

Ordinance 0022-19 – ‘Racine Rental Empowerment & Neighborhood Tenant Services (“Racine RENTS”) Initiative’

An ordinance to amend Chapter 2, Chapter 18, and Chapter 66, of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

(Part 1: Creation of Residential Rental and Commercial Property Registration Program)

Part 1A: Chapter 18, Article X, Residential Rental and Commercial Property Registration Program, *is hereby created.*

Part 1B: Chapter 18, Article X, Section 18-1001 *is created as follows:*

(1) Findings and Purpose: The common council hereby finds and declares that it is necessary to establish a program of residential rental and commercial property registration to ensure the proper enforcement of the city’s building, fire, zoning, and health codes and to safeguard persons, property, and general welfare. The common council of the City of Racine has determined that, in order to best safeguard the health, safety, and general welfare of the public and to expeditiously process enforcement issues, it is necessary to maintain a listing of current residential rental and commercial property owner contact information. The common council of the City of Racine has further determined that in order to expeditiously process enforcement issues, the property owner shall provide owner contact information and may designate an authorized contact person located within the State of Wisconsin for service of process.

(2) Definitions.

Authorized Contact Person means a person designated by the property owner to be contacted regarding related enforcement issues for the subject property. The property owner may be listed as the authorized contact person, except where the owner’s residency is not within the State of Wisconsin. The owner shall authorize the city to serve any legal process on the authorized contact person and service shall have the same effect as having served the owner.

Commercial means property that is not classified by the city assessor as residential and includes classifications of mixed use, multifamily, commercial, manufacturing, industrial, and institutional property classifications.

Domicile means the owner’s true, fixed, and permanent residence, and that to which, whenever absent, the individual intends to return, except that no individual may have more than one domicile at any time. The domicile address shall not be a post office box or similar depository.

Entity means the legal owner of the property and includes the mortgagee in possession, a trustee, a trust, a life estate holder, a condominium association, a land-contract vendee or buyer, a general partnership, a limited partnership, a limited liability company, a cooperative, a corporation, or other property ownership type.

Owner and property owner mean each person who jointly or severally is vested with all or part of legal title to, or beneficial ownership of, the premises, and who has the right to use and enjoyment of the premises. The term includes, but is not limited to, a mortgagee in possession, a trustee, a trust, a life estate holder, a condominium association, a land-contract vendee or buyer, a general partnership, a limited partnership, a limited liability company, a cooperative, a corporation, or other property ownership type.

Owner-occupied means the owner's residence and domicile is the on the subject property.

Person means an individual.

Physical address means a unit-specific building or house number and street name and not a post office box or commercial alternative to a post office box.

Registration form or the form means the form developed, disseminated, and used by the City of Racine to collect registration information from owners of residential rental dwelling units. This form shall be made available on the City's website and paper copies made available at both the city clerk and city assessor's offices.

Residential rental dwelling unit shall mean a structure or part of a structure, home, residence, or living area occupied by a single person or family, or any grounds or other facilities or area occupied for the use of a residential tenant.

Sale means to transfer any ownership interest in a dwelling except by mortgage. The sale or transfer shall be deemed to occur upon the transfer of an ownership interest, the recording of a land contract, or the exercise of an option to purchase property. *Transfer* and *conveyance* have the same meaning as *sale* for the purposes of this article.

Tenant means a person who is a tenant under a lease, a periodic tenant, or a tenant at will as defined by Wis. Stat. § 704.01.

Part 1C: Chapter 18, Article X, Section 18-1002 *is created as follows:*

(1) Property Registration.

- a. Registration Required. The following shall file with the city the required registration form provided by the city for registering the property in compliance with this section.
 - i. The owner of a residential rental dwelling unit located in the city shall file one registration for each tax-key-numbered parcel classified as residential, including properties classified as a vacant lot.

ii. the owner of a commercial property located in the city shall file one registration for each tax-key-numbered parcel classified as commercial, including properties classified as a vacant lot.

b. There shall be a fee as set forth in the fee schedule established by the common council to file the initial registration form and to file a new registration form due to a change in ownership pursuant to subsection (4), below.

(2) Exemptions. The following are exempt from registering as required under this section.

a. Owners of owner-occupied one and two-family residential classified properties, including owner-occupied condominium units.

b. Government-owned properties, including federal, state, county, City of Racine, Racine Area School District, Racine Water & Wastewater Properties, Gateway Technical College Properties, and property owned by public utilities where ownership is recorded with the Racine County Register of Deeds.

c. Owners of jails, convents, monasteries, parish rectories, parsonages, and similar facilities where the ownership is recorded with the Racine County Register of Deeds.

d. Owners of rest homes, convalescent homes, nursing homes, hospitals, assisted-living centers, community-based residential facilities, adult homes and other facilities licensed or certified by the Wisconsin Department of Health Services.

(3) Registration Information Required:

a. The property owner is legally responsible for compliance with the registration requirements of this section and submittal of the required registration form with all required information. Each property owner shall be subject to the penalties set forth in section 18-1003 for failure to comply with the requirements of this section.

b. The registration form shall be provided by the city on the city's website and paper copies shall be available in both the city clerk's office and the city assessor's office.

c. information required to be submitted to the city shall be typed or printed legibly and shall include the following:

i. In the case of a person or persons owning the property: legal name of an owner; domicile residence address of owner including street, city, state, zip code, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. The domicile address shall not be a post office box or similar depository.

ii. In the case of property ownership by corporation, limited partnership, limited liability partnership, or other similar ownership as registered with the State of Wisconsin: Wisconsin Corporation Identification Number; legal name of entity; legal name of registered agent; domicile residence

address of registered agent including street, city, state, zip code, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. The domicile address shall not be a post office box or similar depository.

- iii. In the case of a trust, trustee, or life estate holder: Wisconsin Registration Identification Number; legal name of representative; domicile residence of representative including street, city, state, zip code, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. The domicile address shall not be a post office or similar depository.
 - iv. An authorized contact person: legal name, domicile residence address including street, city, state, zip code, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. The authorized contact person may be the property owner.
 - v. The property address and tax-key-number of the property being registered.
- d. The city's registration form shall allow owners to register multiple units on the same form so long as all units on the form are located on the same tax-key-numbered parcel.
 - e. registration information required to be submitted to the city shall be typed or printed legibly on the provided registration form.
 - f. the completed registration form shall be provided to the city in person or by first class mail to the location or mailing address specified on the form, or may be electronically filed or submitted per the instructions on the form.

(4) Registration and Changes in Information:

- a. Initial Registration. No later than June 1, 2020, each owner of a property required to be registered by this section shall file the required registration form and pay the required fee.
- b. Change of Ownership. Upon any conveyance of any property required to be registered under this section, the new owner of the property shall file a new registration form and pay the required fee within 30 days of the conveyance, or if the conveyance is by sale after foreclosure, then within 30 days of the date of court confirmation of the sale,.
- c. Death. In the event of death of the property owner required to be registered under this section, the subsequent owner shall file a new registration form and pay the

required fee within 60 days after conveyance from the estate or other acquisition of interest.

- d. Change of Contact Information. If any contact information listed on the registration form on file with the city changes, other than ownership events listed in subsections b. and c. above, the owner shall file within 30 days of the change of contact information a revised registration form. There shall be no fee to file a revised registration form.

(5) Violation.

