

Effective date:

Title: A substitute ordinance relating to the definition of chronic nuisance premises and clarification of procedures for addressing chronic nuisance premises.

Sponsors: ALD. WITKOWSKI

Indexes: NUISANCES

Attachments: 1. Hearing Notice List, 2. Notice Published on 2-3-12

Date	Ver.	Action By	Action	Result	Tally
9/1/2011	0	COMMON COUNCIL	ASSIGNED TO		
1/6/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/6/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/10/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
1/18/2012	1	COMMON COUNCIL	PASSED	Pass	15:0
1/24/2012	1	MAYOR	SIGNED		
2/3/2012	1	CITY CLERK	PUBLISHED		

110635
SUBSTITUTE 1

ALD. WITKOWSKI

A substitute ordinance relating to the definition of chronic nuisance premises and clarification of procedures for addressing chronic nuisance premises.

- 80-10-1 am
- 80-10-2-a am
- 80-10-2-c-1-k rc
- 80-10-2-c-1-o am
- 80-10-2-c-1-p am
- 80-10-2-c-1-gg cr
- 80-10-2-c-1-hh cr
- 80-10-2-d am
- 80-10-3-a rc
- 80-10-3-b am
- 80-10-3-c am
- 80-10-3-d-0 am
- 80-10-3- d-1 am

80-10-3-d-2 am
80-10-3-e-3 am
80-10-4 rn
80-10-4-b cr
80-10-5-a am
80-10-6-a-0 am
80-10-7-a am
80-10-8 am

This ordinance clarifies procedures and definitions relating to the abatement of chronic nuisances associated with specific premises.

The ordinance clarifies that the procedures under s. 80-10 are applicable to premises that have generated 3 or more responses from the police department. Currently, the ordinance applies to premises that have generated 3 or more calls for service. These calls may currently include multiple calls arising from a single incident, or may not be sufficient to warrant a police response.

The ordinance also clarifies the definition of “nuisance activity” replacing reference to crimes of violence as defined in ch. 940, Wis. Stats., with specific language referencing crimes against life and bodily security. The ordinance adds robbery and receipt of stolen property to the list of crimes and violations that constitute a nuisance under s. 80-10.

Further, the ordinance provides clarification of procedures and of the duties of property owners or other persons responsible for premises when the chief of police requires modification of a written course of action.

Finally, technical corrections to section references are included in the ordinance.

Part 1. Section 80-10-1 of the code is amended to read:

80-10. Chronic Nuisance Premises.

1. FINDINGS. The common council finds that any premises, including a manufactured home community, that has generated 3 or more ~~[[calls for police service]]~~ responses from the police department for nuisance activities has received more than the level of general and adequate police service and has placed an undue and inappropriate burden on the taxpayers of the city. The common council further finds that premises owners, and other parties conducting business activities upon the premises, that chronically fail to control the use of their property substantially interfere with the comfortable enjoyment of life, health and safety of the community. The common council therefore directs the chief of police ~~[[and]]~~ the commissioner of neighborhood services and the city attorney, as provided in this section, to charge the owners of such premises the costs associated with abating the violations at premises at which nuisance activities chronically occur.

Part 2. Section 80-10-2-a of the code is amended to read:

2. DEFINITIONS.

a. “Chief of police” means the chief of the police department or the chief’s designee. The chief’s designee includes, but is not limited to, a commanding officer signing ~~[[the notice under sub. 3-a]]~~ a notice under sub. 3-a-1 or 2 or any other specifically named designee in any notice under this

section.

Part 3. Section 80-10-2-c-1-k of the code is repealed and recreated to read:

c.

c-1-k. Crimes against life and bodily security as enumerated in ss. 940.01 to 940.32, Wis. Stats., except as provided in subd. 2.

