



CITY ATTORNEY

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November 16, 2023

To: Legislative and Licensing Committee
CC: Michelle Luedtke, City Clerk
Re: Ordinance for Chronic Nuisance Premises

Due to recent issues at a property in the City, Alderman Christianson requested that staff evaluate the City's public nuisance ordinance. To increase the City's ability to regulate public nuisances, I recommend that the Council adopt the changes contained in the attached ordinance. The ordinance would allow the City to charge chronic public nuisance properties for employee time and related costs for responding to nuisance issues. Additionally, the ordinance expands the definition of nuisance and provides more examples of nuisance behavior. Lastly, the ordinance sets up a procedure for appeals, nuisance abatement, and enforcement.

I have shared this ordinance with Fire, Police, Public Works, and Building Inspection and received their input as to the ordinance text.

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Ordinance Number:

Ordinance Title:

WHEREAS, the Police Department has reported an increase in repeat responses to particular places within the City for public nuisances; and

WHEREAS, based on this information, City staff recommends updating the City's nuisance regulations to address the Department's experiences as well as update the nuisance provisions in general; and

WHEREAS, the Legislative and Licensing Committee considered the Staff's recommendation and proposed ordinance at its meeting held on [insert meeting date] and recommended [approval or denial] to the Common Council; and

WHEREAS, based on the Committee's recommendation, the Common Council finds that any premises that has generated 3 or more responses for nuisance activities receives more than the level of general and adequate service that most properties require and has placed an undue and inappropriate burden on the rest of City taxpayers, and

WHEREAS, the Common Council finds that charging the premises owners for City staff time and other costs to abate the nuisances is an appropriate mechanism to improve the health, safety, and welfare of the community and deter nuisances from occurring, and

WHEREAS, the Legislative and Licensing Committee considered the ordinance at its meeting held on [insert meeting date] and recommends [approval or denial] thereof.

NOW, THEREFORE, the Common Council of the City of Brookfield do ordain as follows:

PART I. Section 8.32.020 is repealed and recreated to state:

8.32.020 Definitions.

The following definitions apply to this Chapter.

- A. "Abate" or "abatement" means to remove, end or fix a nuisance.
- B. "Chronic public nuisance" means three or more public nuisance activities have occurred at a premises on separate days during a 180-day period.
- C. "City Official" means Police Chief, Fire Chief, Health Officer, Zoning and Building Administrator, the Director of Public Works, their designees, or the City Attorney as their representative.

D. "Public nuisance" means a thing, act, omission, occupation, place, condition, or use of property which shall continue for such length of time as to:

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1. Substantially annoy, injure, or endanger the comfort, health, repose, 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 render dangerous for passage any street, alley, highway, navigable body of water, or other public way, or the use of public property.

5. Law enforcement services rendered pursuant to Wis. Stat. Sec. 66.0627(7) are not public nuisances.

PART II. Section 8.32.030 is hereby amended to state:

8.32.030 Public nuisances affecting health.

The following are specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 8.32.020.

PART III. Section 8.32.040 is hereby amended to state and Subsections 8.32.040.B and C and E are repealed and recreated to state:

8.32.040 Public nuisances offending morals and decency.

The following are specifically declared to be public nuisances offending morals and decency, but such enumeration shall not be construed to exclude other nuisances offending morals and decency coming within the definition of Section 8.32.020.

B. Any place where gambling in violation of Chapter 945, Wis. Stat., or Section 9.08.050 of this Code occur, or illegal gambling devices are used or stored.

C. Any place where offenses involving intoxicating liquor and fermented malt beverages in violation of Chapter 125, Wis. Stats., or Chapter 5.24 of this Code occur.

E. Any place where controlled substances are possessed, manufactured, or delivered or drug paraphernalia is possessed in violation of Chapter 961, Wis. Stats.