- a. It shall be a violation:
 - i. Failure to file registration form. For an owner timely to fail to file a required registration form, including an initial registration form, a new registration form, or a revised registration form.
 - ii. Failure to pay registration fee. For an owner timely to pay the required fee upon filing a required registration form, including an initial registration form, a new registration form, or a revised registration form.
 - iii. Knowingly providing false information. For a person, entity, or property owner knowingly to provide false information in any registration form required under this section.
- b. Every tax-key-numbered parcel for which a person, entity, or property owner is required to file a registration form constituted the basis for a separate offense.
- c. Every day upon which a violation occurs or continues constitutes a separate offense.
- d. Notice of a violation or violations shall be outlined in written form and served upon the owner of the property by first-class mail to the last known address of the owner. The owner may request a one-time extension for compliance, which will be considered by the chief building inspector after receiving a written communication from the owner, authorized contact person/agent, or legal representative stating good cause.

Part 1D: Chapter 18, Article X, Section 18-1003 *is created as follows:*

Penalty for violation. Upon conviction of a violation of this article, any person, entity, or property owner shall forfeit not less than \$100 nor more than \$500 plus court costs.

(Part 2: Creation of Properties Pending Foreclosure Registration Program)

Part 2A: Chapter 18, Article XI, Properties Pending Foreclosure Registration Program, *is hereby created.*

Part 2B: Chapter 18, Article XI, Section 18-1101 *is created as follows:*

- (1) Findings: The common council of the City of Racine finds that a significant relationship exists among properties in the foreclosure process, the prevalence of blight and abandoned buildings, increased calls for police service, higher incidence of fires, both accidental and intentional, and decline and disinvestment in neighborhoods. Property owners involved in foreclosure have less incentive to maintain their properties, and properties in foreclosure have a higher incidence of building code violations than properties not in foreclosure. The foreclosure process may also result in abandonment of properties. Abandoned buildings may become havens for vandalism, arson, and drug crimes, can drain valuable governmental resources, and may create a significant reduction in quality of life for the surrounding neighborhood. Registration, inspection, and aggressive monitoring of properties in the foreclosure process help to stabilize and improve affected neighborhoods, and aid in code enforcement efforts and public safety. A mortgagee that does not register, inspect, secure, and maintain, as required in this section, places an undue and inappropriate burden on the taxpayers of the City and poses an increased risk to public health, safety, and welfare.
- (2) Purpose and scope. The purpose of this section is to establish a registration program to monitor all real properties pending foreclosure to identify at-risk properties and to regulate the securing and maintenance of abandoned properties in foreclosure. This section is intended to reduce and prevent neighborhood blight; to ameliorate conditions that threaten public health, safety, and welfare; to promote neighborhood stability and occupancy by preserving the condition and appearance of properties; and to maintain property values and assessments. It is declared to be a matter of public policy and an exercise of the City's police power that mortgagees initiating foreclosure proceedings against a property are required to register such status with the City. This registration process will give the City the means of contacting those responsible for the foreclosure proceedings and mortgages at issue, those responsible for the securing and maintenance of property under foreclosure and abandoned property as required in this section, and those responsible for the property inspections required in this section. The purpose of the registration fee is to partially recover administrative costs associated with this registry. Nothing in this section shall be construed as waiving, relieving, or otherwise excusing an owner of property from complying with applicable building codes and ordinances. The owner shall at all times comply with applicable building codes and ordinances, and the owner shall at all times remain responsible and liable therefor. Nothing in this section is intended to affect the right to foreclose as provided by state law.
- (3) Definitions.

Abandoned property means any real property that is in mortgage default, bank owned/REO, or is vacant as a result of the relinquishment of occupancy, possession, or control by a mortgagor and those claiming by, through, or under the mortgagor, including tenants, whether or not the mortgagor relinquished equity and title. A property may be deemed abandoned when there is evidence of conditions, taken separately or as a whole,

that would lead a reasonable person to conclude that the property is abandoned, including:

- (a) Violation of the weed regulations as set forth in ch. 42, art. III of this Code or the weed regulations set forth in Wis. Stat. §§ 66.0407 and 66.0517.
- (b) Accumulation of newspapers, circulars, flyers, or mail.
- (c) Past-due utility notices.
- (d) Accumulation of junk, litter, trash, or debris.
- (e) Absence of window treatments, such as blinds, curtains, or shutters.
- (f) Absence of furnishings and personal items.
- (g) Statements by neighbors, delivery agents, or similarly situated persons that the property is vacant.
- (h) Any of the items specified in Wis. Stat. § 846.102(2).
- (i) Violation of the minimum standards for buildings and structures set forth in ch. 18 of this Code.
- (j) Broken or open doors or windows or the exterior of a building's structure otherwise is not secured from the elements or entry by trespassers.
- (k) Graffiti has not been removed from the buildings, structures, or equipment on the property as required by sec. 66-194 of this Code.
- (l) The buildings, structures, or premises are otherwise dilapidated, deteriorated, or create a dangerous condition.
- (m) Snow and/or ice have been allowed to accumulate and remain on the public sidewalk abutting the property contrary to sec. 82-109 of this Code.
- (n) Any real property located in the City, whether vacant or occupied, that is encumbered by a mortgage in default, that is subject to an ongoing foreclosure action by the mortgagee or trustee, that is subject to an application for a tax deed or pending tax assessor's lien sale, or that has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Accessible structure means a building that is accessible through a compromised door, wall, window, or similar building feature and that is unsecured in a manner that allows access to interior space by unauthorized persons.

Agent means a person or entity, including a servicing company, acting on behalf of the mortgagee regarding the mortgage or mortgage loan, the foreclosure proceedings, or the mortgaged property, including the inspection, maintenance and securing duties required in this section, except that an attorney shall not be deemed to be an agent if the attorney is retained solely to represent the mortgagee or agent in connection with the foreclosure proceedings in court.

Chief building inspector means the chief building inspector of the city or the authorized representative thereof.

Clerk means the city clerk of the city or the authorized representative thereof.

Foreclosure means the process prescribed by Wis. Stat. Chapter 846 and the process for nonjudicial sale authorized by a power of sale clause in a mortgage.

Mortgage means a written instrument creating a lien on real property whereby the property is used as security or collateral for performance of an act or payment of funds. For purposes of this section, mortgage also includes a land contract.

Mortgagee means the person or entity that lends money to a borrower for the purpose of purchasing a piece of real property or the person or entity to which the mortgage has been granted or assigned, excluding governmental entities.

Mortgagor means the person or entity that obtained a mortgage to purchase or refinance a piece of real property.

Occupied property means a residential property with a structure on which any person, including an owner, operator, or tenant, but not a trespasser, lives, sleeps, cooks, or otherwise maintains actual possession.

Person means any person, firm, organization, or corporation.

Real estate owned or REO is property owned by a lender, such as a bank, that has not been successfully sold at a foreclosure auction.

Residential property means a property used in whole or in part for residential purposes, including single-family, two-family, and multifamily dwelling, mixed-use commercial and residential structures, but not residential condominium units.

Servicing company means a person or entity that provides services to the mortgagee or to an agent of a mortgagee, including debt servicing, collection of payments, administration of escrow and insurance accounts, managing loss mitigation, foreclosing, and securing and managing properties on behalf of the mortgagee or the mortgagee's agent.

Part 2C: Chapter 18, Article XI, Section 18-1102 *is created as follows:*

(1) Registration Required.

- (a) Within five working days of filing with the court of the foreclosure proceedings against a residential property, the mortgagee or agent shall register the property in the name of the mortgagee with the clerk on a form or by an electronic process prescribed by the chief building inspector, regardless of occupancy. This form or electronic process shall include all of the following:
 - i. Information identifying the property by address and tax key number.
 - ii. The mortgagor of record and the mortgagee of record.

