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Title: A substitute ordinance relating to suspension or revocation of certificates of occupancy or zoning.

Sponsors: ALD. DONOVAN, ALD. BAUMAN, James N. Witkowiak, ALD. BOHL

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Attachments: 1. City Attorney's Opinion

| Date | Ver. | Action By | Action | Result | Tally |
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| 3/12/2008 | 1 | CITY CLERK | DRAFT SUBMITTED | | |
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| 2/14/2013 | 1 | ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE | HEARING NOTICES SENT | | |
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| 2/27/2013 | 1 | COMMON COUNCIL | PLACED ON FILE | Pass | 14:0 |

070142 SUBSTITUTE 1

ALD. DONOVAN, BAUMAN, WITKOWIAK, AND BOHL

A substitute ordinance relating to suspension or revocation of certificates of occupancy or zoning.

200-31-3 cr

200-42.5 cr

275-32-7.5-a am

This ordinance establishes a procedure for suspension or revocation of a certificate of occupancy or certificate of zoning for reasons related to nuisance-type activities, behaviors or conduct in or on a building, structure or premises. This procedure applies to all properties except owner-occupied one- and 2-family dwellings.

Proceedings for suspension or revocation of a certificate of occupancy or certificate of zoning may be initiated by the filing, with the city clerk, of written charges by the commissioner of neighborhood services, commissioner of health, chief of police, local common council member or any other interested party or member of the public. Under this ordinance, grounds for suspension or revocation of a certificate include any owner, operator, manager, resident, occupant, guest, visitor, patron or employe of the premises (or agent of any of these persons) engaging in nuisance-type activities, overcrowding of the building, structure or premises, and calls for police service at the subject property

occurring in such numbers and for such reasons as to indicate that the building, structure or premises constitutes a threat to the health, safety, convenience or property interests of the surrounding neighborhood. Such causes may be cited by the chief of police, commissioner of neighborhood services, commissioner of health, local common council member or any other interested party when that individual files sworn written charges seeking suspension or revocation of the certificate.

Proceedings for suspension or revocation of a certificate shall begin with the appropriate common council committee requesting the property owner to appear before the committee for the purpose of receiving an explanation of the basis for possible suspension or revocation. The committee shall also inform the owner that he or she may submit to the chief of police, commissioner of neighborhood services, commissioner of health or other party specified by the committee a written course of action to abate the behaviors or conditions that have become problems at the subject property.

If the property owner does not submit a written course of action within the required time frame, submits an unacceptable course of action or submits an acceptable course of action but is subsequently unable to implement it in a satisfactory manner, the council committee shall conduct an evidentiary hearing on the proposed suspension or revocation in the standard manner provided for city-issued licenses. The committee may employ a hearing officer to take testimony and render recommended findings of fact and conclusions of law to the committee. The committee shall provide a report and recommendation to the common council, which shall determine by a majority vote whether to adopt the recommendation of the committee.

A suspension of a certificate shall be in effect for not less than 30 calendar days and not more than 180 calendar days and shall take effect 30 days after the final action of the common council. A revocation shall also take effect 30 days after the common council decision. Whenever a certificate is revoked, no new certificate shall be issued for the subject building, subject or premises for a period of 12 months from the date of revocation.

Whenever a certificate is suspended or revoked, the commissioner of neighborhood services shall order the building, structure or premises vacated by the effective date of the suspension or revocation. If occupancy of the building, structure or premises continues after the suspension or revocation takes effect, the commissioner of neighborhood services shall bill the property owner a violation charge of \$50 per unit per day of illegal occupancy. If such bills are not paid when due, the unpaid charges shall be placed on the owner's property tax bill. The commissioner shall also seek a circuit court order to allow the police department to physically remove occupants of the building, structure or premises.

Whereas, The Common Council finds that certain conduct on private property, including the activities, behaviors and conduct listed in s. 80-10-2 of the Code of Ordinances, may have a detrimental effect on the health, safety or welfare of residents of the surrounding neighborhood, particularly when it occurs repeatedly and when the owner of the problem property fails to take adequate steps to abate such activity; and

Whereas, The Common Council further finds that the presence of such chronic nuisance activity may destabilize the surrounding neighborhood and reduce its desirability as a place to live or conduct business, thereby depressing property values and hurting the neighborhood's economic vitality; and

Whereas, The Common Council finds that chronic nuisance properties generate a disproportionately large volume of calls for police service and that the provision of police service to these properties places an unfair burden on taxpayers of the city and may deprive other residents and property owners

of the police services they deserve; and

Whereas, On January 16, 2001, the Common Council passed File Number 001273, an ordinance that created s. 80-10 of the Code (the “chronic nuisance premises ordinance”) and was intended to reduce the incidence of chronic nuisance activities on private property by assessing the cost of the City’s enforcement actions relating to such activities against the owners of the properties where the activities occur; and

