



City of Madison

City of Madison
Madison, WI 53703
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Master

File Number: 04196

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Controlling Body: EQUAL
OPPORTUNITIES
COMMISSION

Requester: PUBLIC SAFETY
REVIEW BOARD

Cost:

Introduced: 04/17/2007

File Name: THIRD SUBSTITUTE - Creating Section 25.09 of the
Madison General Ordinances to establish that certain
premises may be declared Chronic Nuisance
Premises.

Final Action: 09/18/2007

Title: AMENDED THIRD SUBSTITUTE - Creating Section 25.09 of the Madison General
Ordinances to establish that certain premises may be declared Chronic Nuisance
Premises.

Notes: 3982chronic

INTRO FROM FLOOR

ATTY TO ENTER AMENDMENTS

Code Sections:

Agenda Date: 09/18/2007

Indexes:

Agenda Number: 86.

Sponsors: Tim Bruer, Jed Sanborn, Tim Gruber, Julia S. Kerr,
Judy Compton, Michael Schumacher, Joseph R.
Clausius, Thuy Pham-Remmele, Paul E. Skidmore,
Zachariah Brandon and Lauren Cnare

Enactment Date:

Attachments: FAQChronicNuisancePremisesOrd.pdf,
04196-Version1.pdf, 04196-Version2.pdf,
04196-Version3.pdf, Chronic Nuisance Premises
Ordinance Summary memo.pdf

Enactment Number: ORD-07-00129

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	COMMON COUNCIL	07/18/2006	Refer	PUBLIC SAFETY REVIEW BOARD		04/10/2007	Pass
1	Attorney's Office/Approval Group	07/20/2006	Approved As To Form				
1	Attorney's Office	07/20/2006	Fiscal Note Required / Approval	Comptroller's Office/Approval Group		04/11/2007	
1	Comptroller's Office/Approval Group	07/26/2006	Fiscal Note Pending	PUBLIC SAFETY REVIEW BOARD		07/26/2006	

Notes: Bohrod

1 PUBLIC SAFETY REVIEW BOARD 03/13/2007 Refer Attorney's Office 04/03/2007 Pass

Verbose Action: Pasha asked how prospective tenants will learn of this ordinance and will it be part of the lease? Jennifer Zilavy of the City Attorney's Office responded that most of the behaviors in this ordinance are already those for which one can be arrested, but there will also be an educational component for both tenants and landlords. Landlords can add to the standard state lease as they see fit. The ordinance is to hold landlords accountable for the activities on their properties. King asked if there was case law on #3 - Zilavy said there was some. He also asked about #21 - violations of minimum housing codes - Zilavy replied that the police department has guidelines with discretionary enforcement. Health, safety and welfare of citizens is the concern. There is a trust that the Police Department and Building Inspection Unit will not go after landlords on trivial issues (wrong light bulbs for example). Scott asked if this ordinance was modelled after another community's. Lt. Strasburg and Zilavy stated they had used those of Appleton, Wausau and Green Bay and also looked at Milwaukee and Beloit. Scott was very much in favour of this type of ordinance but had several concerns with the wording of the proposed ordinance. Would it be more correct to have a body outside of the Police Department before whom complaints are brought since the police will be ones also doing the enforcement? Perhaps a Nuisance Abatement Board? The current appeal board has no experience in this subject. There are three options for "punishment" in the current ordinance: fine, cost recovery and injunctive relief (shut down establishment). Does the cost recovery really belong in this category? Moen wondered about the cost of enforcement - how much the tracking of this system compilation of statistics would cost. Captain Klubertanz replied that the system is already streamlined with accounting and would simply be a matter of looking at the report to get officers' names and how much time was involved, then taking those hours times their hourly wage. Accounting Division estimated about a ten minute process for them so minimal time would be needed. Strasburg added that a very small number actually go the enforcement level. Assistant Police Chief Davenport said that in the overall process this was a "last resort" and would follow the in-between steps first. The focus is on changing the bad practices of the few bad apples. Statistics are now gathered from Records Section and once a prescribed level of violations is reached, the landlord is contacted and asked to come in to discuss a plan of action to correct problems. Some don't respond - this ordinance would solve that problem. It is significant that landlords are supporting this measure. Scott felt that the current proposed ordinance puts the city in the position of micro-managing. Pasha asked if there was the potential for liability exposure for the city. At this point Skidmore moved and King seconded for the purpose of discussion, to adopt the ordinance. After further discussion and consideration of the issues raised, it was felt that the item should be tabled for a future meeting. The concept is supported but needs updated with some drafting changes in the details. This would require a referral back to the City Attorney's Office for fine tuning. Skidmore/King withdrew their earlier move to approve. Members were encouraged to forward their comments/concerns to Jennifer Zilavy in the City Attorney's Office. The clear focus is on behavior which is good - ordinance just needs some modifications.