- iii. The Register of Deeds recording document number for the mortgage being foreclosed and the date of recording.
 - iv. The current owner of the note or instrument secured by the mortgage, and the registered agent and registered office for that owner.
 - v. The date of recording of the lis pendens for commencement of the foreclosure proceedings.
 - vi. The case number of the foreclosure action and the plaintiff in the foreclosure action.
 - vii. The servicing company or other agent acting on behalf of the mortgagee, and the registered agent and registered office for that servicing company or agent.
 - viii. Contact information for a person with the mortgagee or agent who will be responsible for inspecting, securing, and maintaining vacant property as required under this section.
- (b) A mortgagee or agent for a residential property in foreclosure proceedings for whom the proceedings were initiated prior to the effective date of this section and who remains subject to the foreclosure proceedings shall register with the City within 30 days of the effective date of this section. The mortgagee or agent shall be subject to the requirements of this section, except for the initial inspection under subsection (4)(a).
- (2) Amendment. Within 20 days of a change in information for the registration of a property, including a change in ownership of the mortgage or a change in agent, servicing company or contact person, the mortgagee or the mortgagee's agent shall file an amended registration with the clerk on a form or by an electronic process prescribed by the chief building inspector.
- (3) Termination of Registration.
- (a) To terminate a registration, the mortgagee or the mortgagee's agent shall file a registration termination with the clerk on a form or by an electronic process prescribed by the chief building inspector within ten days of either of the following, whereupon the duties of the mortgagee or the agent under this section shall cease:
 - i. A court-confirmed sale of the property in foreclosure with the deed having been issued in the foreclosure proceedings, in a non-arm's length transaction, and the deed or evidence of the deed having been recorded in the Register of Deeds office.
 - ii. A court order dismissing the foreclosure proceedings and a discharge of the lis pendens having been recorded in the Register of Deeds office.
 - (b) The mortgagee or agent shall provide in the termination filing the Register of Deeds recording information for one of the following:
 - i. The deed or the evidence of the deed, as provided in subsection (3)(a)(i).

- ii. The lis pendens discharge, as provided in subsection (3)(a)(ii).
 - (c) If the court dismisses the foreclosure proceedings due to a discharge or satisfaction of the mortgage, the mortgagee or agent shall also provide with the termination filing the Register of Deeds recording information for the discharge or satisfaction of the mortgage.
- (4) Inspection of Abandoned Property.
 - (a) Initial Inspection. Whenever a mortgagee or agent initiates foreclosure proceedings against a property, the mortgagee or agent shall cause a physical inspection to be made of the property not later than 30 days from the date of filing of the foreclosure proceedings. One or more photographs shall be taken of the property accurately portraying the condition of the exterior premises. Photographs shall be dated and preserved.
 - (b) Periodic Inspections. The mortgagee or agent shall perform a reinspection of the property subject to the foreclosure proceedings at least once every 30 days following the initial inspection until a registration termination is filed. One or more photographs shall be taken at each reinspection and shall be dated and preserved.
 - (c) Records. A mortgagee or agent shall maintain written records, including photographs, of any inspection or reinspection required by this section, and, in the case of abandoned property, records of actions taken under subsection (6). Written records and photographs of inspection and reinspection shall be made available to the chief building inspector upon request.
- (5) Notification of Abandoned Property. If inspection of the property required under subsection (4) shows the property is abandoned, or if the mortgagee or agent otherwise becomes aware of abandonment, the mortgagee or agent shall file notification of the abandoned property within five business days on a form or by an electronic process prescribed by the chief building inspector or his or her designee, that includes a description of the external condition of the property and whether there is an accessible structure on the property. The notification filing shall identify the person authorized by the mortgagee to enter upon the property and to conduct repairs or maintenance and secure access, as required in subsection (6).
- (6) Duty to Secure, Maintain, and Post Abandoned Property.
 - (a) The property maintenance duties of a mortgagee or agent with an abandoned property shall be limited to the following:
 - i. Ensuring that there are no accessible structures on the premises.
 - ii. Ensuring that there are no conditions upon the property presenting an immediate risk to public health, safety, or welfare, including:
 - a. Removing or abating fire hazards.
 - b. Removing or containing potentially toxic materials and explosives.

- c. Securing the perimeters of swimming pools, ponds, or other bodies of water.
 - d. Maintaining public walkways and thoroughfares free from ice, snow, mud, and other debris consistent with the requirements of ch. 82 of this Code.
 - e. Eliminating weeds and other plant growth consistent with the requirements of ch. 42, art. III of this Code or the weed regulations set forth in Wis. Stat. §§ 66.0407 and 66.0517.
- (b) A mortgagee or agent shall include a statement in the abandonment notification identifying action taken or planned to be taken to comply with the requirements of subsection (6)(a).
- (c) Upon filing notification of the abandoned property or at the time that notification is required to be made, and until there has been a registration termination filed regarding the abandoned property, the chief building inspector may make a finding that the condition of the property constitutes an immediate threat to public health, safety, and welfare and, upon such finding, may issue a written order to the mortgagee or agent, or both, to abate the condition. Upon failure to comply with the chief building inspector's order within ten days, the mortgagee or agent, or both, shall be responsible and shall be subject to a penalty in the same manner and to the same extent as the owner of the property under any applicable building, health, fire, zoning, or public nuisance ordinance within this Code.
- (d) The minimum requirements of a mortgagee or agent for preservation and protection of residential property, absent a specific order of the chief building inspector to abate a condition of the premises, shall be consistent with 24 CFR 203.377 and the rules, regulations and other requirements published by the Federal Housing Administration (FHA) of the United States Clerk of Housing and Urban Development for the preservation and protection of single-family residential properties secured by FHA loans, as those requirements may be amended by FHA mortgagee letters or otherwise, and as applied by the FHA to the State of Wisconsin, including guidelines related to winterization and heating systems. The chief building inspector may issue a written order to the mortgagee or agent, or both jointly and severally, to abate the condition. The mortgagee or agent, or both, shall be held liable for failure to abate and for repayment to the City of the reasonable costs incurred by the City related to abatement of conditions that are subject to FHA guidelines specified in this subsection, or which are subject to an order under subsection (6)(c) and which threaten public health, safety, and welfare.
- (e) A mortgagee or agent, upon receiving information or determining that the residential property is abandoned, and until the property is no longer abandoned, shall post and maintain signs affixed or adjacent to all entrances to the building indicating:
 - i. The name, address, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at

which the person may be contacted of the agent authorized by the mortgagee to be responsible for maintenance and management of the property, as specified under subsection (5).

ii. That no trespassing is allowed upon the premises without consent of the agent.

(7) Fees.

- (a) The fee for registration of property pending foreclosure shall be as set forth in the fee schedule established by the common council and shall be due upon registration.
- (b) The registration form and fee may be transmitted electronically or by any other means to be determined by the chief building inspector or designee. The annual registration shall be valid from the date the property was initially obligated to register pursuant to the governing ordinance, the registration form is completed and filed with the clerk or designee and the registration fee is received by the clerk or its designee.
- (c) There shall be no fee for filing an amended registration or for filing a registration termination.
- (d) If the foreclosing or foreclosed property is not registered, or if the registration fee is not paid within 30 days of when the registration or renewal is required pursuant to this section, a later fee equivalent to ten percent of the annual registration fee shall be charged for every thirty-day period, or portion thereof, the property is not registered and shall be due and payable with the registration.

(8) Violation.

