

Ordinance 0001-26 – Nuisance Properties Amendments

An ordinance to amend Chapter 66, Article XXX, Section 66-1001; to repeal and recreate Chapter 66, Article XXX, Section 66-1001(5); to create Chapter 66, Article XXX, Section 66-1001(9); to amend Chapter 66, Article XXX, Section 66-1002(e); to amend Chapter 66, Article XXX, Section 66-1003(a); to repeal and recreate Chapter 66, Article XXX, Sections 66-1003(c), (d), and (e); to amend Chapter 66, Article XXX, Section 66-1003(f)(3); to repeal and recreate Chapter 66, Article XXX, Section 66-1003(g); to amend Chapter 66, Article XXX, Section 66-1003(h); and create Chapter 66, Article XXX, Section 66-1005 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: Chapter 66, Article XXX, Section 66-1001 is amended as follows:

Within the definition of *chronic nuisance premises*, the words “at least three or more responses from the police department for public nuisance activities within a 60-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” are replaced with “at least three responses from the police department and/or at least three enforcement actions by a code enforcement officer, or any combination thereof, for public nuisance activities within a 90-day period. 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 regardless of whether an arrest was made. Each separate and distinct response from the police department shall be counted. Other enforcement actions, regardless of number, will be counted as one incident if issued on the same day and by the same code enforcement officer”.

Part 2: Chapter 66, Article XXX, Section 66-1001 is amended as follows:

Within the definition of *code enforcement officer*, the words “manager of the neighborhood enhancement division, director of city development,” shall be inserted between the words “weed commissioner,” and “or their designee”.

Part 3: Chapter 66, Article XXX, Section 66-1001 is amended to include the following definition in alphabetical order as follows:

Notice date means the second day after mailing, if applicable, or the date of publication, whichever is later.

Part 4: Chapter 66, Article XXX, Section 66-1001 is amended as follows:

Within the definition of *premises*, the words “multiple dwelling unit for one or more persons” is replaced with “multi-dwelling structure”.

Part 5: Chapter 66, Article XXX, Section 66-1001 is amended as follows:

Within the definition of *premises*, the word “premise” is replaced with “structure”.

Part 6: Chapter 66, Article XXX, Section 66-1001(5) is repealed and recreated as follows:

- (5) Violate the building code and property maintenance code as set forth in chapters 18 and 19 of this code of ordinances;

Part 7: Chapter 66, Article XXX, Section 66-1001(9) is created as follows:

- (9) Violate section 66-1002 of this article.

Part 8: Chapter 66, Article XXX, Section 66-1002(e) is amended as follows:

The words “property maintenance code,” shall be inserted between the words “environment code,” and “or other related codes”,

Part 9: Chapter 66, Article XXX, Section 66-1003(a) is amended as follows:

The phrase “The common council finds that any premises that has generated three or more responses from the police department within a 60-day period or three or more responses from other code enforcement officers within a 180-day period for public nuisance activities” is amended to “The common council finds that any premises that has generated at least three responses from the police department and/or at least three enforcement actions by a code enforcement officer, or any combination thereof, for public nuisance activities within a 90-day period for public nuisance activities”.

Part 10: Chapter 66, Article XXX, Section 66-1003(a) is amended as follows:

The words “manager of the neighborhood enhancement division, director of city development,” shall be inserted between the words “weed commissioner,” and “or their designees”.

Part 11: Chapter 66, Article XXX, Sections 66-1003(c), (d), and (e) are repealed and recreated as follows:

- (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 14 days of the notice date, respond to the 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 deemed to be properly served if sent by first class mail to the address on file with the chief assessor's office or to a registered agent identified through the department of financial institutions. 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) *Abatement plan.*

- (1) *Proposed abatement plan.* The owner shall deliver to the code enforcement officer a written proposal to abate the nuisance activities at the premises by no later than 14 days from the notice date under section 66-1003(c). The code enforcement officer may, but is not required to, grant one 14-day extension for cause. The code enforcement officer may accept or reject the proposed abatement plan at the code enforcement officer's discretion. Any rejection shall be in writing and shall state therein the reasons therefor and that the owner may modify the abatement plan and submit for review a finalized abatement plan under section 66-1003(d)(2). Notice of rejection or acceptance of the proposed abatement plan shall be deemed to be properly served if sent by first class mail to the address on file with the chief assessor's office or to a registered agent identified through the department of financial institutions. Failure to timely submit a proposed abatement plan forfeits an owner's right to submit a finalized abatement plan.
- (2) *Finalized abatement plan.* The owner shall deliver to the code enforcement officer a finalized abatement plan by no later than 14 days from the notice date of rejection of the proposed abatement plan. The code enforcement officer may accept or reject the finalized abatement plan at the code enforcement officer's discretion. Any rejection shall be in writing and shall state therein the reasons therefor.
- (3) *Implementation.* An accepted proposed or finalized abatement plan shall be fully implemented by the owner by no later than 60 days from the notice date of acceptance by the code enforcement officer, except that the code enforcement officer may state an alternative date by which the proposed or finalized abatement plan shall be fully implemented by the owner.
- (4) *Intent to pursue remedies.* Upon rejection of the owner's finalized abatement plan by the code enforcement officer, the code enforcement officer may notify the owner of the code enforcement officer's intent to pursue remedies under section 66-1003(e).