Whereas, The Common Council subsequently amended s. 80-10 to provide for issuance of a substantial citation (currently about \$3,100) to the owner of a premises who has been billed for enforcement costs 3 or more times within a 2-year period; and

Whereas, The Common Council finds that, for a variety of reasons, the provisions of s. 80-10 are ineffective in eliminating or reducing nuisance conduct problems at 10-15% of the chronic nuisance properties to which they are applied; and

Whereas, The Common Council seeks to afford neighbors directly and adversely affected by the chronic nuisance activities, behaviors and conduct on private property the opportunity to present their concerns to the Council and to give direct evidence of the conduct that is adversely affecting the neighbors’ enjoyment of their properties; and

Whereas, For all these reasons, the Common Council finds that it is necessary and beneficial to augment the provisions of s. 80-10 by establishing a procedure by which the certificate of occupancy or certificate of zoning for a property could be suspended or revoked if a sworn, written complaint relating to nuisance-type conduct on the property is filed with the City and the Common Council, following a due-process hearing, finds the complaint to be true; now, therefore

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

Part 1. Section 200-31-3 of the code is created to read:

200-31. Revocation of Permit or Approval.

3. EXCEPTION. The provisions of this section shall not apply to revocation of a certificate of occupancy pursuant to s. 200-42.5.

Part 2. Section 200-42.5 of the code is created to read:

200-42.5. Suspension or Revocation of Certificate. 1. **APPLICABILITY.** This section shall apply to all certificates of occupancy and certificates of zoning except those that have been issued for single-family and 2-family dwellings, provided those dwellings are owner-occupied.

2. INITIATION OF PROCEEDINGS. Proceedings for the suspension or revocation of a certificate of occupancy or certificate of zoning may be initiated by the chief of police, commissioner of health, commissioner of neighborhood services, local common council member or any interested party, including any member of the public. Sworn written charges shall be verified and filed with the city clerk by the person bringing the complaint. Upon verification and filing of written charges, the procedure in sub. 4 shall be followed.

3. GROUNDS FOR SUSPENSION OR REVOCATION. Grounds for suspension or revocation of a

certificate of occupancy or certificate of zoning which may be cited by the chief of police, commissioner of health, commissioner of neighborhood services, local common council member or any interested party, including any member of the public, when filing sworn written charges seeking suspension or revocation of a certificate include:

- a. Any owner, operator, manager, resident, occupant, guest, visitor, patron or employee of the premises, or agent of any of these persons, has engaged in loud and raucous noise, disorderly conduct, or other undesirable, nuisance-type or illegal activities that have had substantial adverse effects upon the health, safety, welfare, convenience or property interests of the surrounding neighborhood.
- b. The police department has received calls for service at the building, structure or premises to which the certificate applies for such reasons and in such numbers as to indicate that the building, structure or premises constitutes a threat to the health, safety, welfare, convenience or property interests of the surrounding neighborhood.
- c. The certificate was procured by fraudulent conduct or false statement of a material fact.
- d. If the building, structure or premises contains a dwelling, the dwelling is housing more residents than can be conveniently and appropriately housed and has an adverse effect on the public health, safety, welfare or property interests of the adjoining property owners.

4. PROCEDURE FOR REVOCATION OR SUSPENSION. a. Notice to Appear at Council Committee Meeting. a-1. Upon receipt of sworn written charges from the chief of police, commissioner of health, commissioner of neighborhood services, local common council member or any interested party, including any member of the public, requesting the suspension or revocation of a certificate of occupancy or certificate of zoning for any of the reasons described in sub. 3, the city clerk shall provide notice of the charges to the appropriate common council committee.

a-2. The city clerk shall also provide written notice to the owner of the property to which the revocation or suspension would apply that the owner is requested to appear before the committee at the next regularly scheduled meeting of the committee that is at least 10 business days from the date the notice is delivered to the owner. This notice shall be deemed to be properly served 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 served 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.

a-3. At the common council committee meeting, the committee shall provide the property owner with an explanation of the basis for possible suspension or revocation of the certificate, including a description of the specific behaviors or conditions on the premises that have given rise to the written charges. The committee shall also inform the property owner that he or she may, within 10 days of the date of the committee meeting, submit to the chief of police, the commissioner of neighborhood services, the commissioner of health or other party specified by the committee a written course of action to abate these behaviors or conditions. If the property owner chooses to submit such a course of action, he or she shall also provide a copy of the course of action to the local common council

member.

b. Requirement for Hearing. The common council committee shall hold a hearing on possible suspension or revocation of the certificate in accordance with the procedures of par. c if any of the following are true:

b-1. The property owner did not submit a written course of action to abate the problem behaviors or conditions within the 10-day period specified in par. a-3. At the end of the 10-day period, the chief of police, commissioner of neighborhood services, commissioner of health or other party to whom the committee specified that the course of action should be submitted shall promptly notify the committee that the property owner did not submit a course of action.

