



## Legislation Text

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070318  
ORIGINAL

ALD. DONOVAN, BAUMAN AND ZIELINSKI

An ordinance relating to regulation of chronic nuisance premises.

80-10 rc

This ordinance revises current code provisions relating to chronic nuisance premises to streamline the procedure and resolve certain ambiguities that have arisen at the administrative appeals board.

The ordinance:

1. Modifies the definition of “nuisance activity” to include crimes of violence, crimes involving illegal possession of firearms, the possession of counterfeit items and the possession of and delivery of drug paraphernalia.
2. Modifies the definition of a “person associated with the premises” to specifically exclude a person present on the premises, such as a trespasser.
3. Adds a definition of “chief of police”.
4. Permits the use of code provisions for additional nuisance activities that occur more than twice within a year.
5. Requires the police department to include examples of nuisance abatement measures during the initial nuisance notice.
6. Provides for appeal to the administrative review board upon receipt of the initial notice letter.
7. Specifies the premises owner’s responsibilities for complying with the ordinance.
8. Clarifies the police time-frame in which to respond to an owner’s response or lack of response to a nuisance notice.
9. Establishes a time-frame of one year in which a premises owner and the police department may invoke the ordinance.
10. Streamlines the procedure for the issuance of a chronic nuisance premises citation.
11. Permits the issuance and re-issuance of nuisance notices without limitation.

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

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 Section 80-10 of the code is repealed and recreated to read:

**80-10. Chronic Nuisance Premises.**

**1. FINDINGS.** The common council finds that any premises that has generated 3 or more calls for police service 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 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, 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.

**2. DEFINITIONS.** For the purposes of this section:

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 or any other specifically named designee in any notice under this section.

b. "Nuisance activity" means any of the following activities, behaviors or conduct whenever engaged in by persons associated with a premises:

b-1. An act of harassment as defined in s. 947.013, Wis. Stats.

b-2. Disorderly conduct as defined in s. 106-1 of the code or s. 947.01, Wis. Stats.

b-3. Battery, substantial battery or aggravated battery as defined in s. 940.19, Wis. Stats.

b-4. Indecent exposure as defined in s. 106-5 of the code or s. 944.20(1)(b), Wis. Stats.

b-5. Keeping a place of prostitution as defined in s. 106-3 of the code or s. 944.34, Wis. Stats. or leasing a building for the purposes of prostitution as defined in s. 106-4 of the code.

b-6. Littering of premises as defined in s. 79-12.

b-7. Theft as defined in s. 110-16 of the code or s. 943.20, Wis. Stats.

b-8. Arson as defined in s. 943.02, Wis. Stats.

b-9. Possession, manufacture or delivery of a controlled substance or related offenses as defined in ch. 961, Wis. Stats.

b-10. Gambling as defined in ss. 107-1 and 2 of the code or s. 945.02, Wis. Stats.

b-11. Crimes of violence as defined in ch. 940, Wis. Stats.

b-12. Crimes involving illegal possession of firearms as defined in ss. 941.23, 941.26, 941.28, 941.29 and 948.60, Wis. Stats.

b-13. Keeping a prohibited dangerous animal as defined in s. 78-25.

b-14. Trespass to land as defined in s. 943.13, Wis. Stats. or criminal trespass to dwelling as defined in s. 943.14, Wis. Stats.

b-15. Any act of aiding and abetting, as defined in s. 50-18 of the code or s. 939.05, Wis. Stats., any of the activities, behaviors or conduct enumerated in subds. 1 to 12.

b-16. Any conspiracy to commit, as defined in s. 939.31, Wis. Stats., or attempt to commit, as defined in s. 939.32, Wis. Stats., any of the activities, behaviors or conduct enumerated in subds. 1 to 14.

b-17. Discharge of a firearm as defined in s. 105-35.

b-18. The production or creation of excessive noise as defined in s. 80-63.

b-19. Loitering as defined in s. 106-31.

b-20. Public drinking as defined in s. 106-1.8.

b-21. The sale, offering for sale, bartering or giving away of any intoxicating liquors or fermented malt beverages without a license as provided in s. 90-3-1 of the code or s. 125.04(1), Wis. Stats.

b-22. The operation of a convenience store in violation of any provision of s. 68-4.3.

b-23. The possession of counterfeit items as defined by s. 132.02, Wis. Stats.

b-24. Selling or giving away tobacco products to persons under the age of 18 as defined in s. 106-30-2.

b-25. The possession, possession with intent to sell or deliver, or delivery of drug paraphernalia as defined in s. 106-36.

b-26. Owning, keeping, having or harboring any bird or animal that causes a disturbance of the peace as defined in s. 78-29.

b-27. Misuse of emergency telephone numbers as defined in s. 105-77.

b-28. Illegal sale, discharge and use of fireworks as defined in s. 105-47-1.

b-29. Loitering-illegal drug activity as defined in s. 106-35.6.

b-30. Truancy and contributing to truancy as defined in ss. 106-23.1 and 106-23.3.

c. "Person associated with a premises" means the premises owner, operator, manager, resident, occupant, guest, visitor, patron or employe or agent of any of these persons.