Excused: Lichtenheld and Smith
Aye: Skidmore, King, Pasha, Bell, Scott and Moen

2 Attorney's Office/Approval Group 04/03/2007 Approved As To Form 04/04/2007

Notes: *Substitute.*

2 Attorney's Office 04/03/2007 Fiscal Note Required / Approval Comptroller's Office/Approval Group 04/11/2007

3 PUBLIC SAFETY REVIEW BOARD 04/10/2007 RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER Pass

Verbose Action: Jennifer Zilavy of the City Attorney's Office had incorporated last month's suggestions in the Substitute Ordinance. A friendly amendment was made and approved to add SS 961.42 as part of this ordinance. Police staff felt that this ordinance would have minimal implementation - only for the few landlords who refuse to work with the police to correct problems. It has not been made to create an adversarial relationship with landlords - just as a tool to use with those few who refuse to cooperate with police.

Notes: *Second Substitute.*

2 Comptroller's Office/Approval Group 04/11/2007 Approved Fiscal Note By The Comptroller's Office (SUBSTITUTES) PUBLIC SAFETY REVIEW BOARD 04/11/2007

Notes: *Bohrod*

3	Attorney's Office/Approval Group	04/11/2007	Approved As To Form			
	Notes: 2nd Substitute.					
3	Attorney's Office	04/11/2007	Fiscal Note Required / Approval	Comptroller's Office/Approval Group		04/11/2007
3	Comptroller's Office/Approval Group	04/11/2007	Approved Fiscal Note By The Comptroller's Office (SUBSTITUTES)	PUBLIC SAFETY REVIEW BOARD		04/11/2007
	Notes: Bohrod					
3	COMMON COUNCIL	04/17/2007	Refer	EQUAL OPPORTUNITIES COMMISSION	06/05/2007	Pass
	Notes: Due back at the 6/5/07 Common Council Meeting.					
3	EQUAL OPPORTUNITIES COMMISSION	05/10/2007	Return to Lead with the Following Recommendation(s)	EQUAL OPPORTUNITIES COMMISSION		

Verbose Action: Strasburg gave a handout "What the Ordinance Says" (attached to file minutes) that outlines the main points of the Ordinance. He discussed how the Madison Police Department (MPD) process currently works. The MPD always tries to communicate with the owner(s) of a property. It is only after they have unsuccessfully tried all possible options that it would resort to the steps outlined in this Ordinance. Research into other cities that have a similar Ordinance shows that it is very rare that an owner does not respond to an initial contact from the respective police department. There is a fine/penalty in the Ordinance and a mechanism to have the owner pay for police services.

Alder Sanborn added that residents on the South West side feel they are beginning to lose their neighborhood and this Ordinance is designed to help them get it back.

A question was asked about the EOC Executive Committee's thoughts on this Ordinance. The issues mentioned: why no Sunset Provision; lack of a record-keeping mechanism and the issue of how would domestic abuse situations be handled.

Assistant City Attorney Zilavy pointed out that since the EOC Executive Committee had seen the Ordinance, it had been reworked to address the Domestic Abuse concern. Zilavy then read language that was being put into the Ordinance: [Sec. 968.075, Wis. Stats., defines "domestic abuse" very broadly. Therefore, in reaching a determination that a premises is a Chronic Nuisance Premises, activities that are "domestic abuse" incidents pursuant to Sec. 968.075, Stats., shall not be included as nuisance activities unless the incidents have been reviewed by the Chief of Police and the Office of the City Attorney and a determination is made that, based upon the specific facts of each incident, the activities should be deemed nuisance activities under subdivision 1(c).]

Various Commissioners asked the following questions:

Can Building Inspection refer a landlord directly to the City Attorney's office for violations or must the MPD always be involved? It was stated that Building Inspection could send violators directly to the City Attorney depending on the circumstances.

