



Legislation Details (With Text)

File #: 151308 **Version:** 1

Type: Ordinance **Status:** Passed

File created: 12/15/2015 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 1/19/2016

Effective date:

Title: An ordinance relating to chronic code violation nuisances.

Sponsors: ALD. MURPHY, ALD. BAUMAN, ALD. BOHL, ALD. WADE

Indexes: BUILDING-REGULATION, NUISANCES

Attachments: 1. Hearing Notice List, 2. Notice Published on 2-4-16

Date	Ver.	Action By	Action	Result	Tally
12/15/2015	0	COMMON COUNCIL	ASSIGNED TO		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/12/2016	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
1/12/2016	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	AMENDED	Pass	5:0
1/19/2016	1	COMMON COUNCIL	PASSED	Pass	15:0
1/28/2016	1	MAYOR	SIGNED		
2/4/2016	1	CITY CLERK	PUBLISHED		

151308
SUBSTITUTE 1

ALD. MURPHY, BOHL, BAUMAN AND WADE
An ordinance relating to chronic code violation nuisances.

80-12 cr
81-20 cr
200-33-48-a am
200-53-2-n-1 am
200-53-2-o am
200-53-3-a am

Under this ordinance, premises that have been subject to 3 qualifying inspections for zoning, building, housing or fire code violations within a period of 30 days are deemed nuisance premises.

The department of neighborhood services is authorized to charge increased inspection fees for nuisance premises, and owners of nuisance premises may be penalized if the code violations have not been abated after 3 additional qualifying inspections. The authorization of this ordinance shall expire on December 31, 2018 unless reauthorized by the common council.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 80-12 of the code is created to read:

80-12. Chronic Code Violation Nuisances.

1. FINDINGS. The common council finds that any building that has been subject to 3 qualifying inspections from the department of neighborhood services for zoning, building, housing or fire code violations within a period of 30 days has received more than the level of general and adequate inspection services and has placed an undue and inappropriate burden on the taxpayers of the city. The common council further finds that buildings which chronically receive inspection services due to uncorrected code violations substantially interfere with the comfortable enjoyment of life, health and safety of the community and are public nuisances. The common council therefore directs the commissioner of the department of neighborhood services, as provided in this section, to take action necessary to abate these public nuisances and charge inspection fees to the owners of nuisance buildings to motivate property owners to bring their properties into compliance with the code and offset the costs incurred by the taxpayers of the city to inspect such nuisance conditions.

2. DEFINITIONS. In this section:

- a. "Chronic code violation nuisance" means a premises which meets all of the criteria in sub. 6-a.
- b. "Code violation" means any violation of s. 80-19, s. 80-48 or subch. 2 of this chapter, or of chs. 78, 79, and 200 to 295 of the code.
- c. "Commissioner" means the commissioner of the department or the commissioner's designee.
- d. "Department" means the department of neighborhood services.
- e. "Nuisance" means a premises which meets all of the criteria in sub. 3-a-1 and 2 and a written notice about the premises as set forth in sub. 3-b been delivered to the premises owner.
- f. "Premises owner" means the owner of the property or an agent acting on behalf of the owner of the property.
- g. "Qualifying inspection" means any inspection by the department, except that which is required for permitted work or that which is required by law on a periodic basis as a result of a specific characteristic of the premises. The commissioner shall not count more than one inspection per day.

3. PROCEDURE.

- a. Notice. Whenever the commissioner determines that a premises meets all of the following criteria, the commissioner may notify the premises owner in writing that, upon delivery of the notification, the premises is a considered a nuisance:
 - a-1. The department has performed 3 or more qualifying inspections of the premises during a 30-day period.
 - a-2. Each qualifying inspection revealed one or more code violations on the premises that were not already observed on a prior qualifying inspection.
- b. Content of Notice. The nuisance notice shall contain all of the following:
 - b-1. The street address or legal description sufficient for identification of the premises.
 - b-2. A description of the code violations observed at the premises.

b-3. A statement indicating that, until all code violations specified on the notice are corrected, future inspections at a fee as set forth in s. 81-20 may be assessed as a special charge against the premises or referred for collection, and that the premises owner may be subject to penalties under sub. 6.

b-4. A statement that the premises owner shall within 14 days either respond to the commissioner with a written abatement plan to correct the code violations at the premises or file an appeal pursuant to sub. 5-a.