- (a) It shall be a violation:
 - i. Failure to register. For any mortgagee or agent to fail to register as required under subsection (1), to fail to file an amendment as required under subsection (2), or to fail to file a termination as required under subsection (3).
 - ii. Failure to Inspect. For any mortgagee or agent to fail to inspect or reinspect a property as required under subsection (4).
 - iii. Failure to Notify regarding Abandoned Property. For any mortgagee or agent to fails to provide notification of an abandoned property as required under subsection (5).
 - iv. Failure to Secure and Maintain Abandoned Property. For any mortgagee or agent having a duty to register abandoned property to fail to secure and maintain the property as required under subsection (6).
 - v. Failure to Maintain Records or to Post Signage. For any mortgagee or agent to fails to maintain or provide records required in subsection (4), or to post signage as required in subsection (6).
- (b) Any mortgagee or agent who violates this section shall be jointly and severally responsible

(c) Each and every day that an offense continues constitutes a separate offense.

Part 2D: Chapter 18, Article XI, Section 18-1103 *is created as follows:*

Penalties.

- (a) Failure to Register or to File Amendment. Any mortgagee or agent who violates subsection (8)(a)(i) shall forfeit not less than \$500 nor more than \$2,000 plus court costs.
- (b) Failure to Inspect. Any mortgagee or agent who violates subsection (8)(a)(ii) shall forfeit not less than \$250 nor more than \$1,000 plus court costs.
- (c) Failure to Notify regarding Abandoned Property. Any mortgagee or agent who violates subsection (8)(a)(iii) shall forfeit not less than \$500 nor more than \$2,000 plus court costs.
- (d) Failure to Secure and Maintain Abandoned Property. Any mortgagee or agent who violates subsection (8)(a)(iv) shall forfeit not less than 8500 nor more than \$2,500 plus court costs.
- (e) Failure to Maintain Records or to Post Signage. Any mortgagee or agent who violates subsection (8)(a)(v) shall forfeit not less than \$100 nor more than \$500 plus court costs.

(Part 3: Nuisance Properties)

Part 3A: Chapter 66, Article XXX, Section 66-1001, *is amended by deleting the stricken language and adding the underlined language:*

Sec. 66-1001. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Chief of police means the City of Racine Chief of Police or his or her designee.~~

Code enforcement officer means any of the following persons: chief of police, chief of fire, public health administrator, chief building inspector, zoning administrator, city attorney, city assessor, city forester, weed commissioner, or their designee.

Chronic nuisance premises means a premises that has generated at least three or more responses from the police department for public nuisance activities within a ninety-day period, regardless of whether an arrest was made. A police response shall be counted against the premises if the call was in response to a public nuisance activity occurring at or within 200 feet of the premises by a person associated with the premises. A chronic

nuisance premises also means a premises that has generated at least three or more enforcement actions to correct violations of the building code, fire code, public health code, or a combination thereof, within a 180-day period, each of which was generated on a separate date.

City means the City of Racine in the State of Wisconsin.

Enforcement action means the arrest, the issuance of a citation or written warning, or the issuance of an order to correct code violations taken against any person associated with the premises.

Occupant means any person other than the owner who is in actual or constructive possession of a premises, including, but not limited to, any occupant or licensee of the premises holding the legal right to occupy and control the premises.

Person means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying, or using property in the City of Racine.

Person associated with premises 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, owner, operator, manager, customer, resident, guest, visitor, agent, employee, or any independent contractor of a property, or person in charge of a premises.

Premises means a commercial business establishment, a place of abode, a residence, a house, or multiple dwelling unit for one or more persons, including lodging houses, hotels, motels and tourist rooming houses, and associated common areas, yards, garages, sheds, other outbuildings, and parking lots, or a specific unit of a multi-dwelling premise, provided the specific unit meets the requirements of a nuisance premises as defined in this section.

Public nuisance or *nuisance activity* means an act, omission, use, activity, thing, behavior, occupation, place, conduct, or physical condition that continues in the City of Racine for such time as to do any of the following:

- 1) Substantially annoy, injure, or endanger the comfort, health, repose, peace, order, or safety of the public;
- 2) In any way render the public insecure in life or in the use of property;
- 3) Greatly offend the public morals or decency;
- 4) Unlawfully and substantially interfere with, obstruct, or attempt to obstruct or render dangerous for passage any street, alley, highway, navigable body of water, or other public way, or the use of public property;
- 5) Violate the building code as set forth in chapter 18 of this code of ordinances;
- 6) Violate the fire prevention and protection code (“fire code”) as set forth in chapter 50 of this code of ordinances;

- 7) Violate the public health, environment, or related codes as set forth in chapters 10, 22, 42, and 54 of this code of ordinances; or
- 8) Violate the zoning code as set forth in chapter 114 of this code of ordinances.

Part 3B: Chapter 66, Article XXX, Section 66-1002, is amended by deleting the stricken language and adding the underlined language:

Sec. 66-1002. - Public nuisance prohibited.

- (a) No person may create, contrive, erect, maintain, cause, continue, install, construct, or permit to exist in the City of Racine a public nuisance.
- (b) The following acts, omissions, uses, activities, things, behaviors, occupations, places, conduct, or physical conditions are specifically declared to be a public nuisance, but such enumeration shall not be construed to exclude other public nuisance activities:
 - (1) *Loud noise areas.* Any place in the city where any unreasonably loud, discordant, and unnecessary sound conditions, including sounds from vehicles, equipment, machinery, guns, fireworks, or enclosed domestic or other animals, or from any human-created or aided sounds, including alleged music, repeatedly occur.
 - (2) *Disorderly conduct areas.* Any place in the city where unpermitted, abusive, indecent, profane, or boisterous sounds, unpermitted fighting, brawling, or rioting, or other unpermitted disorderly conduct conditions, repeatedly occur.
 - (3) *Repeated violations of ordinances or statutes.* Any place in the city where city ordinances or state statutes are repeatedly and intentionally violated. This section does not require repeated violations of the same ordinance or statute in every incident.
 - (4) *Bawdyhouses.* Pursuant to Wis. Stat. § 823.09, whoever erects, establishes, continues, maintains, uses, occupies, or leases any building or part of a building, erection, or place to be used for the purpose of lewdness, assignation, or prostitution, or permits the same to be so used, in the town, is guilty of a nuisance and the building, erection, or place in or upon which such lewdness, assignation, or prostitution is conducted, permitted, carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents used therewith for the same purpose, are declared a nuisance, and shall be enjoined and abated.
 - (5) *Illegal drug houses.* Any building or structure that is used to facilitate the delivery, distribution, or manufacture, as defined in Wis. Stats. §§ 961.01(6), (9), and (13), respectively, of a controlled substance as defined in Wis. Stat. § 961.01(4), or a controlled substance analog as defined in Wis. Stat. § 961.01(4m), and any building or structure where those acts occur.
 - (6) *Criminal gang houses.* Any building or structure that is used as a meeting place of a criminal gang, as defined in Wis. Stat. § 939.22(9), or that is used to facilitate the activities of a criminal gang.
 - (7) *Gambling houses.* Any gambling place as defined in Wis. Stat. § 945.01(4)(a).