b-2. The property owner submitted a course of action within the 10-day period, but the course of action was not acceptable to the chief of police, commissioner of neighborhood services, commissioner of health or other party to whom the committee specified that the course of action should be submitted. At the end of the 10-day period, the party to whom the course of action was submitted shall notify the committee and the property owner that the course of action submitted was not acceptable and the reasons why it was not acceptable.

b-3. The property owner submitted a course of action that was acceptable to the chief of police, commissioner of neighborhood services, commissioner of health or other party to whom the committee specified that the course of action should be submitted, but the party to whom the course of action was submitted has determined that the property owner was subsequently unable to carry out the course of action in a manner that abated the behaviors or conditions that gave rise to the written charges. The party to whom the course of action was submitted shall allow at least 45 days to elapse after the date the course of action was submitted before making a determination as to whether implementation of the course of action was successful. Upon making such a determination, the party to whom the course of action was submitted shall notify the committee and the property owner of the determination that the course of action was not carried out in a manner that successfully abated the behaviors or conditions that gave rise to the written charges.

c. Notice of Hearing. Whenever the provisions of par. b require the common council committee to hold a hearing regarding possible suspension or revocation of a certificate of occupancy or certificate of zoning, the city clerk shall provide written notice of the hearing to the property owner at least 5 business days prior to the date set for the hearing. This notice shall be served in the manner provided in par. a-2. The notice shall include the following information:

c-1. The date, time and place of the hearing.

c-2. A statement of the possibility that the certificate might be suspended or revoked.

c-3. A statement of the reasons for possible suspension or revocation of the certificate.

c-4. A statement that an opportunity will be given to respond to and challenge the basis for suspension or revocation of the certificate and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-5. A statement that the property owner may be represented by an attorney of the property owner's choice, at the property owner's expense, if the property owner so wishes.

d. Committee Hearing. d-1. The common council committee shall convene at the date and time designated in the notice for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the common council in connection with the proposed suspension or revocation.

d-2. If the property owner appears before the committee at the time designated in the notice and contests the basis for suspension or revocation described in the notice, an evidentiary hearing in connection with the suspension or revocation shall be conducted by the committee at that time. If the property owner does not appear, or appears but does not contest the basis for suspension or revocation in the notice, the basis for suspension or revocation described in the notice shall be taken as true, and the committee shall hear the arguments of the complainant and the property owner in connection with the proposed suspension or revocation.

d-3. At any evidentiary hearing required by this subsection, the complainant shall first present evidence in support of the complaint. Computer-aided dispatch reports relating to police calls for service to the property in question shall not be considered admissible evidence. The property may present evidence in opposition to the complaint or objection. Each side may subpoena witnesses. All witnesses shall testify under oath and shall be subject to cross-examination under oath. At the close of the testimony, each side shall be given a reasonable time to make arguments upon the evidence adduced at the hearing.

d-4. The chair of the common council committee shall be the presiding officer. The chair shall direct that oaths be administered and subpoenas issued upon request of either side. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this subsection. The chair shall rule on objections to the admissibility of evidence with the advice of the city attorney. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members. The city attorney shall assist the chair in the conduct of any hearing required in this subsection.

d-5. The committee shall not be bound by common law or statutory rules of evidence.

d-6. At all stages of the proceedings before the committee and before the common council, the property owner shall be entitled to appear both in person and by an attorney.

d-7. A stenographic record shall be made of all proceedings before the committee and before the common council when written exceptions have been filed. Any interested party may at any stage of the proceedings order a copy of the transcript of the record or portions thereof at his or her own expense.

e. Recommendation. The recommendation of the committee to the common council regarding the proposed suspension or revocation shall be based on evidence presented at the hearing. Probative evidence concerning suspension or revocation may include evidence that any of the grounds for suspension or revocation in sub. 3 exist and are true.

f. Hearing Officer. Where it is impractical for the common council committee to hold an evidentiary hearing, the committee may employ a hearing officer to take testimony and render recommended findings of fact and conclusions of law to the committee. When a hearing officer is employed, he or she shall prepare written findings of fact and conclusions of law, which shall be simultaneously transmitted to the common council committee and to the property owner. The chair of the common council committee shall schedule a hearing on the report of the hearing officer not more than 30 days

from receipt of the report. Notice of the committee's hearing on the report shall be given to all parties. The committee may take and reserve additional evidence at the time of the hearing. The committee may accept or reject the report of the hearing officer or make any changes to the report which are warranted by the circumstances, the evidence presented and any arguments of the parties who appeared before the hearing officer and the committee. The committee shall transmit its recommendation to the common council for further action.