c. Notice Delivery. A nuisance notice under par. b shall be deemed to be properly delivered if sent either by first class mail to the premises owner's last known address or if delivered in person to the premises owner. If the premises owner cannot be located, the nuisance notice shall be deemed to be properly delivered if a copy of it is left at the premises owner'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 nuisance notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the nuisance notice is sent by first class mail to the last known address of the owner as identified by the records of the commissioner of assessments.

d. Notice Response. Upon receipt of a nuisance notice, the premises owner shall respond within 14 days to the commissioner with a written abatement plan outlining the actions the premises owner will take to correct all code violations within 60 days of the date on which the premises owner submitted the abatement plan. The commissioner shall accept or reject the abatement plan.

d-1. If the proposed abatement plan is accepted, the commissioner shall inform the premises owner of the acceptance and allow the premises owner 60 days from the date on which the premises owner submitted the abatement plan to correct all code violations before taking further action under this section. The commissioner may allow additional time to correct code violations if the commissioner determines additional time is necessary. If the premises owner has corrected all code violations within the time allowed, the department shall take no further action based on the nuisance notice.

d-2. If the proposed abatement plan is rejected, the premises owner fails to respond to the nuisance notice in 14 days, or the board affirms the determination of the commissioner after an appeal under sub. 5-a, the premises owner shall attend a meeting scheduled by the commissioner. At the meeting, the commissioner shall order the premises owner to correct all code violations by a date deemed reasonable by the commissioner.

e. Inspection Fees. The commissioner may charge the fees in this paragraph for any qualifying inspection in which the code violations on the nuisance notice are subsequently observed.

e-1. The commissioner may charge once per calendar month a fee as set forth in s. 81-20 per inspection provided such inspection occurs at least 3 days after one of the following circumstances:

e-1-a. The scheduled abatement plan meeting, if the premises owner fails to appear.

e-1-b. Expiration of the time allowed by the commissioner to correct all code violations, if the premises owner provided an accepted abatement plan or attended the scheduled abatement plan meeting.

e-1-c. Expiration of the time allowed by the commissioner to correct all code violations, if an appeal is timely filed pursuant to sub. 5-a and the administrative review appeals board affirms the determination within the nuisance notice as provided in s. 320-11.

e-2. The commissioner may increase the monthly fee per inspection as set forth in s. 81-20-2 after the commissioner has charged 3 separate inspection fees as set forth in subpar. 1.

f. Inspection Fee Notice. The commissioner shall notify the premises owner of any inspection fee

charged under this section in the same manner of delivery set forth in sub. 3-c. The inspection fee notice shall contain all of the following:

- f-1. The street address or legal description sufficient for identification of the premises.
- f-2. A description of the code violations observed during the inspection.
- f-3. A notice of the premises owner's right to appeal the fee pursuant to sub. 5-b.
- f-4. A statement that the premises will be reinspected monthly until all code violations are corrected.
- f-5. A statement explaining the cost of future inspections if the premises owner fails to correct all code violations, and explaining that the premises owner may be subject to a forfeiture as set forth in sub. 9-a and b for maintaining a chronic code violation nuisance as set forth in sub. 6.

g. Special Inspection Warrant. If the premises owner or occupant fails to allow an inspection of a premises designated as nuisance as set forth in sub. 3, the commissioner may obtain a special inspection warrant to conduct the inspection.

4. COST RECOVERY. In addition to the inspection fees specified in sub. 3-e, the commissioner may charge the inspection fees set forth in s. 200-33-48.

5. APPEAL.

a. Nuisance Determination Appeal. Appeal of a determination within a nuisance notice under sub. 3-b shall be submitted to the administrative review appeals board as provided in s. 320-11 within 14 days from the date of the notice.

b. Inspection Fee Appeal. Appeal of inspection fees assessed by the commissioner pursuant to sub. 3-e shall be submitted to the administrative review appeals board as provided in s. 320-11 within 30 days from the date of the inspection fee notice.

6. PREMISES WITH CHRONIC CODE VIOLATIONS.

a. Nuisance Designation. Whenever the commissioner determines that a premises meets all of the following criteria, the premises shall be deemed a chronic code violation nuisance:

a-1. The premises owner has been notified that the premises is a nuisance as set forth in sub. 3-a.

a-2. At least 3 inspection fee notices have been issued under sub. 3-f for qualifying inspections of the premises, without correcting all code violations.

b. Penalty. Any person maintaining a chronic code violation nuisance shall be subject to the penalties provided in sub. 9.

