



Legislation Text

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Alderman Coe

Ordinance 0015-17

An Ordinance to repeal and recreate Chapter 66, Article XXIX. - Nuisance Properties of the Code of Ordinances.

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

Part 1: To repeal and recreate sections 66-1001 through 66-1003 of Article XXIX of Chapter 66 to read as follows:

“Sec. 66-1001. - Definitions.

Chief of police means the City of Racine Chief of Police or his or her 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, whether or not 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.

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

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 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 a thing, act, occupation, condition, or use of property 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; or
2. In any way render the public insecure in life or in the use of property; or
3. Greatly offend the public morals or decency; or
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.

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. The following acts, uses, activities, things, occupations, places, 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](http://docs.legis.wisconsin.gov/document/statutes/823.09) [<http://docs.legis.wisconsin.gov/document/statutes/823.09>](http://docs.legis.wisconsin.gov/document/statutes/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. §§ [\(6\)](http://docs.legis.wisconsin.gov/document/statutes/961.01(6)) [<http://docs.legis.wisconsin.gov/document/statutes/961.01\(6\)>](http://docs.legis.wisconsin.gov/document/statutes/961.01(6)), [\(9\)](http://docs.legis.wisconsin.gov/document/statutes/961.01(9)) [<http://docs.legis.wisconsin.gov/document/statutes/961.01\(9\)>](http://docs.legis.wisconsin.gov/document/statutes/961.01(9)), and [\(13\)](http://docs.legis.wisconsin.gov/document/statutes/961.01(13)) [<http://docs.legis.wisconsin.gov/document/statutes/961.01\(13\)>](http://docs.legis.wisconsin.gov/document/statutes/961.01(13)), respectively, of a controlled substance as defined in Wis. Stat. § [\(4\)](http://docs.legis.wisconsin.gov/document/statutes/961.01(4)) [<http://docs.legis.wisconsin.gov/document/statutes/961.01\(4\)>](http://docs.legis.wisconsin.gov/document/statutes/961.01(4)), or a controlled substance analog as

defined in Wis. Stat. § 961.01 (4m) <[http://docs.legis.wisconsin.gov/document/statutes/961.01\(4m\)](http://docs.legis.wisconsin.gov/document/statutes/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) <[http://docs.legis.wisconsin.gov/document/statutes/945.01\(4\)\(a\)](http://docs.legis.wisconsin.gov/document/statutes/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. chapter 125 or 139, or where persons are permitted to drink alcohol beverages in violation of Wis. Stats. ch. 125.

(b) 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.

(c) Owner of premises responsibility. Any owner or occupant of land in the City is responsible for compliance with this ordinance on the owner's or occupant's land regardless of ownership of and responsibility for the uses, activities, or things located on the land that are subject to this ordinance.

(d) 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 police 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.

Sec. 66-1003. - Chronic nuisances prohibited.

(a) Purpose. 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 to be devoted to addressing various problems and incidents that occur thereon. A chronic nuisance is a public nuisance. The common council finds that any premises that has generated three or more responses within a ninety day period from the police department 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 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 or employees 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, and to provide a mechanism for the city to take action against property owners who fail to ensure premises they own or rent do not require a disproportionate devotion of police resources and to recover the costs associated with the disproportionate devotion of police resources to such premises. This article is not intended to discourage crime victims or any person in legitimate need of police services from requesting them.

(b) Determination of chronic nuisance premises. Whenever the minimum criteria for a chronic nuisance premises has been met, the chief of police 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, in making his determination, shall consider among other factors, whether the nuisance activities resulting in numerous police 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 determines that there exists a chronic nuisance premises and that further action is necessary by the police department in order to abate the nuisance, the chief 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 in writing and propose an abatement plan, and the potential penalties for failing to reply. 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 may accept, reject or work with the owner to modify the proposal at his or her discretion. If the owner or responsible party contacts with the chief of police and presents a proposal to abate the nuisance and initiates action in accordance with that abatement plan, the chief may delay further enforcement of this ordinance until the chief 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 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 shall notify the owner of its decision to pursue one or more remedies under sec. 66-1003(f) as a result of the chronic nuisance determination. Delivery of this second notice shall be made in the same manner as the notice in sec. 66-1003(c).

(f) Remedies and forfeitures.

(1) Costs of abatement. The chief of police may calculate the costs of police services for responding and preventing the nuisance activities at the premises and invoice the owner of the real property for

such services, beginning on the date of the notice of intent to pursue remedies under sec. 66-1003 (e). Until the chronic nuisance has been abated, the chief of police may continue to calculate and invoice the owner for the costs of abating nuisance activities. 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. Stat. § 66.0627, unless paid within 30 days of the date on the invoice.

(2) Forfeitures. If after sending out the notice to pursue remedies under sec. 66-1003(e) the chronic nuisance has not been abated, the chief of police may also issue a 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 for the first offense, \$500.00 for the second offense, and \$1000.00 for any subsequent offenses within one year.

(3) Upon declaring a chronic nuisance property, the chief of police 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 & 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 sec. 66-1003(c) and (e) that his or her premises is a chronic nuisance premises or that the chief of police intends to pursue remedies against him or her, may appeal the chief of police'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 or his or her designee as indicated in the chief'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 property 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 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 the premises to address nuisance activities occurs for a period of three consecutive months and the chief of police or his designee deems the property to be in compliance with the abatement plan, if any.

(i) Subsequent notice of nuisance activities. Nothing in this section shall prevent or prohibit the chief of police from issuing or reissuing a notice regarding subsequent nuisance activity or activities which 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) 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 2: To add sections 66-1004 to read as follows:

“Sec. 66-1004. - Eviction or Retaliation Prohibited.

It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant because that tenant complained to the chief of police or other city departments about nuisance activities on the landlord’s premises. 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 the police to report a nuisance activity associated with a premises. 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 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City Common Council and publication or posting as required by law.

Fiscal Note: N/A