

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED October 28, 2008
REFERRED EOC; Public Safety Review Board

Amending Section 25.09 of the Madison General Ordinances to change various provisions of the ordinance recommended by the Equal Opportunities Commission.

RULES SUSPENSION _____
PUBLIC HEARING _____

Drafted by: Jennifer Zilavy

Date: September 10, 2008

SPONSORS: Ald. Solomon

DRAFTER'S ANALYSIS: The changes in this ordinance are recommended by the Equal Opportunities Commission. The changes are as follows: Change #1, Subsection 2(a)2.: now requires charges for manufacture, distribution or delivery of a controlled substance to be filed by the District Attorney before the incident can be considered a "nuisance activity". Previously, if a Dane County Court of law determined, based upon a search warrant request, that probable cause existed that the manufacture, distribution or delivery of a controlled substance occurred on or in association with a property, that finding could be used to declare the property a Chronic Nuisance Premises; Change #2, Subsection (2)(c): changes the definition of "enforcement action" by requiring the issuance of a citation for a law violation and/or the filing of charges by the District Attorney or city Attorney for prosecution for nuisance activities. The change also deletes from the definition of "Enforcement Action" citations or referral of charges by the Department of Neighborhood Preservation and Inspection; Change #3, Subsection 3(a)6.: removes the word "consider" from the sentence and requires owners, when appropriate, to implement alternatives to eviction when formulating an abatement plan; Change #4: 3(b)2. is amended to exclude domestic abuse incidents from being considered "nuisance activities; Change #5, Subsection 3(b)3.b.: removes the word "consider" from the paragraph and now requires a property owner to implement alternatives to evictions in situations where eviction is not the sole remedy to abate the nuisance activity. Change #6, Subsection (6)(a): adds members of a tenant's household as a group that can't be evicted or retaliated against for complaining or being complained about in regard to nuisance activities. Change #7, Subsection 6(a): This change also deletes the sentence that states that a landlord's failure to renew a lease or periodic tenancy upon expiration shall not be deemed a violation of the subsection.

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 amended 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

Approved as to form:

Michael P. May, City Attorney

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~~ Is a Premises for which charges have been filed by the Dane County District Attorney for manufacture, distribution or delivery of a controlled substance that has occurred on or in association with the Premises.
 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.~~ The issuance of a citation for a law violation and/or the filing of charges by the District Attorney or the City Attorney for the 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 Sec. 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. 38.07(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.~~ A statement that the Premises owner shall, when appropriate, 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 s 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~~ implements 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 (3)(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 Subsection (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 or members of the tenant's household because that tenant complained or was complained about 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 Subsection (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."