Does the MPD and/or City Attorney have discretion in assessing fines against the property owner? It was indicated that there would not be a penalty against property owners who are working with the City to remedy the problems. The City's policy is to educate first and enforce second.

What can landlords do besides simply evict tenants who are causing a problem? How does this Ordinance create a sustainable solution? While evictions could result, it is not the intent of the Ordinance. MPD has a list of suggested actions that landlords could take with the aim being to make the landlord more responsive and take care of the problem. Evictions themselves are not always bad as they help make people accountable. It was added that MPD generally finds 2 types of landlords: 1) absentee landlords and 2) new landlords. The MPD currently has some success with new landlords. With absentee landlords, the MPD generally needs to have a face-to-face meeting and make them more accountable for their property. The ultimate goal is to get a plan to resolve any on-going issues with the property. Building Inspection / MPD must accept any plan proposed by the property owner. There was a suggestion that MPD's plan criteria be added to the Ordinance.

Other general questions indicated that education of the landlord and tenant is very important. Also there may be cases, depending on the individual circumstances, where MPD wants the tenant involved with the landlord in formulating a plan. MPD pointed out that the Ordinance would not apply to most properties. One officer indicated in his area over the last 18 months the Ordinance would have applied to only 3 units.

There was a concern regarding a portion of the Ordinance 1(d) "Person associated with" and specifically the implied "hanging out" language and the possible race implications of that language.- -that some neighbors may call the MPD when they see people of color "hanging out" near a building. It was pointed out that "hanging out" is not a nuisance crime and that the Ordinance clearly indicates that there must be some connection to a particular unit or building, so it would not apply to individuals who happened to be near a particular building with no connection to that building. Also the threshold to find "probable cause" is very high.

Commissioner Holmes-Hope indicated that he is aware of a similar Ordinance in New Jersey that was supported by the community and feels this is a good proposed ordinance.

There was a concern because the Ordinance does not say what happens if the plan does not work. The MPD currently has an informal process. If owners are working hard and the situation is still not fixed it is partly the responsibility of the MPD to help resolve the situation; and MPD will continue

working with that property owner.

A brief discussion was held regarding the Retaliation portion of the Ordinance, to whom it applies and how it is applied. A concern was raised using the following example: Tenant A complains regarding Tenant B and it is actually Tenant B's child/grandchild or that child/grandchild's friend who is causing the problem and not Tenant B. While Tenant A is protected under the Retaliation portion of the Ordinance there is no protection for Tenant B. It was indicated that each situation is different and must be resolved through a plan. One officer commented on a similar situation and how MPD got other services involved to help Tenant B with the situation.

There was a question regarding a sunset provision with a reporting requirement to measure whether this Ordinance is effective. While MPD could support a sunset provision, it must be far enough in the future to be able to measure effectiveness and the reporting requirements cannot be so labor intensive that MPD has to hire another employee just to put the report together.

Alder/ Commissioner Solomon indicated that he plans on attending the Common Council discussion on this Ordinance on May 22, 2007 and that other Commissioners can contact him with questions ahead of time and he will try to get them addressed at that meeting.

Notes: *Rerefer. Ragland spoke on behalf of Alder Bruer, who was at another meeting and unable to attend. Ragland informed the Commission that on May 22, 2007, a Common Council Discussion on the proposed Chronic Nuisance Premises ordinance will be held at 5:30 in Room 120, Madison Municipal Building, and is open to the public. Following this meeting, the Ordinance will be tweaked. Ragland asked that the Commission not take final action tonight.*

3	COMMON COUNCIL	06/05/2007	Rerefer	EQUAL OPPORTUNITIES COMMISSION	Pass
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3	EQUAL OPPORTUNITIES COMMISSION	06/14/2007	Table		Pass
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Verbose Action: until the third substitute is ready for action by the Commission

Notes: *A third substitute ordinance was being prepared, but is not yet available for discussion.*

Ald. Brenda Konkel spoke regarding the proposal. She stated that there are many things about the proposal that are bothersome. Separation of the Building Inspection and Police Department portions of the ordinance has been recommended. Issues of concern include the definition of premises, currently the same number of calls triggers the ordinance regardless of the number of units. The current version allows too much Police Department discretion in this regard. Konkel is also concerned with how this proposal inter-relates with the arrest and conviction record protections found in the Equal Opportunities Ordinance, particularly relative to screening of tenants. The list of offenses is long and broad. There are misdemeanors for lesser offenses that trigger the ordinance, while felony charges for more serious offenses do not. She specifically mentioned the "person associated with" an apartment as too vague. The protections relative to retaliatory eviction are unclear and discretionary and belong in Chapter 32. Incidents involving domestic violence are at the discretion of the City Attorney and the Police Department. Employee training by the Police Department should also include the staff of the Equal Opportunities Division. While the ordinance now includes a sunset provision, no reports are required to be submitted.

