

CITY OF MADISON, WISCONSIN

AN ORDINANCE \_\_\_\_\_

PRESENTED July 19, 2011
REFERRED PSRB

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.

Drafted by: Jennifer Zilavy

Date: July 14, 2011

SPONSORS: Alder Skidmore

DRAFTER’S ANALYSIS: This creates Section 25.10 of the Madison General Ordinances. This section creates a definition of “nuisance party.” 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 twelve (12) months of the initial notification of a nuisance party declaration, have a subsequent nuisance party declaration at the same premise.

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

- 1. Section 25.10 entitled “Nuisance Party Prohibited” of the Madison General Ordinances is created to read as follows:

“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. 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.
(2) Definitions. For purposes of this section:
(a) “Nuisance Party” means a social gathering that, by reason of the conduct of persons in attendance, results in one or more of the following violations of the Madison General Ordinances and which violations occur at the site of the social gathering, or on neighboring public or private property and are associated with the site of the social gathering:
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. Intentionally encouraging the underage consumption of alcohol as provided in Sec. 38.04(1)(a)4, MGO or Wis. Stat. § 125.07(a)4.

Approved as to form:

4. 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(1)(a)3.
  5. 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.
  6. Possessing or consuming alcohol beverages from an open container on a public street or alley as provided in Sec. 38.07(7), MGO.
  7. Selling or serving alcohol beverages on a public street as provided in Sec. 38.07(6), MGO.
  8. Violation of fire codes due to overcrowding as provided in Sec. 34.01, MGO.
  9. Throwing of stones or other missiles or other items as provided in Sec. 25.21, MGO.
  10. Obstructing stairways and entrances to buildings as provided in Sec. 24.07, MGO.
  11. The production or creation of noises disturbing the peace, as prohibited by Sec. 24.04, MGO.
  12. Disorderly conduct as defined in Sec. 24.02, MGO or Wis. Stat. § 947.01.
  13. Damage to property as provided in Sec. 23.06, MGO.
  14. Obstruction of streets and sidewalks as provided in Sec. 10.23(1), MGO.
  15. Violations of vending regulations as provided in Sec. 9.13, MGO.
  16. Depositing rubbish or refuse on streets, public grounds or exterior property area as provided in Sec. 7.32, MGO.
  17. Resist or obstruct a peace officer as provided in Sec. 5.06, MGO or Wis. Stat. § 946.41.
- (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.
- (3) 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.
- (4) Beer Barrels Visible to Public. A social gathering shall be deemed to constitute a nuisance party when an open barrel of beer is located in any yard adjacent to a street, on a front porch in a place visible to the public, or in any side yard of the premises upon which the social gathering takes place such that the open barrel of beer is visible to members of the public standing on public streets, sidewalks or on the grounds of other adjoining or nearby private properties, and one or more of the criteria set forth in Sec. 25.10(2)(a)1.-17., MGO, is present.
- (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. 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 property 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.

- (b) If a subsequent nuisance party is declared at the same premise within a twelve (12) 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. (7) 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. (6)(b), 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.
- (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.”

2. 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>Landlord failure to cease nuisance party activity after receiving 2<sup>nd</sup> 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.