Part 4. Section 80-10-2-c-1-o and p of the code is amended to read:

c-1-o. Any act of aiding and abetting, as defined in s. 50-18 ~~[[of the code]]~~ or s. 939.05, Wis. Stats., ~~>>of <<any of the activities , behaviors or conduct enumerated in [[subs. 1 to 12]]>>~~ subpars. a to L ~~<<~~.

c-1-p. Any conspiracy to commit, as defined in s. 939.31, Wis. Stats., or attempt to commit, as defined in s. 939.32, Wis. Stats., and of the activities, behaviors or conduct enumerated in ~~[[subs. 4 to 14]]>>~~ subpars. a to n ~~<<~~.

Part 5. Section 80-10-2-c-1-gg and hh of the code is created to read:

c-1-gg. Robbery as enumerated in s. 943.32, Wis. Stats.

c-1-hh. Receiving or concealing stolen property as enumerated in s. 943.34, Wis. Stats.

Part 6. Section 80-10-2-d of the code is amended to read:

d. "Other responsible party" means any individual or entity other than the owner of the premises that is licensed or subject to license in the operation of a business upon ~~[[a]]>>~~ the ~~<<~~ premises

Part 7. Section 80-10-3-a of the code is repealed and recreated to read:

3. PROCEDURE. a. Notices. a-1. Whenever the chief of police determines that the police department has responded to 3 or more nuisance activities that have occurred at a premises on separate days during a 30-day period or that the police department has responded to 2 or more nuisances of the types defined in sub. 2-c-1-e, i to L that have occurred at a premises within one year, the chief of police may notify the premises owner or other responsible party in writing that the premises is a nuisance. This notice shall contain:

a-1-a. The street address or legal description sufficient for identification of the premises.

a-1-b. A description of the nuisance activities that have occurred at the premises.

a-1-c. A statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, or referred for collection, and that the owner or other responsible party may be cited under sub. 6.

a-1-d. Examples of nuisance abatement measures.

a-1-e. A statement that the premises owner or other responsible party shall within 10 days either respond to the chief of police with an acceptable, written course of action to abate the nuisance activities at the premises or file an appeal pursuant to sub. 5-a.

a-2. Whenever the chief of police determines that modification of an accepted written course of action is necessary to abate nuisance activities at the premises, the chief of police shall notify the premises owner or other responsible party in writing that the written course of action must be modified. This notice shall contain:

a-2-a. The street address or legal description sufficient for identification of the premises.

a-2-b. A description of the nuisance activities that have occurred at the premises that require modification of the accepted written course of action.

a-2-c. A copy of the previously accepted written course of action.

a-2-d. A statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, or referred for collection, and that the owner or other responsible party may be cited under sub. 6.

a-2-e. A statement that the premises owner or other responsible party shall within 10 days, respond to the chief of police with an acceptable, modified written course of action to abate the nuisance activities at the premises.

Part 8. Section 80-10-3-b to d-2 and e-3 of the code is amended to read:

b. ~~[[This notice]]>>A notice under par. a<<~~ shall be deemed to be properly delivered if sent either by first-class mail to the premises owner's or other responsible party's last known address or if delivered in person to the premises owner or other responsible party. If the premises owner or other responsible party cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the premises owner's or other responsible party's usual place of abode or regular business in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing or conducting business 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 or other responsible party as identified by the records of the commissioner of assessments, to the appropriate licensing authority or the commissioner of neighborhood services.

c. Upon receipt of the nuisance premises notice >>or a demand for modification notice<<, the premises owner or other responsible party shall respond within 10 days to the chief of police with a written course of action >or modified written course of action<< outlining the abatement actions the premises owner or other responsible party will take in response to the notice. Upon review of the written course of action >>or modified written course of action<<, the chief shall accept or reject the ~~[[plan]]>>~~proposed course of action<<.

