

CITY OF MADISON, WISCONSIN

2nd SUBSTITUTE ORDINANCE _____

PRESENTED July 19, 2011
REFERRED PSRC _____

Creating Section 25.10 of the Madison General Ordinances to prohibit Nuisance Parties and amending Section 1.08(3)(a) of the Madison General Ordinances to establish bail amounts for this section.

LEGISTAR # 23310

Drafted by: Jennifer Zilavy

Date: January 25, 2011

SPONSORS: Alder Skidmore

DRAFTER’S ANALYSIS: This creates Section 25.10 of the Madison General Ordinances. This section creates a definition of “nuisance party.” There is not a specific criteria-based definition of “nuisance party” due to the fact that police need to have flexibility to meet the myriad of different situations that occur in the context of such parties. It is essential that police have discretion and are not hemmed in by bright line rules. When a nuisance party is declared, all nuisance activity must cease immediately. This ordinance establishes penalties for failure to cease the nuisance party and for allowing the nuisance party. This ordinance directs the police to provide notice of the nuisance party declaration to the premise owner and requires the premise owner to take appropriate measures to prevent future nuisance parties at the premise. A penalty is provided for premise owners who, within six (6) months of the initial notification of a nuisance party declaration, have a subsequent nuisance party declaration at the same premise.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 25.10 entitled “Nuisance Party Prohibited” of the Madison General Ordinances is created to read as follows:

“25.10 NUISANCE PARTY PROHIBITED.

- (1) Findings. The Madison Common Council finds that there are parties occurring on premises located throughout the city, which are unsafe and are public nuisances to our community. These parties involve large amounts of alcohol beverages that are illegally sold and/or provided to individuals in attendance, including underage individuals. These parties often result in excessive noise levels, dangerous overcrowding of the premise and excessive consumption of alcohol, as well as other law violations
- (2) Nuisance parties create a substantial risk to the health and safety of the community and disrupt the peace and tranquility of the neighborhood. This ordinance provides a method for Police to quickly and efficiently abate a nuisance party and provides penalties to those responsible for hosting the parties.
- (3) Definitions. For purposes of this section:
 - (a) “Nuisance Party” means a social gathering at which alcohol is present and/or consumed, that, by reason of the conduct of persons in attendance, results in violations of the Madison General Ordinances (“MGO”) and/or Wisconsin State Statutes (“Wis. Stat.”) and is one in which such violations occur at the site of the social gathering or on neighboring public or private property. Such violations must be associated with or substantially relate back to the social gathering occurring at a specific address. The determination that a gathering is a nuisance party shall be based upon the totality of the circumstances and consideration of all the facts, the context and reasonable suspicion

Approved as to form:

that the activities pose a danger to the public health, safety and welfare. In making the determination, the police may use the following law violations as evidence of a nuisance party:

1. Selling, offering for sale or giving away of any intoxicating liquors or fermented malt beverages without a license as provided in Sec. 38.05(1), MGO or Wis. Stat. § 125.04(1).
 2. Procuring for or furnishing alcohol beverages to underage person as provided in Sec. 38.031, MGO or Wis. Stat. § 125.07(1)(a)1.
 3. Procuring for, selling, dispensing or giving away alcohol beverages to a person who is intoxicated as provided in Sec. 38.04(1)(a)1, MGO or Wis. Stat. § 125.07(2)1.
 4. Possessing or consuming alcohol beverages from an open container on a public street or alley as provided in Sec. 38.07(7), MGO.
 5. Knowingly permit or fail to take action to prevent the illegal consumption of alcohol by an underage person as provided in Sec. 38.031, MGO or Wis. Stat. § 125.07(a)(a)3.
 6. The production or creation of noises disturbing the peace, as prohibited by Sec. 24.04, MGO.
 7. Violation of fire codes due to overcrowding as provided in Sec. 34.01, MGO.
 8. Throwing of stones or other missiles or other items as provided in Sec. 25.21, MGO.
 9. Obstructing stairways and entrances to buildings as provided in Sec. 24.07, MGO.
 10. Obstruction of streets and sidewalks as provided in Sec. 10.23(1), MGO.
 11. Disorderly conduct as provided in Sec. 24.02, MGO or Wis. Stat.947.01.
 12. Depositing human waste as provided in Sec. 7.321, MGO.
 13. Damage to property as provided in Sec. 23.06, MGO or Wis. Stat. 943.01.
 14. Unlawful depositing of trash or litter as provided in Sec. 7.32, MGO.
 15. Battery as provided in Sec. 24.05, MGO or Wis. Stat. 940.19.
 16. Endangering safety by use of a dangerous weapon as provided in Wis. Stat. 941.20.
 17. Recklessly endangering safety as provided in Wis. Stat. 941.30.
- (b) "Person" means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using property in the City of Madison.
- (c) "Premise" means a place of abode, a residence, a house or multiple dwelling unit for rooming houses, and associated common areas, yards and parking lots. In the case of multiple dwelling units, "premises" as used in this section, may consist of any single unit providing complete, independent living facilities for one (1) or more persons, including provisions for living sleeping, eating, cooking and sanitation.
- (4) Duty to Control Premise. Any person who is an owner, occupant, tenant, or otherwise has rightful possession or possessory control, individually or jointly with others, of any premise, who either sponsors, conducts, hosts, invites, or permits a social gathering or party on said premise which is or becomes a nuisance party, as defined in sub. (2)(a) of this ordinance, and which nuisance is either the intentional result of, or within the reasonable expectations of, the person or persons having such possessory control, is deemed to be a violation of this section.
- (5) Order to Cease and Disperse. All participants at any social gathering declared by a police officer to be a nuisance party shall immediately cease participating in that nuisance activity and disperse immediately upon such order of a police officer, and all persons not residing at the premise shall leave immediately. Any person who fails or refuses to obey such an order shall be guilty of a violation of this section.
- (6) Owner's Failure to Prevent a Second Nuisance Party.
- (a) Within ten (10) days of a nuisance party declaration, the police department shall send the premise owner a notice of nuisance party ordinance violation. A copy of the nuisance party declaration notice shall be sent to the alderperson of the district in which

