



City of Madison

City of Madison
Madison, WI 53703
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Master

File Number: 23310

File ID: 23310

File Type: Ordinance

Status: Items Referred

Version: 3

Reference:

Controlling Body: ALCOHOL
LICENSE REVIEW
COMMITTEE

File Created Date : 07/14/2011

File Name: Nuisance Party

Final Action:

Title: 2nd SUBSTITUTE 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.

Notes: 4511nuisanceparty2ndSUB

CC Agenda Date: 07/19/2011

Agenda Number: 10

Effective Date:

Sponsors: Paul E. Skidmore

Attachments: 23310 8.17.11 ALRC registrations.pdf, Gary Stebnitz opposition recd 9/1/2011, Version 1, ASM Legislative Affairs Committee letter recd 12.15.2011, Version 2, Police Department Letter in support.pdf

Enactment Number:

Author: Jennifer Zilavy

Hearing Date:

Entered by: dalhaus@cityofmadison.com

Published Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Attorney's Office/Approval Group	07/14/2011	Referred for Introduction				
	Action Text:		This Ordinance was Referred for Introduction				
	Notes:		Public Safety Review Committee				
1	COMMON COUNCIL	07/19/2011	Referred	PUBLIC SAFETY REVIEW COMMITTEE			
	Action Text:		This Ordinance was Referred to the PUBLIC SAFETY REVIEW COMMITTEE				
	Notes:		Additional Referrals: Alcohol License Review Committee, Housing Committee, Economic Development Committee.				
1	PUBLIC SAFETY REVIEW COMMITTEE	07/19/2011	Refer	ALCOHOL LICENSE REVIEW COMMITTEE			
	Action Text:		This Ordinance was Refer to the ALCOHOL LICENSE REVIEW COMMITTEE				
	Notes:						
1	PUBLIC SAFETY REVIEW COMMITTEE	07/19/2011	Refer	HOUSING COMMITTEE			

Action Text: This Ordinance was Refer to the HOUSING COMMITTEE
Notes:

1 PUBLIC SAFETY REVIEW COMMITTEE 07/19/2011 Refer ECONOMIC DEVELOPMENT COMMITTEE 08/17/2011

Action Text: This Ordinance was Refer to the ECONOMIC DEVELOPMENT COMMITTEE
Notes:

1 HOUSING COMMITTEE 08/03/2011
1 ECONOMIC DEVELOPMENT COMMITTEE 08/17/2011 Return to Lead with the Following Recommendation(s) PUBLIC SAFETY REVIEW COMMITTEE Pass

Action Text: A motion was made by Stone, seconded by Clarke, to Return to Lead with the Following Recommendation(s).

- The EDC took no action, and suggests the following items be considered in developing the final version of this ordinance:
- Section 1.(2)(a), 1-17, need to be more specific about when one or more of these would reach the threshold of a nuisance party.
 - Section 1.(4), is too specific, and needs to set a threshold for all types of alcohol at parties, and not just barrels of beer.
 - Section 1.(6)(b)2 needs more specificity about the need for a meeting of the police, alcohol coordinator, landlord, and Alder before imposing a penalty.
 - Consider the overlap of this proposed ordinance with existing ordinances.
 - Involve Landlords in the process of developing this ordinance.
 - Encourage City Attorney to be present at future meetings where this proposed ordinance is discussed.
 - Concern about misuse, mis-targeting of this ordinance.

Sent to the PUBLIC SAFETY REVIEW COMMITTEE. The motion passed by the following vote:

Victoria S. Selkove: Aye

Notes:

Ayes: 7 Julia Stone; Alfred L. Zimmerman; Sandra J. Torkildson; Douglas S. Nelson; Edward G. Clarke; Matthew C. Younkle and Scott J. Resnick
Noes: 1 Jill Johnson
Excused: 3 Peng Her; Mark Clear and Joseph W. Boucher

1 ALCOHOL LICENSE REVIEW COMMITTEE 08/17/2011 Return to Lead with No Recommendation PUBLIC SAFETY REVIEW COMMITTEE Pass

Action Text: A motion was made by Ald. Verveer, seconded by Ald. Bidar-Sielaff, to Return to Lead with the recommendation to refer back to the ALCOHOL LICENSE REVIEW COMMITTEE. Sent to the PUBLIC SAFETY REVIEW COMMITTEE. The motion passed by voice vote/other.

Notes:

1 HOUSING COMMITTEE 09/07/2011
1 PUBLIC SAFETY REVIEW COMMITTEE 09/14/2011 Re-refer PUBLIC SAFETY REVIEW COMMITTEE

Action Text: Citizen Rosemary Lee said that she is a renter in the downtown area and knows a number of landlords that already have no keg clause in their leases. She asked that the committee members acknowledge that the property owner has an economic investment in the property and that they are providing housing for students and likewise. She indicated that she has an issue with the language that says if a subsequent nuisance party is declared at the same premise within a twelve month period that the police department should send the premise owner a second party ordinance violation. She said that those renters should be addressed that are abusing their rental agreements and not the property owner.