- (e) *Notice of intent to pursue remedies.* If any one or more of the following conditions is met, then the code enforcement officer may notify the owner of both the code enforcement officer's intent to pursue one or more remedies under section 66-1003(f) and the right to appeal under section 66-1003(g). Such notice shall be by first class mail sent to the address on file with the chief assessor's office or to a registered agent identified through the department of financial institutions. 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.

- (1) The owner fails to deliver a timely proposed abatement plan under section 66-1003(d)(1);
- (2) The owner fails to deliver a timely finalized abatement plan or such plan is rejected by the code enforcement officer under section 66-1003(d)(2);
- (3) The owner fails to fully implement an accepted proposed or finalized abatement plan by the expiration date under section 66-1003(d)(3).
- (4) If, after 180 days from the date of acceptance of the proposed or finalized abatement plan, the premises qualifies as a chronic nuisance premises unless otherwise noted in a proposed or finalized abatement plan.

Part 12: Chapter 66, Article XXX, Section 66-1003(f)(3) is amended as follows:

The words “Wis. Stat. chs. 66, 254, or 823” shall replace “Wis. Stats. Ch. 823”.

Part 13: Chapter 66, Article XXX, Section 66-1003(g) is repealed and recreated as follows:

- (g) *Appeal.* A property owner who receives notice pursuant to section 66-1003(c) that the property owner’s premises is a chronic nuisance premises, or pursuant to section 66-1003(e) that the code enforcement officer intends to pursue remedies against the property owner, may appeal the code enforcement officer's decision within ten days from the notice date. Failure to appeal the code enforcement officer’s decision within ten days forfeits the property owner’s right to appeal.
- (1) The appeal shall be in writing, shall state the basis for the appeal, and shall be delivered to the code enforcement officer who issued the chronic nuisance premises notice or notice of intent to pursue remedies or to the code enforcement officer’s designee as indicated in the code enforcement officer's notice. An appeal is timely if postmarked or received by the code enforcement officer or designee as indicated in the code enforcement officer's notice within 10 days from the notice date.
 - (2) Appeals shall address the relevant issue that serves as the basis for the notice of chronic nuisance premises or the notice of intent to pursue remedies as follows:
 - (a) An appeal of a notice of chronic nuisance premises provided under section 66-1003(c) shall be limited as to whether the premises is a chronic nuisance premises under the ordinance as of the notice date.
 - (b) An appeal of notice of intent to pursue remedies due to a rejection of a finalized abatement plan under section 66-1003(e)(2) shall be limited as to whether there was a rational basis for the code enforcement officer’s discretionary decision.
 - (c) An appeal of notice of intent to pursue remedies due to failure to deliver a proposed or finalized abatement plan under sections 66-1003(e)(1) and (2) shall be limited as to whether the proposed or finalized

abatement plan was delivered by the date set by the code enforcement officer.

- (d) An appeal of notice of intent to pursue remedies due to the property owner's failure to implement an accepted proposed or finalized abatement plan by the expiration date under section 66-1003(d)(3) shall be limited as to whether the abatement was implemented by the expiration date identified by the code enforcement officer.
 - (e) An appeal of a notice of intent to pursue remedies due to the premises qualifying as a chronic nuisance premises 180 days after acceptance of a proposed or finalized abatement plan, or as otherwise noted in section 66-1003(d)(4), shall be limited as to whether the premises is a chronic nuisance premises under the ordinance as of the date of the notice of intent to pursue remedies.
- (3) Within 30 days from the date of receipt of the written appeal by the code enforcement officer, the due process board shall hear the appeal and allow the property owner an opportunity to present evidence as prescribed under section 66-1003(g). In doing so, the chair of the due process board may allow testimony from any member of the audience having relevant first-hand knowledge regarding the issues at hand. The due process board may schedule a hearing beyond 30 days from receipt of a written appeal if needed to arrange a quorum, at the discretion of the chair or vice chair, in which case a hearing may be held as soon as practicable.
 - (4) 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 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.
 - (5) For purposes of this section, the city elects not to be bound by Wis. Stat. ch. 68 with respect to administrative procedure.
 - (6) Nothing in this section shall prevent the property owner or the code enforcement from resolving and dismissing by mutual agreement any appellate issue to the satisfaction of the parties prior to the due process hearing.

Part 14: Chapter 66, Article XXX, Section 66-1003(h) is amended as follows:

The words "proposed or" shall be inserted between the words "after the" and "finalized abatement plan".

Part 15: Chapter 66, Article XXX, Section 66-1003(h) is amended as follows:

The words "of acceptance" shall replace "of the notice under section 66-1003(c)".

Part 16: Chapter 66, Article XXX, Section 66-1003(h) is amended as follows:

The words “Additionally, nothing in this section shall be construed as preventing cooperation between city departments. Code enforcement officers may delegate their authority to another code enforcement officer at their discretion, including, but not limited to, receipt, review, and approval of a proposed or finalized abatement plan.” shall be inserted as the final sentence.

Part 17: Chapter 66, Article XXX, is amended to create Section 66-1005 as follows:

Sec. 66-1005. City attorney authorization to abate nuisances.

The city attorney is authorized to initiate actions to abate nuisances as permitted under Wis. Stat. §§ 66.0413, 254.595, and ch. 823.

Part 18: 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.

Fiscal Note: N/A

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor’s signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor’s objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.