It was noted that the ordinance is not ready for action. It was requested that staff prepare information for the Executive Committee on how the Equal Opportunities Ordinance relates to the proposal relative to arrest record protections.

4	Attorney's Office/Approval Group	09/12/2007	Approved As To Form		
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Notes: *3rd Substitute.*

4	Attorney's Office	09/12/2007	Fiscal Note Required / Approval	Comptroller's Office/Approval Group	
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5	COMMON COUNCIL	09/18/2007	Adopt With Amendment(s)		Pass
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Verbose Action: (see detail of amendments below).

Aye: 18 Sanborn, Cnare, Verveer, Rummel, Brandon, Judge, Skidmore, Solomon, Gruber, Rhodes Conway, Kerr, Bruer, Palm, Compton, Clausius, Schumacher, Clear and Pham-Remmele

No: 2 Konkel and Webber
Non Voting: 1 Cieslewicz

5 Attorney's Office/Approval 09/21/2007 Approved As To
Group Form

Text of Legislative File 04196

..Fiscal Note

[enter Fiscal Note here]

..Title

AMENDED THIRD SUBSTITUTE - Creating Section 25.09 of the Madison General Ordinances to establish that certain premises may be declared Chronic Nuisance Premises.

..Body

DRAFTER'S ANALYSIS: This ordinance is another method for the City Attorney's office, the Madison Police Department and the Department of Neighborhood Preservation and Inspection to use to combat public nuisance activities. This ordinance defines what constitutes nuisance activity and it allows for a faster and more efficient response time from the City regarding enforcement and abatement. The ordinance places the responsibility of abating nuisance activities on the premises owner and establishes a cost recovery system for police and the Neighborhood Preservation and Inspection services for those premises deemed to be chronic nuisance premises. There is also a forfeiture provision for chronic nuisance premises. The ordinance sunsets on November 1, 2009.

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

Section 25.09 entitled "Chronic Nuisance Premises" of the Madison General Ordinances is created to read as follows:

"25.09 CHRONIC NUISANCE PREMISES.

- (1) Findings. The Madison Common Council finds that certain premises within the City receive and require more than the general, acceptable level of police services and Neighborhood Preservation and Inspection Department Services, place an undue and inappropriate burden on City of Madison taxpayers, and constitute public nuisances. Nuisance activity contributes to the general decay of an affected neighborhood and negatively impacts law-abiding residents in these neighborhoods. The vast majority of properties with chronic nuisance activity are non-owner occupied. This ordinance is enacted to encourage premises owners to recognize their responsibility to ensure that activities occurring on their premises conform to the law and do not unduly burden the City's police and Neighborhood Preservation and Inspection resources and to provide a mechanism for the City to take action against premises owners who fail to ensure premises they own do not require a disproportionate level of police and Neighborhood Preservation and Inspection resources to be devoted to such premises. This ordinance provides a method for Police and the Department of Neighborhood Preservation and Inspection to use in a progressive manner when working with property owners to abate nuisance activities occurring on their premises. Therefore, the Common Council determines that the City will charge the owners of such premises with the costs associated with abating nuisance activity at premises where nuisance activities chronically occur. This section is not intended to discourage crime victims or a person in legitimate need of police services from requesting them. This section does not affect a Premises owner's duty to comply with the Fair Housing Laws under sec. 39.03 of the Madison General Ordinance (Equal Opportunities Ordinance), nor does it affect a Premises owner's duty to comply with all other laws governing residential tenancies which are contained in Chapter 704 of the Wisconsin Statutes, Chapter ATCP 134 of the Wisconsin Administrative Code, and Chapter 32 of the Madison General Ordinances.
- (2) Definitions. For the purposes of this section:
 - (a) "Chronic Nuisance Premises" means a premises that meets any of the following criteria:
 1. Is a Premises which has generated three (3) or more calls for police services that have resulted in Enforcement Action for Nuisance Activities on three (3) separate days within a ninety (90) day period and/or has generated five (5) or more cases from the Neighborhood Preservation and Inspection Department for Nuisance Activities from at least five (5) building inspections occurring within a one (1) year period, with such calls resulting in Enforcement Action. Three (3) or more calls for police services resulting in Enforcement Action for Nuisance Activities includes Enforcement Action taken against any person associated with the Premises while at or within two hundred feet (200) of the