- (8) *Illegal alcohol houses.* Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured, or rectified without a valid permit or license issued under Wis. Stats. ch. 125 or 139, or where persons are permitted to drink alcohol beverages in violation of Wis. Stats. ch. 125.
- (9) *Blighted buildings and premises.* Premises existing within the city that are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management, or the accumulation thereon of junk or other unsightly debris, structurally unsound fences, and other items that depreciate property values and jeopardize or are detrimental to the health, safety, enjoyment of property, or welfare of the people of the city.
- (b)(c) A nuisance activity does not include activities, behaviors, or conduct that result in a call for assistance made by the owner or occupant requesting law enforcement services related to any of the following:
- (1) "Domestic abuse," as defined in Wis. Stat. § 813.12(1)(am).
 - (2) "Sexual assault," as defined in Wis. Stats. §§ 940.225, 948.02, and 948.025.
 - (3) "Stalking," as defined in Wis. Stat. § 940.32.
- (e)(d) *Owner or occupant of premises responsibility.* Any owner ~~or occupant~~ of land or premises in the city is responsible for compliance with this article on the owner's ~~or occupant's~~ land or premises regardless of ownership ~~of and~~ responsibility for the acts, omissions, uses, activities, things, behaviors, occupations, places, or physical conditions located on the land or premises that are subject to this article. Any occupant of land or premises in the city is responsible for compliance with this article on the occupant's land, regardless of ownership of such land or premises, for the acts, omissions, uses, activities, things, behaviors, occupations, places, or physical conditions occurring on the land or premises that are subject to this article during such occupancy.
- (e) For purposes of this article, the finding of a public nuisance activity does not require an arrest, charge, or conviction of any of the above offenses, so long as the public nuisance activity can be substantiated by code enforcement records. Each separate and distinct incident shall constitute a public nuisance activity, and two or more separate and distinct incidents occurring on the same day shall be counted separately, except for orders to correct violations of the building, fire, zoning, public health, environment code, or other related codes that are issued on the same day, which shall be construed as one incident.

Part 3C: Chapter 66, Article XXX, Section 66-1003, is amended by deleting the stricken language and adding the underlined language:

Sec. 66-1003. - Chronic nuisances prohibited.

- (a) *Findings and Purpose.* The common council of the City of Racine finds that public nuisances exist in the City of Racine in the activities happening on, within, and surrounding certain commercial and residential premises in violation of the City of Racine municipal code of ordinances, all of which interfere with the public's interest in

the quality of life and total community environment, tone of commerce, and property and neighborhood values. Nuisance activities contribute to the general decay of affected neighborhoods and negatively impact residents in those neighborhoods. The Common Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the City of Racine and of the businesses thereof and visitors thereto.

The Common Council finds that ~~from time to time~~ certain commercial and residential premises in the City of Racine require a disproportionate amount of ~~police department~~ resources from the City of Racine's various departments to be devoted to addressing ~~various problems and incidents~~ nuisance activities and violations of the City of Racine municipal code of ordinances that occur thereon. A chronic nuisance is a public nuisance. The Common Council finds that any premises that has generated three or more responses from the police department within a 90-day period or three or more responses from other code enforcement officers within a 180-day period for public nuisance activities has received more than the level of general and adequate police service and has placed an undue and inappropriate burden on the taxpayers of the city. Often this disproportionate devotion of ~~police~~ city resources is due to property owners' own actions or the failure of property owners to accept and exercise sufficient responsibility for and over the actions of occupants, guests, agents, employees, or other persons associated with the premises that reside within or frequent the premises.

The Common Council further finds that premises owners and occupants conducting business activities upon the premises, who chronically fail to control the use of their property, substantially interfere with the comfortable enjoyment of life, health and safety of the community. This section is enacted to encourage property owners to recognize their responsibility to ensure that activities occurring on their property conform to the law and do not unduly burden the city's ~~police~~ resources, to provide a mechanism for the city to take action against property owners who fail to abate nuisance activities occurring on their premises, and to recover the costs associated any disproportionate devotion of ~~police~~ city resources devoted to addressing nuisance activities.

The common council therefore directs the chief of police, chief of fire, public health administrator, chief building inspector, zoning administrator, city attorney, city assessor, city forester, weed commissioner, or their designees, as provided in this section, to charge the owners of such premises the costs associated with abating the nuisance activities that occur thereon.

- (b) *Determination of chronic nuisance premises.* Whenever the minimum criteria for a chronic nuisance premises has been met, the ~~chief of police~~ code enforcement officer shall determine from the facts of each incident and considering the purpose of this section as set forth in paragraph (a), whether the premises is a chronic nuisance premises. The ~~chief~~ code enforcement officer(s), in making ~~his~~ a determination, shall consider, among other factors, whether the nuisance activities resulting in numerous ~~police-city~~ responses were reported by the owner of the premises in an effort to abate the problems at the premises and whether the nuisance activity was committed by a person having no association with the premises by acquaintance with, relation to, or expressed or implied invitation from the owner, occupant, operator, or agent of the premises. If the ~~chief~~ code

enforcement officer determines that there exists a chronic nuisance premises and that further action is necessary by the ~~police code enforcement officer's~~ department in order to abate the nuisance, the chief code enforcement officer shall notify the owner of the property that it has been deemed a chronic nuisance premises.

- (c) *Notice of chronic nuisance premises.* The notice shall contain the street address or legal description sufficient for identifying the premises, a description or list of the nuisance activities that have occurred at the premises, a statement that the owner shall, within ten days of the notice, respond to the ~~chief of police code enforcement officer who issued the notice~~ in writing and propose an abatement plan, and the potential penalties for failing to reply, including a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises. Such notice shall be delivered by regular mail to the address on file with the city assessor's office. If the owner cannot be located, the notice shall be published as a class 2 notice under Wis. Stats. ch. 985 and a copy left at the premises.
- (d) *Owner abatement.* The owner or responsible party shall respond in writing within ten days of the notice with a specific proposal to abate the nuisance activities at the premises. The ~~chief of police code enforcement officer~~ may accept, reject, or work with the owner to modify the proposal at his or her discretion. If the owner contacts the ~~chief of police code enforcement officer~~ and presents a proposal to abate the nuisance and initiates action in accordance with that abatement plan, the chief code enforcement officer may delay further enforcement of this article until the chief code enforcement officer determines that the abatement plan or written course of action has failed or is no longer acceptable.
- (e) *Notice of intent to pursue remedies.* If the owner fails to contact the ~~chief of police code enforcement officer~~ or present an acceptable abatement plan within the time frame provided, or at any time fails to follow through with an accepted course of action or abatement plan, the chief code enforcement officer shall notify the owner of its decision to pursue one or more remedies under section 66-1003(f) as a result of the chronic nuisance premises determination and the right to appeal pursuant to section 1003(g). Delivery of this second notice shall be made in the same manner as the notice in section 66-1003(c).
- (f) *Remedies and forfeitures.*
 - (1) *Costs of abatement.* The ~~chief of police code enforcement officer~~ may calculate the costs of police services any and all costs, fees, and other expenses (collectively "expenditures") incurred by the city arising from and/or pertaining to city services and resources used for responding and preventing the nuisance activities at the premises, including, but not limited to, actual burdened labor, overtime, materials, vehicle use, and related administrative time and efforts incurred and for any subsequent city expenditures for the same, including subsequent enforcement actions, and invoice the owner of the real property for such services and resources, beginning on the date of the notice of intent to pursue remedies under section 66-1003(e). Until the chronic nuisance has been abated, the ~~chief of police code enforcement officer~~ may continue to calculate and invoice the owner for the costs of abating any and all expenditures to abate nuisance activities. The relevant code enforcement officer shall keep an accurate calculation of the expenditures and

shall report it to the finance director. An unpaid invoice may be a lien on such premises and such costs may be assessed against the real property for services rendered and incurred by the city to enjoin or abate the public nuisance as a special charge under Wis. Stats. § 66.0627, unless paid within 30 days of the date on the invoice.