### 3. PROCEDURE.

a. 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-b-5, 9 to 12 that have occurred at a premises within one year, the chief of police may notify the premises owner in writing that the premises is a nuisance. This notice shall contain:

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

a-2. A description of the nuisance activities that have occurred at the premises.

a-3. A statement indicating that the cost of future enforcement may be assessed as a special charge against the premises and that the owner may be cited under sub. 6.

a-4. Examples of nuisance abatement measures.

a-5. A statement that the premises owner 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.

b. This notice 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 notice shall be deemed to be properly delivered if a copy of it is left at the premises 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 commissioner of assessments or the commissioner of neighborhood services.

c. Upon receipt of the nuisance premises notice, the premises owner shall respond within 10 days to the chief of police with a written course of action outlining the abatement actions the premises owner will take in response to the notice. Upon review of the premises owner's written course of action, the chief shall accept or reject the plan.

c-1. If the written course of action is accepted, the chief shall inform the owner of same and permit the owner 45 days to implement the written course of action. If the premises owner has implemented the approved 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 to revise the accepted written course of action.

c-2. If the premises owner fails to respond, proposes an unacceptable written course of action or fails to implement or modify an approved written course of action, the chief shall notify the premises owner that the cost of future enforcement may be assessed as a special charge against the

premises and that the owner 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 for subsequent nuisance activities occurring at the premises within one year of the date of the notice under sub. 3-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 fails to respond or fails to propose a written course of action for abatement that is acceptable to the chief of police; or,

d-2. 45 days after the written course of action was accepted and the premises owner failed to properly implement or modify the accepted written course of action for abatement.

d-3. After the administrative review appeals board affirms the nuisance premises determination as provided in s. 320-11 if an appeal is timely filed pursuant to sub 5-a.

e. The chief of police shall notify the premises owner of the decision to refer the cost of police services by copy of the chief's cost referral letter to the commissioner of neighborhood services. Delivery of this notice shall be made as set forth in sub. 3-b. The cost referral letter shall contain:

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

e-2. A statement that the chief of police has referred the cost of enforcement to the commissioner with a concise description of the nuisance activities and the relevant sections of the code.

e-3. A notice of the premises owner's right to appeal pursuant to sub. 5.

e-4. A statement that each subsequent incident of nuisance activity may be deemed a separate violation.

e-5. A statement that whenever a premises owner has been billed, on 3 or more separate dates, for the costs of enforcement within one year, he or she may be issued a citation of not less than \$1,000 nor more than \$5,000 after notification by the chief of police that the premises is a chronic nuisance due to the premises owner's failure to abate the nuisance activities.

**4. COST RECOVERY.** Upon receipt of a cost referral letter from the chief of police pursuant to sub. 3-d, the commissioner of neighborhood services shall charge any premises owner found to be in violation of this section the costs of enforcement, including administrative costs, in full or in part. All costs so charged are a lien upon such premises and may be assessed and collected as a special charge. The commissioner shall establish a reasonable charge for the costs of administration and enforcement of this section.

#### **5. APPEAL.**

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

b. Appeal of the subsequent cost referral by the chief of police pursuant to sub. 3-d shall be submitted to the administrative review appeals board as provided in s. 320-11 within 30 days from the date of the cost referral letter.

#### **6. CHRONIC NUISANCE PREMISES.**

a. Whenever a premises owner has been notified that a nuisance exists at his or her property 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:

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

a-2. A statement that the premises owner has been billed, on 3 or more separate dates, for the costs of enforcement within a one-year time period, along with a concise description of the nuisance activities, bills and relevant sections of the code.

a-3. A statement that any subsequent incident of nuisance activity shall be subject to a forfeiture of

not less than \$1,000 nor more than \$5,000 for failure to abate the nuisance activity.

a-4. A statement that each subsequent incident of nuisance activity may be deemed a separate violation.

b. Any person failing to abate nuisance activities after receiving notice under par. a shall be subject to a forfeiture of not less than \$1,000 nor more than \$5,000 for failure to abate the nuisance activity. 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 40 days nor more than 90 days.

**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 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; 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. 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.

b. Any person violating par. a shall be subject to a forfeiture of not less than \$100 nor more than \$2000 for each violation and in default of payment thereof, be imprisoned in the county jail or house of correction for a period of not less than 4 days nor more than 80 days.

**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 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: \_\_\_\_\_

LRB07222-1

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5/25/2007