

**Legistar File Number 83091 Version 2 Body**

DRAFTER'S ANALYSIS: The Chronic Nuisance Premises ordinance was enacted in 2009 at a time when nuisance activity associated with residential premises was related more to general quality of life issues rather than gun violence and other violent activity that deeply impacts residents' ability to feel safe in their homes. The primary focus of this amendment is to make it easier and faster to declare a Chronic Nuisance Premises when there are firearm crimes and crimes involving serious bodily injury. This amendment adds the following four nuisance activities to the Chronic Nuisance Offenses Table 2: Robbery, receiving or concealing stolen property, mistreating/cruelty to animals, and possession, sale, or use of synthetic marijuana. The ordinance previously allowed for domestic violence offenses to be considered a nuisance activity under this ordinance subject to specific review by the Chief of Police and Office of the City Attorney. This amendment exempts domestic violence, and several other victim-centered offenses from this ordinance. Finally, there were several administrative/reorganization amendments intended to clarify some provisions and make comprehension easier.

The Substitute eliminates redundant language in section 2(a)(1); corrects paragraph 3(c)1 to provide the same 45 day time-frame for obtaining landlord training as mandated in paragraph 3(a)(1)g; and corrects paragraph numbering and reference in section 3(d) and 3(e).

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

1. Subsection (2) entitled "Definitions" of Section 25.09 entitled "Chronic Nuisance Premises" of the Madison General Ordinances is amended as follows:

(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)~~ sixty (60) day period. Two or more separate and distinct enforcement actions for nuisance activity occurring on the same day shall be counted separately. 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 (200) feet of the Premises for a Nuisance Activity; ~~and/or has generated a number of cases from the Building Inspection Department for Nuisance Activities from separate inspections occurring within a one (1) year period, with such calls resulting in Enforcement Action based on the following:~~
  - a. ~~Five (5) cases with one resulting in Enforcement Action, or~~
  - b. ~~Four (4) cases with two resulting in Enforcement Acton, or~~
  - c. ~~Three (3) cases all resulting in Enforcement Action; or~~
2. Is a Premises for which police have responded to two or more nuisance activities of the types identified in the first two rows of the Nuisance Activities table in subsection (2)(d)1. Below, that have occurred at the Premises during a six (6) month period, and probable cause exists that the nuisance activities are associated with the Premises.
3. Is a Premises which has generated a number of cases from the Building Inspection Department for Nuisance Activities from separate inspections

occurring within a one (1) year period, with such calls resulting in Enforcement Action based on the following:

- a. Five (5) Building Inspection cases with one resulting in Enforcement Action, or
  - b. Four (4) Building Inspection cases with two resulting in Enforcement Acton, or
  - c. Three (3) Building Inspection cases all resulting in Enforcement Action; or
4. 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
- ~~3.5.~~ 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 Building Inspection and referred to in Subsection (3)(a) of this ordinance.
- (c) "Enforcement Action" means any of the following:
1. The physical arrest of an individual(s);
  2. ~~the~~ The issuance of a citation for a law violation; ~~and/or~~
  3. ~~referral~~ Referral of charges by the police or the Department of Building 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. 38.07(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.~~
- ~~29. Violations of the Fire Prevention Code as prohibited by Ch. 34, MGO.~~

1. Life and Firearms Offenses Crimes.

<u>Nuisance Activities</u>	<u>MGO/Wis. Stat.</u>
<u>Crimes against life and bodily security</u>	<u>§940.01-940.32 Wis. Stats., except as provided in subd. 2</u>
<u>Crimes involving illegal possession or use of firearms</u>	<u>§941 &amp; 948.60, Wis. Stats.</u>

2. Chronic Nuisance Offenses Crimes.

<u>Nuisance Activities</u>	<u>MGO/Wis. Stat.</u>
<u>Selling, offering for sale or giving away of any intoxicating liquors or fermented malt beverages without a license</u>	<u>Sec. 38.05(1) MGO; §125.04(1) Wis. Stats.</u>
<u>Any act of aiding and abetting</u>	<u>§939, Wis. Stats</u>
<u>Damage to property</u>	<u>Sec. 23.06, MGO; §943.01, Wis. Stats.</u>
<u>Trespass to land</u>	<u>§943.13, Wis. Stats.</u>
<u>Criminal trespass to dwelling</u>	<u>§943.14, Wis. Stats.</u>
<u>Unlawful trespass</u>	<u>Sec. 23.07, MGO</u>