- Premises for a Nuisance Activity; or
2. Is a Premises for which a Dane County Court of law has determined that, pursuant to a search warrant request, probable cause exists that manufacture, distribution or delivery of a controlled substance has occurred on or in association with the Premises within thirty (30) days prior to the date of the search warrant application; or
 3. Is a Premises which has had one (1) Enforcement Action associated with the Premises resulting from the manufacture, delivery or distribution of a controlled substance(s) as defined in Chapter 961 of the Wisconsin Statutes.
- (b) "Chronic Nuisance Premises Notice" means the notice issued by the Chief of Police and/or the Director of Neighborhood Preservation and Inspection and referred to in Subsection (3)(a) of this ordinance.
- (c) "Enforcement Action" means any of the following: The physical arrest of an individual(s), the issuance of a citation for a law violation and/or referral of charges by the police or the Department of Neighborhood Preservation and Inspection to the City Attorney or District Attorney for prosecution for Nuisance Activities.
- (d) "Nuisance Activities" means any of the following activities, behaviors or conduct:
1. An act of harassment as defined in s. 947.013, Wis. Stats.
 2. Disorderly conduct as defined in s. 24.02, MGO or s. 947.01, Wis. Stats.
 3. Crimes of violence as defined in ch. 940, Wis. Stats.
 4. Resisting or obstructing an officer as prohibited by Sec. 5.06, MGO or s. 946.41, Wis. Stats.
 5. Indecent exposure as prohibited by Sec. 26.01, MGO or s. 944.20(1)(b) Wis. Stats.
 6. Damage to property as prohibited by Sec. 23.06, MGO. or s. 943.01, Wis. Stats.
 7. The production or creation of noises disturbing the peace, as prohibited by sec. 24.04, MGO.
 8. Discharge of a firearm as prohibited by Sec. 25.06, MGO.
 9. Crimes involving illegal possession of firearms as defined in ss. 941.23, 941.26, 941.28, 941.29 and 948.60, Wis. Stats.
 10. Trespass to land as defined in s. 943.13, Wis. Stats. or criminal trespass to dwelling as defined in s. 943.14, Wis. Stats, or unlawful trespass as prohibited in Sec. 23.07, MGO.
 11. Obstructing a street or sidewalk, as prohibited by Sec. 10.23(1), MGO.
 12. Theft as defined in s. 943.20, Wis. Stats.
 13. Arson as defined in s. 943.02, Wis. Stats.
 14. Depositing rubbish as prohibited by Sec. 10.17, MGO.
 15. Keeping a place of prostitution as defined in or s. 944.34, Wis. Stats.
 16. Loitering for the purposes of prostitution as prohibited by Sec. 26.08, MGO.
 17. Loitering for purposes of soliciting prostitutes, as prohibited by Sec. 26.085, MGO.
 18. Prostitution as prohibited by s. 944.30, Wis. Stats.
 19. Soliciting prostitutes as prohibited by s. 944.32, Wis. Stats.
 20. Pandering as prohibited by s. 944.33, Wis. Stats.
 21. Loitering for purposes of soliciting prostitutes, as prohibited by Sec. 26.085, MGO.
 22. Possessing an open container which contains alcohol beverages or consuming alcohol beverages upon any public street as prohibited by Sec. 38.08(7) of these ordinances.
 23. 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 s. 125.04(1), Wis. Stats.
 24. Possession, manufacture, distribution or delivery of a controlled substance or related offenses as defined in ch. 961, Wis. Stats.
 25. Maintaining a drug dwelling as defined in Sec. 961.42 of the Wisconsin Statutes.
 26. Illegal gambling as defined in s. 945.02, Wis. Stats.
 27. Owning, keeping or harboring a dangerous animal, as defined in Sec. 25.22, MGO.
 28. Violations of the Minimum Housing Code, as prohibited by Ch. 27, MGO.
- (e) "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.