- (2) Violations and Forfeitures. It shall be a violation for any person to fail to abate any chronic nuisance after receiving a notice to pursue remedies. If after sending out the notice to pursue remedies under section 66-1003(e) the chronic nuisance has not been abated, the ~~chief of police~~ code enforcement officer may also issue a complaint or citation against the property owner or occupant for every nuisance activity thereafter associated with the premises until the chronic nuisance has been abated. A person in violation of this section shall forfeit not less than ~~\$300.00~~ \$500.00 for the first offense, ~~\$500.00~~ \$750.00 for the second offense, and \$1,000.00 for any subsequent offense within one year. Each day that a violation continues shall be a separate offense.
 - (3) Upon declaring a chronic nuisance property, the ~~chief of police~~ code enforcement officer shall also refer the matter to the city attorney's office to determine if a nuisance action under Wis. Stats. ch. 823 is appropriate and to the public safety and licensing committee to determine if a review of the licensed premises is appropriate.
- (g) *Appeal.* A property owner or occupant who receives notice pursuant to sections 66-1003(c) and (e) that his or her premises is a chronic nuisance premises or that the ~~chief of police~~ code enforcement officer intends to pursue remedies against him or her, may appeal the ~~chief of police's~~ code enforcement officer's decision within ten days from the date of the notice.
- (1) The appeal shall be in writing and must be delivered to the ~~chief of police~~ code enforcement officer who issued the chronic nuisance premises notice or his or her designee as indicated in the ~~chief's~~ code enforcement officer's letter. As soon as practicable thereafter, but not more than 30 days from the date of the written appeal, the due process board shall hear the appeal and allow the property owner or occupant an opportunity to present evidence as to why the premises is not a chronic nuisance premises under the ordinance. In doing so, the chairman may allow testimony from any member of the audience having relevant first-hand knowledge regarding the issues at hand.
 - (2) Within ten days after the appeal is heard, the property owner or occupant shall be notified in writing of the board's decision to either reverse or deny the ~~chief of police's~~ code enforcement officer's chronic nuisance determination. Any person adversely affected by a decision of the due process board in this respect may seek review by filing a petition in circuit court within 30 days of the date of the decision or be forever barred.
 - (3) For purposes of this section, the city elects not to be bound by Wis. Stats. ch. 68 with respect to administrative procedure.

- (h) *When a chronic nuisance is deemed abated.* The public nuisance created by a chronic nuisance premises shall be deemed abated when no police calls to address for service or for nuisance activities have been made to the premises and no enforcement action has been taken against any person associated with the premises for a period of ~~three consecutive months~~ 90 days and the ~~chief of police~~ code enforcement officer or his designee thereof deems the property to be in compliance with the abatement plan, if any, and this code.
- (i) *Subsequent notice of nuisance activities.* Nothing in this section shall prevent or prohibit ~~the chief of police~~ a code enforcement officer from issuing or reissuing a notice regarding subsequent nuisance activity or activities that may constitute a chronic nuisance premises.
- (j) *Other methods not excluded.* 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 of Wisconsin, including, but not limited to, an action under Wis. Stats. ch. 823.
- (k) *Departmental independence.* Nothing in this section shall be construed as requiring any city department to undertake any enforcement action set forth herein independently of any other city department.
- (l) *Severability.* If any section of this article is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

(Part 4: Creating Residential Rental Inspection Program)

Part 4A: Chapter 18, Article V, Section 18-711, *is amended by designating the existing paragraph as (a):*

Part 4B: Chapter 18, Article V, Section 18-711(b), *is created as follows:*

- (b) Residential Rental Inspection Program
 - (1) Findings and Purpose. The common council of the City of Racine finds that it is necessary to establish a program of regularly scheduled, systematic inspections of residential rental dwelling units within neighborhood stabilization and enhancement districts within the city to ensure that those units provide safe, decent, and sanitary living conditions for tenants living in the residential rental dwelling unit and to prevent further deterioration of those units. The common council finds that a significant percentage of code complaints and violations occur at residential rental dwelling units and that the conditions that exist at these units adversely affect the occupants, as well as the neighbors and neighborhoods in which they are located. This ordinance is enacted to encourage property owners who own and operate residential rental dwelling units to exercise their responsibility to ensure that the city ordinances governing the condition and maintenance of residential rental dwelling units are followed to protect the health, safety, and welfare of the public and prevent blighted conditions in city neighborhoods.

(2) Definitions:

Habitability violation means the existence in a residential rental dwelling unit any of the following conditions: lacks hot or cold running water; the heating facilities serving the property are not in safe operating condition, are not capable of maintaining a temperature in all living areas of the unit of at least 67 degrees Fahrenheit during all seasons of the year in which the property may be occupied; the unit is not served by electricity, or the electrical wiring, outlets, fixtures, or other components of the electrical system are not in safe operating condition; any structural or other conditions in the rental property or rental unit that constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the property or unit other than negligent use or abuse of the property or unit by the tenant; is not served by plumbing facilities in good operating condition; is not served by sewage disposal facilities in good operating condition; lacks working smoke detectors or carbon monoxide detectors; is infested with rodents or insects; or contains excessive mold. *Habitability violation* also means the failure to comply with any basic facilities requirement stated or referenced in article V, division 2 of this code.

Residential rental dwelling unit means a structure or part of a structure, home, residence, or living area occupied by a single person or family, or any grounds or other facilities or area occupied for the use of a residential tenant.

Tenant means a person who is a periodic tenant as defined by Wis. Stat. § 704.01(2), or a tenant at will as defined by Wis. Stat. § 704.01(5), or both.

(3) Residential Property Inspection Program.

- a. The City of Racine hereby establishes a program of regularly scheduled inspections of all residential rental dwelling units located within neighborhood stabilization and enhancement districts in the city. The neighborhood stabilization and enhancement areas shall be defined in accordance with State Statute, and the common council shall adopt the districts by resolution.
- b. Exemptions. The following are exempt from the residential property inspection program:
 - i. Owner-occupied one and two-family residential classified properties, including owner-occupied condominium units.
 - ii. Government-owned properties, including federal, state, county, City of Racine, Racine Area School District, Racine Water and Wastewater Properties, Gateway Technical College Properties, and property owned by public utilities where ownership is recorded with the Racine County Register of Deeds.
 - iii. Jails, convents, monasteries, parish rectories, parsonages, and similar facilities where the ownership is recorded with the Racine County Register of Deeds.

- iv. Rest homes, convalescent homes, nursing homes, hospitals, assisted-living centers, community-based residential facilities, adult homes, and other facilities licensed or certified by the Wisconsin Department of Health Services.
 - v. Residential rental dwelling units that are less than eight years old.
- c. Circumstances. Inspections shall only be conducted:
- i. In an occupied dwelling unit with consent from an adult tenant or adult designee present at the time of the inspection;
 - ii. In a vacant dwelling unit with consent from the owner or owner's agent who is present at the time of the inspection; or
 - iii. Upon obtaining a special inspection warrant pursuant to Wis. Stat. § 66.0119, Wis. Stat.
- d. Program Inspection.
- i. If pursuant to a program inspection no habitability violation is discovered, then the city may not perform a program inspection for at least five years.
 - ii. If pursuant to a program inspection a habitability violation is discovered and the violation is corrected within a period of 30 days, then the city may not perform a program inspection for at least five years.
 - iii. If pursuant to a program inspection a habitability violation is discovered and the violation is not corrected within 30 days, then the city may require a program inspection annually.
 - iv. If pursuant to an annual program inspection, no habitability violation is discovered for two consecutive annual program inspections, then the city shall not perform a program inspection for at least five years.
- e. Inspection upon Complaint
- i. If pursuant to an inspection conducted upon a complaint and a habitability violation is discovered that is not corrected within a period of 30 days, then the city may conduct an annual inspection pursuant to the program.
 - ii. If pursuant to an annual program inspection, no habitability violation is discovered for two consecutive annual program inspections, then the city shall not perform a program inspection for at least five years.
- f. Imminent Danger. The city may provide a period of less than 30 days for the correction of a habitability violation so long as the violation exposes a tenant to imminent danger.

