

# **CHRONIC NUISANCE PREMISES ORDINANCE**

## **FREQUENTLY ASKED QUESTIONS**

### **1. WHY DOES MADISON NEED A CHRONIC NUISANCE PREMISES ORDINANCE?**

This ordinance is a tool the City can use to quickly and effectively abate nuisance activity that is occurring on a specific premises. The ordinance places responsibility for abating nuisance activity on the premises owner and holds the premises owner accountable for what happens on, or in association with, his or her property. The primary focus of this ordinance is non-owner occupied residential properties where the landlord has been unresponsive to the City's efforts to work with the landlord to abate the nuisance activities associated with his or her premises.

### **2. WHAT ARE THE BASIC FACTS OF THE ORDINANCE?**

It allows the City to declare a premises a chronic public nuisance if it has a threshold number of nuisance activities occurring on, or in association with, the premises and it allows the City to recover the cost of Police and/or Neighborhood Preservation and Inspection response to repeated occurrences of nuisance activities at the same premises. The ordinance also penalizes premises owners who fail to respond to the chronic public nuisance notice and/or fail to, in good faith, abate the nuisance activity.

### **3. WHAT ARE NUISANCE ACTIVITIES?**

The nuisance activities listed in the ordinance are generally associated with quality of life issues. The activities include:

- Harassment
- Disorderly conduct
- Battery
- Indecent exposure
- Damage to property
- Disturbing the peace
- Discharge of a firearm
- Trespass
- Obstructing a street or sidewalk
- Theft
- Arson
- Depositing rubbish
- Prostitution
- Open alcohol
- Selling alcohol without a license
- Possession, manufacture, delivery and/or distribution of a controlled substance

- Maintaining a drug dwelling
- Illegal gambling
- Keeping a dangerous animal
- Violations of the minimum housing code

**4. DOES THIS ORDINANCE CREATE A PROVISION THAT PUTS LANDLORDS IN JAIL?**

No. It is true, that if a premises owner fails to pay a forfeiture associated with this ordinance they could go to jail for failure to pay. However, this is true with any municipal court forfeiture action involving an ordinance violation and is not unique to this ordinance.

**5. WILL THIS ORDINANCE APPLY TO OTHER TYPES OF PREMISES?**

Yes. This ordinance applies to any premises located in the City of Madison (motels, businesses, etc.) and it will be applied City wide.

**6. HOW WILL LANDLORDS KNOW ABOUT THIS ORDINANCE?**

If the Common Council adopts this ordinance, the Community Prosecutor will hold several training sessions in and around the City for landlords interested in finding out the specifics of the ordinance.

**7. WILL TENANTS BE INFORMED ABOUT THE ORDINANCE?**

Yes. The Community Prosecutor will also hold several training sessions in and around the City for tenants in order for tenants to understand their rights and responsibilities as they relate to this ordinance.

**8. WILL THIS ORDINANCE BE INCORPORATED INTO A LEASE AGREEMENT?**

There is no mandate from the City that this ordinance be included in any lease agreement. The City does not regulate lease agreements.

**9. IS THIS ORDINANCE MODELED AFTER ANOTHER CITY'S?**

Yes. We looked at chronic nuisance ordinances from around the country. Madison's draft is very similar to Milwaukee's ordinance. We also looked at Wausau, Green Bay, Appleton and Portland, Oregon. All the chronic nuisance ordinances we looked at were very similar.

## **10. ARE LANDLORDS OPPOSED TO THIS ORDINANCE?**

Generally, No. We have not talked personally to every single landlord owning property in the City of Madison. However, we have spoken with many landlords and we have met with representatives from the Madison Landlord Legislative Council, and they are in support of this ordinance.

## **11. WILL THIS ORDINANCE RESULT IN HUNDREDS OR THOUSANDS OF PREMISES BEING DECLARED CHRONIC NUISANCE PREMISES?**

No. The City anticipates having to use this ordinance on a couple of dozen premises per year. The vast majority of premises owners are responsive to, and cooperate with, the City when contacted in regard to nuisance activity on, or associated with, their premises. This ordinance is really targeted at the landlords who are unresponsive and have rental property or properties that have a negative impact on the quality of life in a neighborhood and/or the community in general.

## **12. CAN'T THE CITY DO SOMETHING ELSE TO GET RID OF NUISANCE ACTIVITY?**

Yes. There are other methods available to the City, but those methods involve statutory civil actions filed in Dane County Circuit Court. These actions are very labor intensive and slow moving due to the heavy calendaring in Dane County Circuit Court. Additionally, there are times when there may not be enough evidence for a circuit court nuisance action, but we still have a premises that is negatively impacting the health, safety and welfare of others living either on the premises or near the premises. It is important to be able to effectively address those premises and this ordinance is a helpful tool in that regard. This ordinance is a relatively fast process that allows for timely penalizing a premises owner if he or she fails to comply with the ordinance.

