



Legislation Text

File #: 140922, **Version:** 1

140922 SUBSTITUTE 1

ALD. BOHL

A substitute ordinance relating to repeated occurrence of certain public nuisance activity on unlicensed premises.

80-11 rc

This ordinance declares an “after set activity” -- the unlicensed sale or distribution of alcohol beverages or the operation of public entertainment on an unlicensed premises - to be a public nuisance. It further provides that the premises owner or other party responsible for the premises shall be liable for all the costs of administration and enforcement of the prohibition of after set activity whenever all of the following occur:

- a. The police department has responded to after set activity engaged in by a person associated with the premises.
- b. The police department has sent by first-class mail a written notice of the after set activity addressed to the last known address of the premises owner or other responsible party.
- c. A person associated with the premises has engaged in subsequent after set activity and the subsequent after set activity occurred at least 14 days after the mailing of notice by the police department.
- d. The chief of police has notified the premises owner or other responsible party 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 or the city attorney for collection.

Upon receipt of a cost referral letter from the chief of police, the commissioner of neighborhood services shall charge any premises owner found to be in violation the costs of enforcement, including administrative costs, in full or in part. All costs so charged are a lien upon the premises and may be assessed and collected as a special charge. In addition, upon receipt of a cost referral letter from the chief of police, the city attorney shall initiate a collections action against any other responsible party found to be in violation for the costs of enforcement, including administrative costs, in full or in part.

An appeal of a cost referral by the chief of police may be submitted to the administrative review appeals board within 30 days from the date of the cost referral letter.

This ordinance also provides that whenever a premises owner or other responsible party has been billed for the costs of enforcement relating to 3 or more separate occurrences of after set activities 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 after set premises due to the

premises owner's or other responsible party's failure to abate the after set activities.
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 80-11 of the code is repealed and recreated to read:

80-11. After Sets. 1. FINDINGS. The common council finds that the unlicensed sale or distribution of alcohol beverages and the operation of public entertainment by individuals or entities that have not applied for and received, or are not eligible for, the appropriate licenses or permits as required by this code, particularly when these activities take place on premises not zoned for commercial activities, constitute a public nuisance. The common council further finds that premises owners, and other parties conducting business activities upon the premises, who 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, the commissioner of neighborhood services and the city attorney, as provided in this section, to charge the owners of these premises the costs associated with abating the violations on premises at which after set activities chronically occur.

2. DEFINITIONS. In this section:

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

a-1. 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 of the code or s. 125.04(1), Wis. Stats.

a-2. Conducting or operating public entertainment without a license or permit as provided in s. 108-5.

b. "Occupant" means any person over one year of age, including an owner or operator, living, sleeping, cooking in, or having actual possession of a dwelling, dwelling unit, rooming unit or hotel unit.

c. "Other responsible party" means any individual or entity other than the owner of the premises that is licensed or required to be licensed for the operation of a business upon the premises.

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

e. "Premises" means any building or structure, except an establishment with a valid Class "B" tavern license or a valid public entertainment premises license or permit.

3. LIABILITY. The premises owner or other responsible party of any premises shall be liable for all the costs of administration and enforcement of this section whenever the following occur:

a. The police department has responded to after set activity engaged in by a person associated with the premises.

b. The police department has delivered a written notice of the after set activity addressed to the last known address of the premises owner or other responsible party. The notice 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. The notice shall include a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises or referred for collection. The notice shall also include a statement that whenever a premises owner or other responsible party has been billed for the costs of enforcement relating to 3 or more separate occurrences of after set activities 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 after set premises due to the premises owner's or other responsible party's failure to abate the after set activities.

c. A person associated with a premises has engaged in subsequent after set activity and the subsequent after set activity occurred at least 14 days after the mailing of notice under par. b. If at a residential premises, the after set activity shall be at the same address, be in the same unit, and have at least one of the same occupants, but it need not involve the same persons associated with a premises for whom notice of violation was sent under par. b. If at a non-residential premises, the after set activity shall occur while the premises has the same premises owner or other responsible party for whom notice of violation was sent under par. b.

d. The chief of police has notified the premises owner or other responsible party 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 or, alternatively, the chief of police has notified the responsible party of the decision to refer the cost of police services by copy of the chief's referral letter to the city attorney for collection and to the appropriate licensing authority.

4. COST RECOVERY. a. 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 the 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.

b. Upon receipt of a cost referral letter from the chief of police, the city attorney shall initiate a collection 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.

5. CHRONIC AFTER SET PREMISES. a. Designation. Whenever a premises owner or other responsible party has been notified that after set activity exists at his or her premises, and has been billed for the costs of enforcement associated with 3 or more separate occurrences of after set activities within a one-year time period, the chief of police may designate the premises as a chronic after set premises.

b. Notice. The police department shall deliver a written notice of the chronic after set activity addressed to the last known address of the premises owner or other responsible party. Notice of designation of a premises as a chronic after set premises shall be deemed 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. The notice shall include each of the following:

b-1. A statement that the premises owner or other responsible party has been billed for the costs of enforcement associated with 3 or more separate occurrences of after set activities within a one-year time period.

b-2. A concise description of the after set activities, bills and relevant sections of the code.

b-3. A statement that any subsequence occurrence of after set activity shall be subject to a forfeiture of not less than \$1,000 nor more than \$5,000 for failure to abate the after set activity.

b-4. A statement that each subsequent occurrence of after set activity may be deemed a separate violation.

c. Penalty. Any person failing to abate after set activities after receiving the notice provided in this subsection shall be subject to a forfeiture of not less than \$1,000 nor more than \$5,000 for failure to abate the after set activity. Upon default of payment, the premises owner or other responsible party shall be imprisoned as provided by law.

6. APPEAL. Appeal of the cost referral by the chief of police pursuant to sub. 3 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.

..LRB

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: _____

LRB155464-1

Jeff Osterman

10/03/2014