City of Madison Alcohol License Policy Coordinator, Mark Woulf shared background on the ordinance to prohibit nuisance parties that already went before the Council as well as the substitute ordinance that he distributed during today's meeting. He said what is being addressed is large out of control house parties, overcrowded, and for profit parties. He said the ordinance defines what a nuisance party is and if a social gathering is deemed a nuisance house party it puts the landlord on notice after the first event and within six months if there is a similar event at the same premises with the same tenant the landlord is subject to a fine. He said that the substitute draft is a little different and the reason for this he said is that after several meetings with Alders, landlords, and other stakeholders there was a lot of feedback and they wanted to improve the ordinance too not be too broad or vague and concentrate on specifics. He said the substitute ordinance now says instead of having seventeen different criteria's there are now five specific criteria's and the social gathering has to meet the criteria. The language was removed on beer barrels that are visible to the public and that there would be a review from the district Captain on the owner's failure to prevent a second nuisance party. Woulf mentioned that the ordinance is addressing the landlords that are not responding and following up with their tenants in certain situations. He shared that if the landlord meets with the City Attorney, district Captain and designees after the second nuisance party within six months they would not be subject to a fine as long as they are outlining preventative measures with their tenant. He further said that within the third nuisance house party within six months there would be a fine given based on the review. And, the last piece that he said was added was affirmative defense if a landlord were to see a gathering starting and if the landlord makes the call to the Police Department in that situation the landlord would not be fined.

Central District Captain Gloede from the Madison Police Department said that the ordinance would be used as a tool to continue the efforts to deal with dangerous out of control parties that for example have overcrowding, fire safety issues, extreme overconsumption, and disturbances to the neighborhood. He said typically what they see is bad decisions made by the individuals such as being extremely intoxicated, fighting, passing out, etc. These types of large parties are those that are called in by complaints through citizens, landlords, and other means. He said given the proximity of the central district the police department doesn't have the resources to specifically drive around looking for these types of parties. He did mention however, there are areas within the campus that have student housing areas that the police department monitors. He ended that the Police Department just received the amended ordinance yesterday and he said even though it is before you tonight that he hasn't had the time to sit down with the Chief and Assistant Chiefs as well as the other district Captain's because he said this just isn't a Central district issue as it is a citywide issue. He said that there are discussions that need to be taken from the Police Department's perspective and also a review of the substitute language to ensure that the Police Department can not only support but also make the changes happen.

Alder Skidmore made a motion to refer to the October 11th meeting so that the Police Department has time to review the amended ordinance. Alder Johnson seconded the motion.

Notes:

1	ALCOHOL LICENSE REVIEW COMMITTEE	09/21/2011	Re-refer	ALCOHOL LICENSE REVIEW COMMITTEE	Pass
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Action Text: A motion was made by Bean, seconded by Ald. Bidar-Sielaff, to Re-refer. Sent to the ALCOHOL LICENSE REVIEW COMMITTEE. The motion passed by voice vote/other.

Notes:

1	HOUSING COMMITTEE	10/05/2011
1	ALCOHOL LICENSE REVIEW COMMITTEE	10/19/2011

Action Text: Mr. Woulf presented substitute language to the committee.

Notes:

2	HOUSING COMMITTEE	11/02/2011
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2	ALCOHOL LICENSE REVIEW COMMITTEE	11/09/2011			
2	ALCOHOL LICENSE REVIEW COMMITTEE	11/30/2011	Re-refer	ALCOHOL LICENSE REVIEW COMMITTEE	Pass

Action Text: A motion was made by Landgraf, seconded by Ald. Bidar-Sielaff, to Re-refer to the ALCOHOL LICENSE REVIEW COMMITTEE at its regularly scheduled December meeting. The motion passed by voice vote/other.

Notes:

2	HOUSING COMMITTEE	12/07/2011			
2	ALCOHOL LICENSE REVIEW COMMITTEE	12/21/2011	Re-refer	ALCOHOL LICENSE REVIEW COMMITTEE	Pass

Action Text: A motion was made by Ald. Verveer, seconded by Ald. Bidar-Sielaff, to Re-refer to the ALCOHOL LICENSE REVIEW COMMITTEE. The motion passed by voice vote/other.

Notes: Re-refer to the Alcohol License Review Committee meeting on 1-25-12.

2	HOUSING COMMITTEE	01/04/2012			
2	ALCOHOL LICENSE REVIEW COMMITTEE	01/25/2012			
2	HOUSING COMMITTEE	02/01/2012			

Text of Legislative File 23310

Fiscal Note

There may be a small increase in General Fund revenues derived from forfeitures.

Title

2nd SUBSTITUTE 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.

Body

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.

"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 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.