## **13. HOW DOES A PREMISES GET DECLARED A CHRONIC NUISANCE PREMISES?**

There are several ways in which this could happen:

- (1) If there are three (3) or more enforcement actions (which basically means arrest) in ninety (90) days for nuisance activities occurring on or in association with a premises;
- (2) If a Dane County Circuit Court has signed a search warrant for a premises based upon probable cause to believe that possession, manufacture, distribution or delivery of a controlled substance has occurred on or in association with the premises;
- (3) If the premises has had one (1) enforcement action associated with the premises resulting from the manufacture, distribution or delivery of a controlled substance; or

(4) If the premises has had five (5) building inspections occurring within a one (1) year period and said calls resulted in enforcement action (referral to City Attorney for prosecution).

**14. WHY ARREST AND NOT CONVICTION AS THE STANDARD FOR CONSIDERING WHEN A NUISANCE ACTIVITY HAS OCCURRED?**

Using arrest as the standard is more objective and it allows for a faster response to chronically occurring nuisance activity. Using conviction as the standard is too unpredictable. Anybody charged with a law violation can contest that charge in court. It is possible that a person charged with a law violation would not be convicted or the case otherwise adjudicated for up to a year, possibly longer. This means the nuisance activity could drag on for as long as the court case and it could mean that the City would be unable to proceed with a chronic nuisance action because all nuisance activity charges would be pending and could remain pending for long periods of time.

**15. IS THIS THE SAME STANDARD OTHER CITIES WITH SIMILAR ORDINANCES ARE USING?**

No. Many of the other cities with similar ordinances base their chronic nuisance determination on calls for service. The City felt this standard was too arbitrary.

**16. WHY NOT SEPARATE THIS ORDINANCE INTO TWO (2) ORDINANCES--ONE FOR POLICE AND ONE FOR THE DEPARTMENT OF NEIGHBORHOOD PRESERVATION AND INSPECTION?**

Chronic nuisance activity is not a one-agency problem. In order to effectively deal with chronic nuisance issues, an interdisciplinary approach is essential. It is rare that a chronic nuisance premises will have only police issues or building inspections issues. Plans to abate nuisance activity frequently include police-related remedies and building inspection-related remedies. It makes sense for these agencies to work together and with the Community Prosecutor in an effort to rid properties of nuisance activities.

**17. HOW IS A PREMISES OWNER NOTIFIED THAT HIS OR HER PREMISES IS A CHRONIC NUISANCE PREMISES?**

Written notice is provided to the premises owner via first class mail or delivered in person. The notice identifies the premises and includes a description of the relevant nuisance activities that support the determination that the premises is a chronic nuisance premises.

**18. WHAT DOES THE PREMISES OWNER HAVE TO DO AFTER GETTING THE NOTICE THAT HIS OR HER PREMISES IS A CHRONIC NUISANCE PREMISES?**

The premises owner has 10 days to respond with either an appeal of the determination, or to propose a written course of action to abate the nuisance activities. If the premises

is a non-owner occupied residential premises, the premises owner must attend an approved landlord training within 30 days of the issuance of the chronic nuisance premises notice. If the landlord fails to attend the training, he or she is subject to a \$250 monetary penalty.

#### **19. ISN'T EVICTION THE ONLY PLAN A LANDLORD COULD HAVE TO ABATE NUISANCE ACTIVITY?**

Absolutely not. Of course, there may be times when eviction is the only answer to abating a chronic nuisance. However, there are many, many options available to a landlord to abate nuisance activity. We know that a good portion of nuisance activity occurs when it is supported by certain environmental elements. Thus, if the environmental elements are addressed, we can reduce or eliminate the nuisance activity. For example, overgrown weeds and shrubs provide natural cover to individuals engaging in illegal activities. Abandoned vehicles and poor lighting in parking lots can create a haven for drug dealers. An abatement plan could include trimming back shrubs and trees, increasing lighting in parking lots and at entrances to buildings, posting a property with no trespass signs, keeping trash and junk off the property, removing abandoned vehicles, having the premises owner establish a presence on the property (either themselves or by way of a property manager or maintenance manager), establishing a permit system for parking, and so on. These types of strategies are commonly referred to as CPTED--Crime Prevention Through Environmental Design.

#### **20. WHAT IF THE ONLY LEASE IS AN ORAL LEASE?**

Landlords who opt for oral leases rather than written leases can still non-renew leases at the end of a lease term (which, in the case of an oral lease would presumably be month-to-month) by giving the appropriate notice. A landlord can non-renew a lease at the end of a lease term for any reason or no reason. The statutes do allow landlords to give a 14 day notice to vacate if the tenant commits waste or breaches any other covenant or condition of the agreement. Granted, breaching any other covenant or condition of the agreement may be difficult to prove if the lease is an oral lease, but it is not an impossibility. This is another reason why education is so important. It is in the landlord's best interest to have a written lease to better exercise his or her rights as a landlord.

#### **21. IS THERE AN APPEAL PROCESS?**

Yes. A premises owner may appeal the chronic nuisance determination and/or the action of the City Comptroller in imposing special charges to the property. Any appeal is made to the City's Administrative Review Board.