- (f) "Person Associated With" means any person who, whenever engaged in a Nuisance Activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a premises or person present on a premises, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner of a premises.
 - (g) "Person in Charge" means any person, in actual or constructive possession of a Premises including but not limited to an owner or occupant of Premises under his or her ownership or control.
 - (h) "Chief of Police" means the City of Madison Police Department Chief of Police or designee.
 - (i) "Director of Neighborhood Preservation and Inspection" means the City of Madison Department of Neighborhood Preservation and Inspection Director or designee.
 - (j) "Premises" means a place of abode, a residence, a house or multiple dwelling unit for one (1) or more persons, including lodging houses, hotels, motels and tourist 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.
- (3) Procedure.
- (a) Upon finding that a Premises meets the definition of a Chronic Nuisance Premises, the Chief of Police or the Director of Neighborhood Preservation and Inspection may declare the Premises a Chronic Nuisance Premises. The Chief of Police or the Director of Neighborhood Preservation and Inspection shall provide written notice of his or her determination to the Premises owner identified by the City of Madison Assessor's records for that Premises, and a courtesy copy to the Alder of the affected district. The Chronic Nuisance Premises Notice ("CNP Notice") shall be deemed delivered if sent either by first class mail to the Premises owner's last known address or delivered in person to the Premises owner and the courtesy copy to the Alder at the Common Council office or by electronic mail. 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 CNP Notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the CNP Notice is sent by first class mail to the last known address of the owner as identified by the records of the City Assessor. The CNP Notice shall contain the following information:
 1. Street address, parcel number or a legal description sufficient to identify the Premises.
 2. A concise statement, including a description of the relevant activities supporting the determination that the Premises is a Chronic Nuisance Premises.
 3. A statement that the owner shall immediately notify the Chief of Police or Director of Neighborhood Preservation and Inspection of any change in address to ensure receipt of future notices.
 4. A statement that the cost of future enforcement may be assessed as a special charge against the Premises.
 5. A statement that the owner shall, within ten (10) days of receipt of the CNP Notice, respond to the Chief of Police or the Director of Neighborhood Preservation and Inspection either with an appeal or to propose a written course of action to abate the Nuisance Activities. The Statement shall direct the Premises owner to schedule a meeting with the Chief of Police and/or Director of Neighborhood Preservation and Inspection to discuss the Nuisance Activity and the Premises owner's intent regarding abatement.
 6. A statement that the Premises owner shall, when appropriate, consider and implement alternatives to eviction when formulating an abatement plan.
 7. A statement that the Premises owner shall at all times comply with the fair housing requirements contained in Sec. 39.03 of the Equal Opportunities Ordinance when considering any action against a tenant based upon a CNP Notice.

8. A statement that the Premises owner may be subject to a forfeiture action with a penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for permitting a Chronic Nuisance Premises and may be subject to imprisonment for failure to pay such forfeiture.
 9. A statement that if the Premises is a non-owner occupied residential Premises, the Premises owner shall attend a landlord training, approved by the Office of the City Attorney, within thirty (30) days of issuance of the CNP Notice.
- (b) 1. In reaching a determination that a premises is a Chronic Nuisance Premises, activities that were reported to the police or Department of Neighborhood Preservation and Inspection by the Premises owner or on-site Premises manager shall not be included as Nuisance Activities.
2. Sec. 968.075, Wis. Stats., broadly defines "domestic abuse". Therefore, in reaching a determination that a Premises is a Chronic Nuisance Premises, activities that are "domestic abuse" incidents pursuant to sec. 968.075, Stats., shall not be included as Nuisance Activities unless the incidents have been reviewed by the Chief of Police and the Office of the City Attorney and a determination is made that, based upon the specific facts of each incident, the activities should be deemed Nuisance Activities under Subsection (2)(c). In determining whether to include such activities, the Chief of Police and Office of the City Attorney shall consider the strong public policy in favor of domestic victims reporting alleged abuses, and this ordinance shall not operate to discourage such reports and shall comply with the domestic violence provisions contained in the Equal Opportunities Ordinance under Sections 39.03(4)(d)3 and 5.
 3. a. If the owner responds to the CNP Notice pursuant to Subdivision (a) with a nuisance abatement proposal, the Chief of Police or the Director of Neighborhood Preservation and Inspection may accept, reject or work with the owner to modify the proposal. The plan is acceptable if it can reasonably be expected to result in abatement of the Nuisance Activities described in the CNP Notice within sixty (60) days.
 - b. Premises owners shall be counseled regarding nuisance abatement methods and strategies and shall be encouraged to submit a comprehensive nuisance abatement plan that considers alternatives to eviction in situations where eviction is not the sole remedy available to abate the nuisance activity.
 - c. Premises owners shall be counseled regarding use of available resources, including community service providers, when Nuisance Activity associated with the Premises is not caused or contributed to by the direct actions of a tenant.
 - d. If the Premises owner meets with the Chief of Police and/or the Director of Neighborhood Preservation and Inspection and presents an acceptable abatement plan and initiates action to abate the Nuisance Activities occurring on the Premises, the Police Department and/or Department of Neighborhood Preservation and Inspection will delay further enforcement of this ordinance, including cost recovery under Subsection (4)(a).
 - e. If the Premises owner ceases to cooperate with the efforts to abate the Nuisance Activities, the Chief of Police and/or Director of Neighborhood Preservation and Inspection will reinstitute enforcement of this ordinance and the Premises owner will be sent a Change In Status Letter. This letter will document the Police Department and/or Department of Neighborhood Preservation and Inspection's efforts to contact and/or obtain cooperation of the owner.
 - f. Failure by the Premises owner to respond within ten (10) days as directed in this subdivision shall result in a forfeiture of one thousand dollars (\$1,000) plus court costs and fees.
 4. Any Premises owner who has been notified by the Chief of Police or the Director of Neighborhood Preservation and Inspection that their non-owner occupied