<u>Theft</u>	<u>§943.20, Wis. Stats.</u>
<u>Arson</u>	<u>§943.02, Wis. Stats.</u>
<u>Robbery</u>	<u>§943.32, Wis. Stats.</u>
<u>Receiving or concealing stolen property</u>	<u>§943.34, Wis. Stats.</u>
<u>Indecent exposure</u>	<u>Sec. 26.01, MGO; §944.20(1)(b), Wis. Stats.</u>
<u>Keeping a place of prostitution</u>	<u>§944.34, Wis. Stats.</u>
<u>Prostitution</u>	<u>§944.30, Wis. Stats.</u>
<u>Soliciting prostitutes</u>	<u>§944.32, Wis. Stats.</u>
<u>Pandering</u>	<u>§944.33, Wis. Stats.</u>
<u>Illegal gambling</u>	<u>§945.02, Wis. Stats.</u>
<u>Resisting or obstructing an officer</u>	<u>Sec. 5.06, MGO; §946.41, Wis. Stats.</u>
<u>Disorderly conduct</u>	<u>Sec. 24.02, MGO; §947.01, Wis. Stats.</u>
<u>An act of harassment</u>	<u>§947.013, Wis. Stats.</u>
<u>Mistreating/Cruelty to animals</u>	<u>Sec. 23.18, MGO; §951.02, Wis. Stats.</u>
<u>Possession, manufacture, distribution or delivery of a controlled substance or related offenses</u>	<u>Ch. 961, Wis. Stats.</u>
<u>Maintaining a drug dwelling</u>	<u>§961.42, Wis. Stats.</u>
<u>Obstructing a street or sidewalk</u>	<u>Sec. 10.23(1), MGO</u>
<u>Depositing rubbish</u>	<u>Sec. 10.17, MGO</u>
<u>The production or creation of noises disturbing the peace</u>	<u>Sec. 24.02, MGO</u>
<u>Unlawful use of emergency telephone number</u>	<u>Sec. 24.01, MGO</u>
<u>Discharge of a firearm</u>	<u>25.06, MGO</u>
<u>The possession, sale or use of synthetic marijuana</u>	<u>Sec. 24.01, MGO</u>
<u>Owning, keeping or harboring a dangerous animal</u>	<u>Sec. 25.22, MGO</u>
<u>Loitering for the purposes of prostitution</u>	<u>Sec. 26.08, MGO</u>
<u>Violations of the Fire Prevention Code</u>	<u>Ch. 34, MGO</u>
<u>Possessing an open container which contains alcohol beverages or consuming alcohol beverages upon any public street</u>	<u>Sec. 38.07(7), MGO</u>
<u>Violations of the Minimum Housing Code</u>	<u>Ch. 27, MGO</u>

- (e) “Nuisance Activity” does not include activities, behaviors, or conduct that results in a call for assistance made by any person requesting law enforcement services related to any of the following:
1. Domestic abuse as defined in §813.12(1)(am), Wis. Stat.

2. “Sexual assault,” as described in §§ 940.225, 948.02, 948.025, Wis. Stats.
  3. “Stalking” as described in §940.32, Wis. Stat.
  4. Enforcement of a restraining order as defined under Chapter 813, Wis. Stat.
  5. Any incident or behavior involving an individual at risk as defined in § 813.123, Wis. Stat.
  6. Any matters involving a child in need of protective services as defined under §48.235(4), Wis. Stat.
- (ef) "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.
- (fg) "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.
- (gh) "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.
- (hi) "Chief of Police" means the City of Madison Police Department Chief of Police or designee.
- (ij) "Director of Building Inspection" means the City of Madison Department of Building Inspection Director or designee.
- (jk) "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.

2. Subsection (3) entitled “Procedure” of Section 25.09 entitled “Chronic Nuisance Premises” of the Madison General Ordinances is amended as follows:

(3) Procedure.

(a) Notices.

1. Upon finding that a Premises meets the definition of a Chronic Nuisance Premises, the Chief of Police or the Director of Building Inspection may declare the Premises a Chronic Nuisance Premises. The Chief of Police or the Director of Building 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. a. 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. b. A statement that the owner shall immediately notify the Chief of Police or Director of Building 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. c. 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 Building Inspection either with an appeal or to propose a written course of action that is intended to abate the Nuisance Activities. The written course of action must include specific steps to abate the nuisance activities and shall propose a timeline by which the steps will be completed The Statement shall direct the Premises owner to schedule a meeting with the Chief of Police and/or Director of Building Inspection to discuss the Nuisance Activity and the Premises owner's intent regarding abatement. The Chief of Police or the Director of Building Inspection may accept, reject or work with the owner to modify the proposal to abate the Nuisance Activities.
6. d. A statement that the Premises owner shall, when appropriate, consider and implement alternatives to eviction when formulating ~~an abatement plan~~ a written course of action to abate the nuisance.
7. e. 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. f. 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. g. A statement that if the Premises is a non-owner occupied residential Premises, the Premises owner, site property managers and on-site staff, shall attend a landlord training, approved by the Office of the City Attorney, within ~~thirty (30)~~ forty-five (45) days of issuance of the CNP Notice.