g. Committee Report. g-1. The committee shall prepare and serve a report. The report shall include specific findings of fact and conclusions of law made by the committee. The report shall be distributed to each member of the common council, the complainant and the property owner. The committee report may be prepared by the city attorney.

g-2. If the committee recommends that the certificate of occupancy or certificate of zoning be suspended or revoked, the property owner shall, within 7 days of receipt of the report and recommendation of the committee, file written exceptions, if any, to the report and recommendation of the committee. Written exceptions shall include a concise statement of objections together with supporting arguments.

g-3. Any exceptions to the report and recommendation of the committee filed by the property owner shall be filed by the close of business on the day that is 3 working days prior to the date on which the matter is to be heard by the common council. Copies of exceptions shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

h. Council Action. h-1. At a meeting of the common council following receipt of the report and recommendation of the common council committee, the common council shall consider the report and recommendation. Not less than 5 business days prior to the hearing before the common council, the city clerk shall notify the property owner, by United States first class prepaid mail, and the city attorney that the common council will convene. If written exceptions are filed, the hearing shall be at the time set for such proceedings on the council's agenda. Each member of the common council shall be asked to affirm that he or she has read the report and recommendation of the committee. When written exceptions are filed to a committee report and recommendation, each member of the common council shall be asked to affirm that he or she has read the exceptions. If members of the common council have not read the committee report and recommendation, and any exceptions that have been filed hereto, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendation presented by the city attorney and oral argument on behalf of the property owner in opposition to the report and recommendation shall be permitted only at the discretion of the chair. If such argument is permitted by the chair, each side shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation and the written exceptions. A property owner may address the council only if the property owner has filed written exceptions to the committee report and recommendation. The chair may also permit the person or persons who filed the charges relating to the property in question to present an oral argument in support of the report and recommendation of the committee, provided testimony is limited to 5 minutes and relates to the subject matter of the report and recommendation or the written exceptions.

h-2. The common council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the committee. Such vote shall be a roll call vote. If the common council finds that there is cause for suspension or revocation under sub. 3, or if there is no objection to a report recommending suspension or revocation, the city clerk shall give notice of

certificate suspension or revocation to the property owner and to the commissioner of neighborhood services. If the common council finds that there is no cause for suspension or revocation under sub. 3, the proceedings shall be dismissed without cost to the property owner.

i. Suspension Period. A suspension of a certificate of occupancy or certificate of zoning shall be in effect for not less than 30 calendar days and not more than 180 calendar days. A suspension shall take effect 30 days after the final action of the common council.

j. Effective Date of Revocation. Revocation of a certificate of occupancy or certificate of zoning shall take effect 30 days following the final action of the common council.

5. DISQUALIFICATION FOR CERTIFICATE. Whenever a certificate of occupancy or certificate of zoning is revoked pursuant to this section, no new certificate of occupancy or certificate of zoning shall be issued for the premises to which the revocation applies for a period of 12 months from the date of revocation by the common council.

6. VACATION OF PREMISES; PENALTY. a. Whenever a certificate of occupancy or certificate of zoning is suspended or revoked pursuant to this section, the commissioner of neighborhood services shall order the affected building, structure or premises vacated by the effective date of the suspension or revocation.

b. The commissioner of neighborhood services shall issue an order to vacate by both mailing or delivering the order to the property owner in accordance with s. 200-12-3 and posting a placard containing a copy of the order in a conspicuous place on the premises.

c. If occupancy of the building, structure or premises continues after the revocation or suspension takes effect, the commissioner of neighborhood services shall:

c-1. On the first business day of each month, bill the property owner a violation charge of \$50 per dwelling unit per day of illegal occupancy. Each bill shall be payable within 30 days. If a bill is not paid when due, the unpaid violation charges shall be charged against the real estate on which the building, structure or premises is located, shall be a lien upon the real estate and shall be assessed and collected as a special tax.

c-2. Pursue, in circuit court, a court order to enable the police department to physically remove occupants of the building, structure or premises.

Part 3. Section 275-32-7.5-a of the code is amended to read:

275-32. Exterior Structure.

7.5. VACANT STRUCTURES; ALTERNATIVES TO BOARDING.

a. Whenever a residential building, structure or premises has been found to be vacant and boarded for at least 6 months, the commissioner may order the owner to elect and undertake within 30 days of the date the order is served upon the owner one or more of the courses of action under par. b. A residential building, structure or premises is boarded under this paragraph if any door or window opening is in any part covered with any solid material other than a product designed for the original construction. >>The provisions of this paragraph shall not apply to any residential building, structure or premises for which a certificate of occupancy or certificate of zoning has been revoked pursuant to

s. 200-42.5.<<

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:_____

LRB07109-2

JDO

03/12/2008