Premises is a Chronic Nuisance Premise shall attend a landlord training approved by the Office Of The City Attorney within thirty (30) days of said notification. The fee for any landlord training program administered by the City of Madison shall be fifty dollars (\$50.00) and shall be paid by the Premises owner prior to attending the training. Failure to attend the approved landlord training shall result in a forfeiture of two hundred fifty dollars (\$250) plus court costs and fees.

- (c) Whenever the Chief of Police or the Director of Neighborhood Preservation and Inspection determines that any of the following have occurred:
1. A Premises owner has failed to respond to the CNP Notice in Subsection (3)(a), or
 2. Enforcement action for an additional Nuisance Activity has occurred at a Premises for which Notice has been issued pursuant to Subdivision (a) and this Enforcement Action has occurred not less than fifteen (15) days after the CNP Notice has been issued, or
 3. A course of action submitted pursuant to Subsection (23)(b)3. has not been completed,

Then the Chief of Police and/or the Director of Neighborhood Preservation and Inspection may calculate the cost of enforcement to abate this and any subsequent Nuisance Activities and may refer such cost to the City Comptroller so that the cost may be billed to the Premises owner. The Chief of Police and/or the Director of Neighborhood Preservation and Inspection shall notify the Premises owner of the decision to refer the cost of enforcement to the City Comptroller. Delivery of this notice, along with a copy of the Chief's or Neighborhood Preservation and Inspection Director's referral letter to the City Comptroller, shall be made as set forth in Subdivision (a). The notice shall contain:

- a. The street address or legal description sufficient for identification of the premises.
 - b. A Statement that the Chief of Police and/or the Director of Neighborhood Preservation and Inspection has referred the cost of enforcement to the City Comptroller with a concise description of the Nuisance Activities and the relevant sections of the ordinances.
 - c. Notice of the premises owner's right to appeal pursuant to Subsection (5).
- (d) Each subsequent incident of enforcement action for Nuisance Activity shall be deemed a separate violation and costs will continue to be assessed pursuant to Subsection (3)(c)3 until the nuisance is abated pursuant to Subsection (10).

(4) Penalties and Remedies.