- ~~10.~~ ~~A statement that the Premises owner must comply with the registration requirements of Sec. 9.25, MGO, if the owner is renting, or offering for rent, the Premises and that the owner must apply for a registration certificate within fifteen (15) days 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 Building Inspection by the Premises owner or on-site Premises manager shall not be included as Nuisance Activities.~~
  - ~~2.~~ ~~Wis. Stat. § 968.075, 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 Wis. Stat. § 968.075, 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)(d). 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.~~~~(b)~~
  - ~~a~~1. ~~If the owner responds to the CNP Notice pursuant to Subdivision (a) with a nuisance abatement proposal~~ written course of action that is intended to abate the nuisance activity, the Chief of Police or the Director of Building 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. If the proposed course of action is accepted, the Chief of Police or Director of Building Inspection shall permit the owner or other responsible party 45 days to implement the accepted course of action. Implementation of the written course of action shall commence within 45 days of the date the premises was declared a chronic nuisance.
  - ~~b~~2. ~~Premises owners shall be counseled regarding nuisance abatement methods and strategies and shall be encouraged to submit a comprehensive nuisance abatement proposal~~ written course of action that considers alternatives to eviction in situations where eviction is not the sole remedy available to abate the nuisance activity.
  - ~~c~~3. ~~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~~4. ~~If the Premises owner meets with the Chief of Police and/or the Director of Building Inspection and presents an acceptable abatement proposal~~ written course of action and initiates implements the written course of action to abate the Nuisance Activities occurring on, or in association with, the Premises, the Police Department and/or Department of Building Inspection will delay further enforcement of this ordinance, including cost recovery under Subsection (4)(a). The Premises owner must provide proof of implementation of the proposed written course of action to the Chief of Police and/or the Director of Building Inspection in order for delay of further enforcement of this ordinance.

- e5. If the Premises owner ceases to cooperate with the efforts to abate the Nuisance Activities, the Chief of Police and/or Director of Building 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 Building Inspection's efforts to contact and/or obtain cooperation of the owner.
- f6. 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.(c) Landlord Training.

- 1. Any Premises owner who has been notified by the Chief of Police or the Director of Building Inspection that their non-owner occupied Premises is a Chronic Nuisance Premise, and all site property managers and on-site staff, shall attend a landlord training approved by the Office of The City Attorney within ~~thirty (30)~~ forty-five (45) 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.
- 2. Failure to attend the approved landlord training shall result in a forfeiture of two hundred fifty dollars (\$250) plus court costs and fees.

(ed) Failure to Respond. Whenever the Chief of Police or the Director of Building 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. A Premises owner has failed to submit a written course of action to abate the nuisance activities at the Premises.
- 3. 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
- ~~3.4.~~ A course of action submitted pursuant to Subsection (3)(~~b~~)31. has not been completed,

Then the Chief of Police and/or the Director of Building Inspection may calculate the cost of enforcement to abate this and any subsequent Nuisance Activities and may refer such cost to the Finance Director so that the cost may be billed to the Premises owner. The Chief of Police and/or the Director of Building Inspection shall notify the Premises owner of the decision to refer the cost of enforcement to the Finance Director. Delivery of this notice, along with a copy of the Chief's or Building Inspection Director's referral letter to the Finance Director, 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 Building Inspection has referred the cost of enforcement to the Finance Director 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).



- (~~de~~) 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)(~~e~~)3(d)4 until the nuisance is abated pursuant to Subsection (10).

3. Subsection (5) entitled "Appeal" of Section 25.09 entitled "Chronic Nuisance Premises" of the Madison General Ordinances is amended as follows:

- (5) Appeal. Appeal of the determination of the Chief of Police and/ or the Director of Building Inspection pursuant to either Subsection (3)(a), or the action of the Finance Director 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. If no appeal is filed by the Premises Owner within 15 days following receipt of the notice provided for in Subsections (3)(a) and 4(a), the right to review and hearing shall be voided as untimely.

#### **EDITOR'S NOTE:**

**Title:** SUBSTITUTE: Amending Section 25.09 of the Madison General Ordinances related to Chronic Nuisance Premises: (1) to make it easier to declare a Chronic Nuisance Premises when the nuisance activity involves firearms and/or serious bodily injury or death, and shortening the period for declaring a Chronic Nuisance Premises based on nuisance activities not involving firearms or serious bodily injury or death; (2) adding four additional nuisance activities to Chronic Nuisance Activities Table 2; (~~23~~) adding a section to exempt certain victim-centered offenses such as domestic violence, from eligible nuisance activities; (~~34~~) administrative and reorganization of some subsections for easier comprehension.

**Drafter's Analysis:** The Chronic Nuisance Premises ordinance was enacted in 2009 at a time when nuisance activity associated with residential premises was related more to general quality of life issues rather than gun violence and other violent activity that deeply impacts residents' ability to feel safe in their homes. The primary focus of this amendment is to make it easier and faster to declare a Chronic Nuisance Premises when there are firearm crimes and crimes involving serious bodily injury. This amendment adds the following four nuisance activities to the Chronic Nuisance Offenses Table 2: Robbery, receiving or concealing stolen property, mistreating/cruelty to animals, and possession, sale, or use of synthetic marijuana. The ordinance previously allowed for domestic violence offenses to be considered a nuisance activity under this ordinance subject to specific review by the Chief of Police and Office of the City Attorney. This amendment exempts domestic violence, and several other victim-centered offenses from this ordinance. Finally, there were several administrative/reorganization amendments intended to clarify some provisions and make comprehension easier.

The Substitute eliminates redundant language in section 2(a)(1); corrects paragraph 3(c)1 to provide the same 45 day time-frame for obtaining landlord training as mandated in paragraph 3(a)1(g); and corrects paragraph numbering and reference in section 3(d) and 3(e).