c-1. If the ~~[[written]]>>~~proposed<< course of action is accepted, the chief shall inform the owner or other responsible party of same and permit the owner or other responsible party 45 days to implement the ~~[[written]]>>~~accepted<< course of action. If the premises owner or other responsible party has implemented the ~~[[approved]]>>~~accepted<< written course of action within 45 days, no

further action by the department may be taken except that if nuisance activity continues, the chief may request the premises owner or other responsible party to ~~[[revise]]~~ modify the accepted written course of action.

c-2. If the premises owner or other responsible party fails to respond, proposes ~~[[an unacceptable written]]~~ a course of action that is rejected by the chief of police, or fails to implement ~~[[or modify]]~~ an ~~[[approved]]~~ accepted written course of action, the chief shall notify the premises owner or other responsible party that the cost of future enforcement may be assessed as a special charge against the premises , or referred for collection, and that the owner or other responsible party may be cited under sub. 6.

d. The chief of police may calculate the cost of police services and refer the cost to the commissioner of neighborhood services or the city attorney for subsequent nuisance activities occurring at the premises within one year of the date of ~~[[the]]~~ a notice under ~~[[sub. 3-a]]~~ par. a provided such nuisance activity occurs under one of the following circumstances:

d-1. 13 days after notice was given pursuant to sub. 3-a if the premises owner or other responsible party fails to respond , or ~~[[fails to propose]]~~ proposes a ~~[[written]]~~ course of action ~~[[for abatement that is acceptable to]]~~ that is rejected by the chief of police ~~[[; or,]]~~ .

d-2. 45 days after ~~[[the written]]~~ a proposed course of action was accepted by the chief of police and the premises owner or other responsible party failed to properly implement ~~[[or modify]]~~ the accepted ~~[[written]]~~ course of action ~~[[for abatement]]~~.

e-3. A notice of the premises owner's or other responsible party's right to appeal pursuant to ~~[[sub. 5]]~~ sub. 5-b.

Part 9. Section 80-10-4 of the code is renumbered 80-10-4-a.

Part 10. Section 80-10-4-b of the code is created to read:

4. COST RECOVERY.

b. Upon receipt of a cost referral letter from the chief of police pursuant to sub. 3-d, the city attorney shall initiate a collections action against any other responsible party found to be in violation of this section for the costs of enforcement, including administrative costs, in full or in part. The city attorney shall establish a reasonable charge for the costs of administration and enforcement of this section.

Part 11. Section 80-10-5-a of the code is amended to read:

5. APPEAL. a. Appeal of a determination that a premises is a nuisance ~~[[pursuant to sub. 3-a]]~~ under sub. 3-a-1 shall be submitted to the administrative review appeals board as provided in s. 320-11 within 10 days from the date of the notice.

Part 12. Section 80-10-6-a-0 of the code is amended to read:

6. CHRONIC NUISANCE PREMISES. a. Whenever a premises owner or other responsible party has been notified that a nuisance exists at his or her ~~[[property]]~~ premises and has been billed on 3 or more separate dates within a one-year time period for the costs of enforcement, the

chief of police may designate the premises as a chronic nuisance premises. Delivery of this notice shall be made as set forth in sub. 3-b. The chronic nuisance premises letter shall contain:

Part 13. Section 80-10-7-a of the code is amended to read:

7. EVICTION OR RETALIATION PROHIBITED. a. 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 about nuisance activities on the landlord's premises. 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 constitutes unlawful retaliation under this subsection. ~~[[Such]]~~ >> This << 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. 2-b-1 to 30]]~~ >> sub. 2-c-1-a to hh <<; 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. 709, Wis. Stats., and ch. ~~[[Ag.]]~~ >> ATCP << 134, Wis. 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.

Part 14. Section 80-10-8 of the code is amended to read:

8. SUBSEQUENT NOTICE OF NUISANCE ACTIVITY. Nothing in this section shall prevent or prohibit the chief of police from issuing or reissuing a notice under ~~[[sub. 3-a]]~~ >> sub. 3-a-1 << regarding subsequent nuisance activity at a premises.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB133488-2.2
Richard L. Withers
1/5/2012