- (a) Cost Recovery. The Chief of Police and the Director of Neighborhood Preservation and Inspection shall keep an accurate account of the cost of enforcement and shall report it to the City Comptroller. The Comptroller shall establish a reasonable charge for the costs of enforcement of this section. Upon receipt of a notice from the Chief of Police or the Director of Neighborhood Preservation and Inspection issued pursuant to Sub. (2)(b), the Comptroller shall charge any Premises owner found to be in violation of this section the costs of enforcement in full or in part. Such costs shall be billed to the Premises owner by invoice sent by regular mail and must be paid within thirty (30) days of the date on the invoice. Any unpaid invoice shall be a lien on such Premises and may be assessed and collected as a special charge pursuant to Sec. 66.0627, Wis. Stats. A one hundred dollar (\$100) administrative fee shall be added to the cost of enforcement charged to the benefited premises any time the premises is declared a chronic nuisance premises.
- (b) Suspension of Cost Recovery. If after the receipt of a billing notice from the Comptroller, the Premises owner develops an acceptable plan and initiates action to abate nuisance activities occurring on the Premises, the Chief of Police and/or Director of Neighborhood Preservation and Inspection will suspend further enforcement of this ordinance. The Premises owner is still responsible for any enforcement costs incurred prior to the Premises owner's submitting an abatement plan, including the administrative fee. If the Premises owner ceases to cooperate with the efforts to abate the Nuisance Activities, the Chief of Police and Director of Neighborhood Preservation

and Inspection will reinstitute enforcement of this ordinance after sending the Premises owner a Change In Status letter.

- (c) Forfeiture. A forfeiture action may be commenced by the Office Of The City Attorney for each Enforcement Action for Nuisance Activity occurring after the Premises has been declared a Chronic Nuisance Premises. The forfeiture shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each enforcement action. Upon default of payment, the Premises owner may be imprisoned in the county jail for a period of not more than ninety (90) days.
- (5) Appeal. Appeal of the determination of the Chief of Police and/ or the Director of Neighborhood Preservation and Inspection pursuant to either Subsection (3)(a), or the action of the City Comptroller imposing special charges pursuant to Subsection (4)(a) against the Premises, may be submitted in writing to the Administrative Review Board in accordance with the procedures set forth in Sec. 9.49 of these ordinances.
- (6) 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 or Neighborhood Preservation and Inspection Director about Nuisance Activities on the landlord's premises. It shall be unlawful for a landlord or any person acting as an agent for the landlord, to intimidate or actively discourage a tenant and/or persons associated with a tenant, from calling the police to report Nuisance Activity associated with a 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 or Neighborhood Preservation and Inspection Director 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. 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. ~~(4)(e)~~(2)(d); 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. 704, Wis. Stats. and ch. Ag. 134, Wis. Admin. 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) "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.
 - (c) Penalty. Any person violating Subsection (6) shall be subject to a forfeiture of not less than \$100 nor more than \$2000 for each violation and upon failure to pay said forfeiture, may be imprisoned in the county jail for a period of not more than ninety (90) days.
- (7) Summary Abatement. The Director of Neighborhood Preservation and Inspection is authorized to cause the abatement, including summary abatement, of any nuisance found on any Premises, according to the procedure prescribed in Sec. 27.05(3), MGO.
- (8) Injunction. This section may be enforced by injunction. Neither an action for injunction or for a forfeiture hereunder is subject to the notice requirements of Sec. 3.07(2), MGO.
- (9) Abatement In Accordance With State Law. Nothing in this section shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State.
- (10) When Nuisance Is Deemed Abated. The public nuisance created by a Chronic Nuisance Premises shall be deemed abated when no Enforcement Action to address Nuisance Activities occurs for a period of six (6) consecutive months from the date stated on the notice declaring the premise a Chronic Nuisance Premise and/or there are no building inspection cases generated for a period of six (6) consecutive months from the date stated on the notice declaring the Premise. a Chronic Nuisance Premise.
- (11) Severability. The provisions of any part of this section are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this section that the same would have been adopted had such invalid provisions, if any, not been included herein.
- (12) Sunset. This ordinance shall automatically repeal on November 1, 2009.

- (a) The Chief of Police shall submit an interim report to the Common Council by September 1, 2008, and a final report to the Common Council by September 1, 2009, indicating the following:
 1. How many Premises were declared Chronic Nuisance Premises.
 2. How many Premises that were declared Chronic Nuisance Premises were abated and the length of time it took for abatement to occur.
 3. How many evictions were directly associated with a Premises being declared a Chronic Nuisance Premises.
 4. How often the Cost Recovery provision was used and the dollar amount collected under this provision.
- (b) The Department of Civil Rights shall submit an interim report to the Common Council by September 1, 2008, and a final report to the Common Council by September 1, 2009, indicating whether that Department had referrals for violation of Fair Housing Laws contained in Chapter 39 or any other elements of the Equal Opportunity Ordinance that were directly related to the application of this ordinance to a Premises."