- g. Extension for Good Cause. The city shall provide an extension to the period for correction of a habitability violation upon a showing of good cause so long as the violation does not expose a tenant to imminent danger, in which case such extension shall not be granted.
- h. Notification. The city shall provide the property owner with notice of a habitability violation that contains a specification of the violation and the exact location of the violation that is sent via first-class mail to the registered property owner at the registered address.
- i. Fees. The building department, fire department, and health department are authorized to charge an inspection fee and/or a reinspection fee for program inspections as set forth in the fee schedule established by the common council. Inspection fees shall be collected as a special charge as provided in Wis. Stat. § 66.0627, and entered on the tax roll if unpaid, or may be collected in any other manner allowed by law. The enactment of this ordinance shall constitute notice to property owners of such charge. It shall be a violation of section 66-1004 for any owner or owner's agent directly or indirectly to impose upon any tenant any such property inspection or reinspection fee.
- j. Inspection Requests. All properties in the city, including residential rental dwelling units, shall remain subject to inspection requests. The building department, fire department, and health department shall continue to inspect residential rental dwelling units based on tenant or resident requests or complaints.
- k. Remedies.
 - i. The remedies provided in this section are not to be construed to be exclusive of any other remedy under the municipal code, including but not limited to the prohibition on retaliation set forth in section 66-1004, and the Building Department, Fire Department, Health Department, and Police Department may take further actions to ensure compliance with this section including but not limited to seeking injunctive relief and obtaining inspection warrants.
 - ii. Nothing in this section shall be construed to limit the authority of the Department of Building Inspection and the Department of Public Health to perform housing inspections in accordance with this code or enforcing any other provision of state or federal law.

(Part 5: Eviction or retaliation prohibited – Building Code)

Part 5: Chapter 18, Article V, Section 18-719, *is amended by deleting the stricken language and adding the underlined language:*

Sec. 18-719. ~~Retaliatory~~ Eviction or retaliation prohibited

No owner or operator shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict an occupant by any means, including the termination or substantial reduction of heat, water, or electricity to the dwelling or dwelling unit, in retaliation against an occupant because the occupant has reported a violation of ~~this article~~ the City of Racine Code of Ordinances to any governmental authority. It shall similarly be unlawful for a landlord or any person acting as an agent for a landlord, to intimidate or actively discourage a tenant and/or persons associated with a tenant, or threaten to do the same, from reporting nuisance activities or code violations to appropriate city departments. No non-owner occupant of premises that become the subject of activity by any city department under this section shall be evicted or retaliated against for having notified a department of the existence of such conditions or for having been the occupant at the time the code enforcer took such action. A violation of this section shall constitute a violation of section 66-1004.

(Part 6: Eviction or retaliation prohibited – Offenses)

Part 6: Chapter 66, Article XXX, Section 66-1004, is amended by deleting the stricken language and adding the underlined language:

Sec. 66-1004. – Eviction or retaliation prohibited.

It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy, increase charges, directly or indirectly to impose upon any tenant any property inspection or reinspection fee, reduce services, refuse to renew a rental agreement, or otherwise retaliate against any tenant because that tenant complained to ~~the chief of police or other~~ any city department about nuisance activities or code violations on the landlord's premises or threaten to do the same. 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 or contacting the police any city department to report a nuisance activity or code violation associated with a premises or threaten to do the same. No non-owner occupant of a premises that has been found to be in violation of the City of Racine Municipal Code of Ordinances shall be evicted or retaliated against for having notified a city department of the existence of nuisance activities or code violations.

It shall be a rebuttable presumption that any act or attempt by a landlord to initiate any of the aforesaid unlawful activities within six months of notification of the nuisance activities or code violations is done in retaliation and is void and is subject to a forfeiture of not less than \$100 nor more than \$2,000 for each such act or attempt.

Such an occupant may be evicted for his or her failure to pay rent, or if the occupant commits waste upon the property, or if the occupant commits a substantial violation of a written rental agreement. In order to overcome such presumption, it must be shown by a

preponderance of the evidence that such acts were based upon good cause. “Good cause” used herein means that the landlord must show a good reason for his or her action, other than one related to or caused by the operation of this ordinance or in response to increased costs related to the repair or correction of code violations, including but not limited to normal uniform rental increases due to utility increases or other increased costs to the landlord, or for other bona fide, nondiscriminatory business reason. This section shall not be read to prevent landlords from exercising their rights to evict a tenant consistent with local, state, and federal landlord tenant laws.

(Part 7: Creation of Rent Escrow Deposit Program)

Part 7A: Chapter 18, Article IX, Section 18-903, *is amended by is amended by deleting the stricken language and adding the underlined language:*

Except as set forth in sec. 18-904, the ~~The~~ penalties provided in section 18-1 shall apply to any person found in violation of this article. In imposing penalties for violations of this article, the court may consider whether the violator voluntarily agrees to attend the landlord training class.

Part 7B: Chapter 18, Article IX, Section 18-904, *is hereby created as follows:*

Suspension of duty to pay rent

(1) Definitions

Code enforcement officer means any of the following persons: chief of police, chief of fire, public health administrator, chief building inspector, zoning administrator, city attorney, city assessor, city forester, weed commissioner, or their designee.

Finance director means the director of the City of Racine finance department or his or her designee.

Habitability violation means the existence in a residential rental dwelling unit any of the following conditions: lacks hot or cold running water; the heating facilities serving the property are not in safe operating condition, are not capable of maintaining a temperature in all living areas of the unit of at least 67 degrees Fahrenheit during all seasons of the year in which the property may be occupied; the unit is not served by electricity, or the electrical wiring, outlets, fixtures, or other components of the electrical system are not in safe operating condition; any structural or other conditions in the rental property or rental unit that constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the property or unit other than negligent use or abuse of the property or unit by the tenant; is not served by plumbing facilities in good operating condition; is not served by sewage disposal facilities in good operating condition; lacks working smoke detectors or carbon monoxide detectors; is infested with rodents or insects; or contains excessive mold. *Habitability violation* also means the failure to comply with any basic facilities requirement stated or referenced in chapter 18, article V, division 2 of this code.

Residential rental dwelling unit means a structure or part of a structure, home, residence, or living area occupied by a single person or family, or any grounds or other facilities or area occupied for the use of a residential tenant.

Tenant means a person who is a tenant under a lease, a periodic tenant, or a tenant at will as defined by Wis. Stat. § 704.01.

- (2) Deposit in Escrow. Notwithstanding any other provision of law or any agreement, whether oral or written, if an owner of a residential rental dwelling unit fails or neglects to comply with an order from a code enforcement officer to correct a habitability violation, then upon the expiration of the time given in an order to correct those violations, the code enforcement officer who issued the order to correct, upon application of the tenant, may authorize the tenant, as of the date of application, to deposit rental payments into an escrow account designated by the finance director. Notwithstanding the foregoing, a tenant shall not be authorized to withhold rent if the only violation is a non-habitability violation, or if the tenant has rent for that property that is unpaid past the due date. It shall be an affirmative defense to a rent withholding under this section to show that the damage or condition on which the violation is based is caused by negligence or improper use by the tenant.
 - (a) The tenant may commence rental deposits into the escrow account after the order is past due and upon authorization by the code enforcement officer, provided that payment is made prior to expiration of a five-day pay or quit notice or service of a 14-day termination notice given by the lessor under Wis. Stat. chapter 704.
 - (b) The owner or authorized contact person shall be notified of rent escrow deposit authorization by the code enforcement officer by first class mail or email, if the owner has previously provided an email address on a city property registration form, within five days of said authorization.
- (3) Escrow Account. The finance director is authorized to create a special revenue fund for the purpose of depositing rental payments collected which shall be held in an escrow account and released as set forth in subsection (7).
- (4) Appeal from Tenant Authorization by Owner. Tenant authorization to deposit rental payments into an escrow account pursuant to this section shall be stayed if an appeal of rent escrow deposit authorization is made by the owner to the due process board within ten days of the date of the authorization to withhold rent notification.
 - (a) The due process board shall have the power to affirm or reverse the authorization of rent escrow deposit or require the return to the owner all or part of the rent paid to the City escrow account or postpone to a future date the commencement of rent escrow deposit. The due process board

may determine which, if any, of the habitability violations was caused by the act or omission of the tenant and make a specific finding of such fact. Such finding shall not relieve the owner or agent from the duty to correct violations of the building code, fire code, health code, or a combination thereof in a timely manner.