**22. WHAT HAPPENS IF A PREMISES OWNER SUBMITS AN ABATEMENT PLAN AND DOES EVERYTHING THE PLAN REQUIRES BUT THE NUISANCE ACTIVITY CONTINUES?**

The City will not penalize a premises owner who is working diligently and in good faith with the City. We will continue to work cooperatively with that premises owner in an attempt to develop new strategies for abating nuisance activity.

**23. WHAT HAPPENS IF A PREMISES OWNER DOES NOT COOPERATE AND DOES NOT TAKE STEPS TO ABATE THE NUISANCE ACTIVITY?**

The costs of enforcement actions taken on that owner's premises will be charged to the owner. The ordinance also contains a forfeiture provision which would subject the premises owner to a monetary penalty of \$1,000 to \$5,000 for each instance of nuisance activity once the premises has been declared a chronic nuisance premises. If the premises owner fails to pay the monetary penalty, jail time is possible.

**24. WHAT HAPPENS AT PREMISES WHERE THERE ARE A LOT OF POLICE CALLS BUT NO ENFORCEMENT ACTION IS EVER TAKEN?**

Each police district monitors calls for service and any premises that appears to have an inordinate number of police calls is generally contacted by the police department regarding those calls and the premises would be evaluated for an appropriate course of action.

**25. WHAT ABOUT RETALIATION AGAINST INNOCENT TENANTS BY A LANDLORD?**

The ordinance does contain a provision that prohibits a landlord from intimidating or actively discouraging a tenant and/or persons associated with a tenant, from calling the police to report nuisance activity associated with the premises. There is a presumption that any attempt to evict during the 12-month period following receipt of any such complaint is unlawful retaliation. Any landlord found guilty of such retaliation is subject to a monetary penalty of up to \$2000 and jail time if they fail to pay the penalty.

**26. WHAT ABOUT RETALIATION BY A LANDLORD AGAINST AN INNOCENT TENANT?**

If a tenant is targeted by a landlord for eviction and the City believes the eviction is in retaliation related to this ordinance being applied to the landlord, the City is willing to attend the eviction hearing as a witness on the tenant's behalf.

**27. WILL THIS ORDINANCE ALLOW THE POLICE TOO MUCH DISCRETION?**

No. Exercising discretion is part of every police officer's job. Every single day they are making discretionary decisions--do they arrest, do they give a warning, do they counsel,

do they cite and release or do they bring the person downtown to post bail. The criteria for this ordinance are as objective as most laws the police and department of Neighborhood Preservation and Inspection enforce.

**28. ISN'T THE DEFINITION OF PREMISES TOO BROAD (PREMISES ON WHICH OR WITHIN 200 FEET OF WHICH)?**

No. This definition is necessary because some of the worse nuisance activity occurs in this area. The nuisance activity that occurs in this 200-foot area will only be relevant and counted against a premises owner if the activity is connected back to the specific premises. Nuisance activity under this ordinance cannot be random. It must be "associated with" the property.

**29. WILL IT BE BURDENSOME FOR THE POLICE DEPARTMENT TO TRACK 10-DAY NOTICES?**

No. The command staff of the Police District in which they are located will manage the chronic nuisance premises. It is estimated that each district will likely have not more than 5 such premises each year, making this process very manageable.

**30. WHO PROVIDES THE LANDLORD TRAINING AND AT WHAT COST?**

Landlord training is required only for residential premises owners. The ordinance requires the landlord attend an approved training. The City Attorney's office will offer regularly scheduled trainings for \$50.

**31. HOW WILL THE POLICE DEPARTMENT KEEP AN ACCURATE COST OF ENFORCEMENT?**

The time that an officer is dispatched to a call and the time when he/she finishes a call are currently recorded as routine practice in the Dispatch system's computer. It is very easy for the police department to determine the amount of time spent by specific officers on a particular incident. The department also has a formula for determining an officer's hourly rate, which would be applied to the time spent on a particular call. The police budget specialist does not think it would be difficult or burdensome to accurately track and bill these charges.

**32. WHAT EXACTLY IS A PREMISES? IS IT ONE APARTMENT IN AN APARTMENT BUILDING OR IS IT THE ENTIRE BUILDING?**

The ordinance specifies that "premises" could be one unit in a large complex; it could be an entire complex or an entire building in a complex. It is necessary to define premises in this manner because of the vast array of housing options and the various ways in which nuisance activity may be present on a property.

**33. ARE DOMESTIC ABUSE INCIDENTS COUNTED AS NUISANCE ACTIVITIES?**

There is a special provision in the ordinance regarding domestic abuse. The Chief of Police and the Office of the City Attorney must review any incident related to domestic abuse before it could be deemed a nuisance activity under the ordinance.

**34. WILL THIS ORDINANCE MAKE TENANTS AFRAID TO CALL THE POLICE FOR FEAR OF LOSING THEIR HOUSING?**

We think not, and we think that providing tenants with educational opportunities regarding the use of this ordinance and the landlord tenant laws will empower them to assert and protect their right to live in a nuisance free premises.