the premise is located. The notice shall set forth the date, place, names of occupants/tenants involved, and nature of the violation, and shall inform the premise owner of the necessity to take action to prevent future nuisance parties on the premise. The notice shall also inform the premise owner that a five- (5) day notice must also be given to the occupant(s)/tenant(s) who had the nuisance party. Notice shall be given by first class mail using the premise owner's address that is on file with the City of Madison Assessor's records.

- i. Prior to notice to the premise owner, all police reports relating to the incident shall be reviewed by the District Captain or his/her designee to determine whether the facts alleged support declaring a social gathering a "nuisance" given the totality of the circumstances.
- (b) If a subsequent nuisance party is declared at the same premise within a six (6) month period and the same occupant(s)/tenant(s) are responsible for the second nuisance party, the police department shall send the premise owner a second notice of nuisance party ordinance violation within ten (10) days of the party and the premise owner shall be charged with violating this ordinance and shall be subject to the forfeiture stated in sub. (6) of this ordinance. A copy of the nuisance party declaration notice shall be sent to the alderperson of the district in which the premise is located.
 - i. Prior to a premise owner being charged with a violation of sub. (b), all police reports relating to the incident shall be reviewed by the District Captain or his/her designee to determine whether the facts alleged support charging the premise owner given the totality of the circumstances.
 - ii. After a violation of sub. (5)(b) has occurred, if the premise owner meets with the District Captain and his/her designee and the City Attorney and/or designee and presents an acceptable abatement plan to abate future nuisance party activity at the premise, the premise owner will not be subject to a forfeiture for the nuisance party that was the subject of the meeting.
 - iii. A premise owner shall be prohibited from delegating or otherwise assigning any forfeiture assessed against the premise owner under this subsection to any occupant/tenant of the premises where the violation occurred. Such delegation or assignment shall result in an additional violation of this section and subject the premise owner to further forfeiture action under sub. (6) of this ordinance.
- (c) If a third or subsequent party is declared at the same premise within a six- (6) month period and the same occupant(s)/tenant(s) are responsible for the third or subsequent nuisance party, the District Captain or his/her designee shall send the premise owner a second notice of nuisance party ordinance violation with ten (10) days of the party, and the premise owner shall be charged with violating this ordinance and shall be subject to the forfeiture stated in sub. (6) of this ordinance. A copy of the nuisance party declaration notice shall be sent to the alderperson of the district in which the premise is located.
 - i. Prior to a premise owner being charged with a violation of sub. (c), all police reports relating to the incident shall be reviewed by the District Captain or his/her designee to determine whether the facts alleged support charging the premise owner given the totality of the circumstances.
 - ii. A premise owner shall be prohibited from delegating or otherwise assigning any forfeiture assessed against the premise owner under this subsection to any occupant/tenant of the premise where the violation occurred. Such delegation or assignment shall result in an additional violation of this section and subject the premise owner to further forfeiture action under sub. (6) of this ordinance.
- (7) Penalty. Any person violating this section shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5000) for each violation.
- (8) Affirmative Defense. It shall be an affirmative defense to a charge of violating sub. (5)(b) or sub. (5)(c), above, that the premise owner has evicted or is diligently attempting to evict all tenants and occupants of the property who were responsible for the nuisance parties, following the procedures as set forth in sub. (6)(b)ii. and/or it can be confirmed the premise owner was the original complainant to police dispatch.
- (9) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person

or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not be included herein.”

1. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance Of Citations For Violations Of Certain Ordinances And Providing A Schedule Of Cash Deposits" of the Madison General Ordinances is amended by amending therein the following:

<u>“Offense</u>	<u>Ord. No.</u>	<u>Deposit</u>
<u>Allowing a nuisance party.</u>	<u>25.10(3)</u>	<u>\$500</u>
<u>Failure to cease nuisance party activity.</u>	<u>25.10(5)</u>	<u>\$300</u>
<u>Premise owner’s failure to cease nuisance party activity after receiving 2nd notice of nuisance party.</u>	<u>25.10(6)</u>	<u>\$1,000”</u>

EDITOR’S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.