- (b) The due process board shall authorize rent escrow deposit under this section in such instances to continue only until violations are certified as corrected by the code enforcement officer. If a rent payment shall become due during the pendency of an appeal, the tenant shall deposit the rental payment into the escrow account designated by the finance director when due.
 - (c) If the due process board does not authorize continued rent escrow deposit, all money deposited in the escrow account due to lessor shall be paid to the lessor without deduction of administrative fees from the account. If the due process board does authorize continued rent escrow deposit, administrative fees as herein authorized shall be deducted by the city prior to the making of any other disbursements.
- (5) Receipt of Rent Withheld. Upon acceptance of rent, the finance director shall cause a receipt to be mailed certified mail, return receipt mail requested, or equivalent private delivery service, to the owner or authorized contact person, which will serve as a notice that rent has been paid. Within five days of the due date, if rent remains unpaid, notice of nonpayment will be mailed to the owner or authorized contact person by certified mail, return receipt requested, or equivalent private delivery service.
- (6) Deposit by Tenant. The right of the tenant to deposit rental payments into the escrow account established by this section shall not preclude or adversely affect in any way the right of the property owner to use any of the rights and remedies provided by the laws of the State of Wisconsin pertaining to the relationship of landlord and tenant, including, but not limited to, commencing eviction proceedings after notice of nonpayment of rent has been sent. The city has no responsibility for the collection of rent which is not paid when due.
- (7) Release of Funds. Monies deposited in the escrow account shall be released as follows:
- (a) During Pendency of Rent Escrow Deposit. Monies deposited in the escrow account, during pendency of escrow deposit:
 - i. Shall be retained in an amount as set forth in the fee schedule established by the common council to cover administration expenses for the following purposes:

1. A fee to establish the account, to be assessed only after rent escrow deposit has been authorized by the code enforcer.
 2. A fee, payable each month, to maintain the account if no transaction occurs during the month.
 3. A fee per transaction made by the finance director from the escrow account.
 4. A fee to close the account.
- ii. Shall be released at the discretion of the finance director to pay utilities where the utility costs are included as part of the rent.
 - iii. May be released at the discretion of the finance director or code enforcement officer to reimburse any city department or to pay any private contractor hired by the city, for the costs of razing the building, closing or securing vacant and open dwelling units, and the cutting of long grass and weeds.
 - iv. May be released at the discretion of the code enforcement officer to the owner or authorized contact person upon presentation of itemized receipts for reasonably necessary work completed at the direction of the code enforcer.
- (b) After Completion of Required Repairs. After all repair orders of the code enforcement officer that formed the basis for the rent escrow deposit are complied with to the satisfaction of the code enforcement officer, the code enforcement officer, after applicable deductions under this section, shall release all remaining funds that had been deposited by the tenant for that lessor, to the owner or authorized contact person. The finance director shall make payment to owner or authorized contact person by check within a reasonable time in the due course of business.
- (8) Exemptions. The following are exempt from rent escrow deposit as provided for under this section:
- (a) Owners of owner-occupied one and two-family residential classified properties, including owner-occupied condominium units.
 - (b) Government-owned properties, including federal, state, county, City of Racine, Racine Area School District, Racine Water and Wastewater Properties, Gateway Technical College Properties, and property owned by public utilities where ownership is recorded with the Racine County Register of Deeds.
 - (c) Owners of jails, convents, monasteries, parish rectories, parsonages, and similar facilities where the ownership is recorded with the Racine County Register of Deeds.

- (d) Owners of rest homes, convalescent homes, nursing homes, hospitals, assisted-living centers, community-based residential facilities, adult homes and other facilities licensed or certified by the Wisconsin Department of Health Services.
- (9) Prosecution. Use of rent escrow deposit shall not prohibit the city from prosecuting violations of the code relating to the property.
- (10) Violation. It shall be a violation:
- (a) Harassment. For any person to use any provision of this section to harass any other person.
 - i. To harass will include, but is not limited to, making spurious complaints to the code enforcer or any other law enforcement official, terminating a tenancy or giving notice preventing the automatic renewal of a lease, or constructively evicting a tenant by any means, including the termination or substantial reduction of heat, water, or electricity to the dwelling unit, or increasing, without good cause, the rent to a unit by more than ten percent over the rental rate in effect at the time during which the tenant applied for rent escrow deposit.
 - ii. “Good cause” used herein means that the landlord must show a good reason for his or her action, other than one related to or caused by the operation of this ordinance or in response to increased costs related to the repair or correction of code violations, including but not limited to normal uniform rental increases due to utility increases or other increased costs to the landlord, or for other bona fide, nondiscriminatory business reason. “Good cause” as used in this section, shall include the nonpayment of rent to the lessor or to the escrow account or the commission of waste.
 - (b) Wrongful acceptance of rental payments. For any person, contrary to this section, to accept rental payments for premises subject to authorized rent escrow deposit, whether the rental payments are tendered by or on behalf of the tenant occupying the premises at the time rent escrow deposit is authorized or by, or on behalf of, any subsequent or other tenant who occupies the premises during the existence of such rent escrow deposit authorization, shall be in violation of this section. Each payment accepted shall constitute a separate violation.

- (c) Penalty for violation. Upon conviction of a violation of this section, any person shall forfeit not less than \$100 nor more than \$500 plus court costs.

(Part 8: Amending jurisdiction of Due Process Board)

Part 8: Chapter 2, Article III, Section 2-263, *is amended by deleting the stricken language and adding the underlined language:*

Sec. 2-263. - Functions.

The due process board shall have the following powers and duties:

- (a) Conduct hearings on an appeal filed by a person adversely affected as a result of ~~the chief of police's~~ a code enforcement officer's determination of a chronic nuisance premise under article ~~XXIX~~ XXX of chapter 66. After such hearing, the board shall either affirm or reverse the determination of the ~~chief code enforcement officer~~, depending on its findings as to whether the criteria for declaring a chronic nuisance premise and assessing costs and forfeitures have been met under the ordinance.
- (b) Conduct due process hearings regarding the nonrenewal, suspension and/or revocation of any licenses related to the sale of alcohol beverages pursuant to chapter 6 of the code and Wis. Stats. § 125.12. After such hearing and within five business days after it reaches a decision, the board shall file a report containing the findings of fact, conclusions of law and recommendation as to the license, with the city clerk. Upon majority vote, the common council shall either affirm or reverse the findings of the board.
- (c) Conduct hearings on appeal filed by an owner of a tenant's authorization to deposit rental payments into an escrow account pursuant to section 18-904(4) of the code. The board shall follow the procedures set forth in section 18-904(4) for such hearings.

(Part 9: Passage)

Part 9: Part 5 (Eviction or retaliation prohibited – Building Code) and Part 6 (Eviction or retaliation prohibited – Offenses) of this ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law. All other Parts of this ordinance shall take effect on the first day of the month following 90 days after passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.