7. EVICTION OR RETALIATION PROHIBITED.

a. Retaliation Prohibited. It shall be unlawful for a landlord to terminate a lease or periodic tenancy of any tenant or otherwise retaliate against any tenant because that tenant complained to the commissioner about code violations 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 commissioner constitutes unlawful retaliation under this subsection. 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 or periodic tenancy may be terminated for failure to pay rent, the commission of waste upon the premises, violating the terms and conditions of the lease or periodic tenancy, or as otherwise provided in ch. 704, Wis. Stats., and ch. ATCP 134, Wis. Adm. Code. A landlord's failure to renew a lease or periodic tenancy upon expiration of such lease or periodic tenancy shall not be deemed a violation of this subsection.

b. Penalty. Any person violating par. a shall be subject to the penalties provided in sub. 9-c and d.

8. SUBSEQUENT NOTICE OF NUISANCE ACTIVITY. Nothing in this section shall prevent or prohibit the commissioner from issuing or reissuing a notice under sub. 3-a regarding subsequent code violations observed at a premises.

9. PENALTIES.

a. Chronic Code Violation Nuisance Forfeiture. Any premises owner maintaining a chronic code violation nuisance under sub. 6 shall be subject to a forfeiture of not less than \$1,000 nor more than \$5,000 for failure to correct all code violations.

b. Default. Upon default of payment of a forfeiture assessed under sub. 6, the premises owner shall be imprisoned as provided by law.

c. Eviction or Retaliation Forfeiture. Any person violating sub. 7 shall be subject to a forfeiture of not less than \$100 nor more than \$2,000 for each violation.

d. Default. Upon default of payment of a forfeiture assessed under sub. 7, such person shall be imprisoned as provided by law.

Part 2. Section 81-20 of the code is created to read:

81-20. Chronic Code Violation Nuisance Fees. The inspection fees for premises identified as a nuisance under s. 80-12 shall be:

1. For the first 3 qualifying inspections of a premises, after a nuisance notice has been delivered for that premises in accordance with s. 80-12-3, \$500.

2. For any subsequent qualifying inspections of a premises, \$750.

Part 3. Section 200-33-48-a of the code is amended to read:

200-33-48. REINSPECTION FEE.

a. To compensate for inspectional and administrative costs, a fee of \$60 may be charged for any reinspection to determine compliance with an order to correct conditions of provisions of the code under the jurisdiction of the department of neighborhood services or assigned to the department, except no fee shall be charged for the reinspection when compliance is recorded. A fee of \$75 may be charged for a second reinspection, a fee of \$200 for a third reinspection and a fee of \$350 for each subsequent reinspection >>unless the inspected premises is subject to a nuisance notice under s. 80-12, in which case the fee as set forth in s. 81-20 may be charged for inspection of such nuisance<<. Reinspection fees shall be charged against the real estate upon which the reinspections were made, shall upon delinquency be a lien upon the real estate and shall be assessed and collected as a special charge for payment and settlement as provided in ch. 19 of the city charter.

Part 4. Section 200-53-2-n-1 of the code is amended to read:

200-53. Residential Rental Certificate.

n-1. Determined to be a nuisance under s. 80-10-3-a-1 >>or s. 80-12-3-a<< and the time for appealing the determination has passed or the determination was upheld on appeal.

n-2. Subject to an order from the chief of police to modify an abatement plan under s. 80-10-3-a-2.

>>n-3. The owner of the dwelling has been charged for enforcement costs as set forth in s. 80-10-4 or inspection fees as set forth in s. 80-12-3-e.<<

Part 5. Section 200-53-2-o of the code is amended to read:

200-53. Residential Rental Certificate.

o. "Chronic nuisance premises" means a dwelling that, within the prior 2 years, has qualified under s. 80-10-6 >>or s. 80-12-6<<.

Part 6. Section 200-53-3-a of the code is amended to read:

200-53. Residential Rental Certificate.

3. RESIDENTIAL RENTAL CERTIFICATE REQUIRED.

a. The owner of a dwelling within the designated residential area >>, a nuisance property or a chronic nuisance premises<< shall apply for a residential rental certificate for each unit within the dwelling. Unless a unit has a valid residential rental certificate or temporary residential rental certificate, no owner of the unit shall permit any person to occupy the unit as a tenant or otherwise. A residential 2-family building that is owner-occupied is exempt from this requirement.

Part 7. The commissioner of neighborhood services shall evaluate the results and effectiveness of the ordinance and report to the common council these results and potential improvements to be made prior to December 31, 2018. The authorization of this ordinance shall expire on December 31, 2018 unless reauthorized by the common council.

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: _____

LRB161665-2
Dana Zelazny
1/12/2016