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PART IV. Section 8.32.050 is hereby amended to state and Subsections 8.32.050.N. through CC. are created to state:

8.32.050 Public nuisances affecting peace and safety.

The following are specifically to be declared public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances offending morals and decency coming within the definition of Section 8.32.020.

- N. Any place where harassment as defined in Wis. Stat. § 947.013 occurs;
- O. Any place where disorderly conduct as defined in Wis. Stat. § 947.01 occurs;
- P. Any place where cruelty to animals as defined in Section 6.04.020 of this Code occurs;
- Q. Any place where theft as defined in Wis. Stat. § 943.20 occurs;
- R. Any place where arson as defined in Wis. Stat. § 943.02 occurs;
- S. Any place where robbery as defined in Wis. Stat. § 943.32 occurs;
- T. Any place where receiving or concealing stolen property as defined in Wis. Stat. § 943.34 occurs
- U. Any place where offenses against life and bodily security as enumerated in Wis. Stat. §§ 940.01 to 940.32, except as provided in Section 8.32.020.B, occurs;
- V. Any place where offenses involving illegal possession or use of firearms as defined in Wis. Stat. Chapter 941 and Wis. Stat. § 948.60 or discharge of firearm as provided in Section 9.28.010 of this Code occurs;
- W. Any place where trespass to land as defined in Wis. Stat. § 943.13 or criminal trespass to dwelling as defined in Wis. Stat. § 943.14 occurs;
- X. Any place where loitering as defined in Chapter 9.24 of this Code occurs;
- Y. Any place where offenses involving tobacco products or electronic cigarettes in violation of Chapter 5.14 and Chapter 9.05 of this Code occurs;
- Z. Any place where misuse of emergency telephone numbers as provided in Section 9.08.030 of this Code occurs;
- AA. Any place where illegal sale, discharge, or use of fireworks as set forth in Chapter 8.20 of this Code occurs;
- BB. Any place where excessive noise occurs in violation of Section 9.08.100 of this Code;
- CC. Any place where false alarms occur in violation of Section 9.08.020 of this Code;
- DD. Any place where external alarm bells sound continuously for more than five minutes;
- EE. Any place where burning occurs in violation of Chapter 8.36 of this Code.

PART V. Section 8.32.060 is repealed and recreated to state:

8.32.060 Abatement of Public Nuisances.

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A. Enforcement. City Officials are responsible for enforcing this Chapter as appropriate to their office. Enforcement requires periodic or, upon complaint, inspections. No City Official may undertake abatement procedures without inspection.

B. Abatement. If the City Official determines that a public nuisance exists which is a great and immediate danger to the public health and safety, the City Official may, without notice or hearing, issue an order requiring immediate action be taken, as they deem necessary, to abate the nuisance. Notwithstanding any other provisions of this Chapter, the order shall be effective immediately and any person to whom such order is directed must comply with the order immediately. For all other nuisances, the City Official may issue an order to remove or abate the public nuisance within 10 days.

C. Orders and Notices.

1. Contents. Orders and notices must be written and contain the legal description or street address of the premises; a description of the nuisance activities at the premises; a statement that if the City abates the nuisance the cost of abatement will be assessed as a special charge against the property; a statement that the property owner must within 10 days service of the notice abate the nuisance, propose a plan to abate the nuisance activities; or file an appeal with the City Clerk under Section 8.32.080.

2. Service. The City must serve notice and orders by certified mail to the property owner's or registered agent's last known address or principal office, or in person to the property owner. If the property owner is unable to be served, the City must post the notice or order on the property and publish the designation as a Class I notice. Any time frame for compliance begins upon posting.

D. Compliance. If nuisances are not abated as directed in the order or notice, the City Official or their designee or a City agent may enter upon the premises and abate the nuisance, and the City shall recover the expenses incurred by billing the property owner and placing the expenses on the property tax roll as a special charge if said expenses are not paid within 30 days.

E. Other Methods Not Excluded. Nothing in this chapter shall be construed as prohibiting public nuisance abatements by the City in accordance with State law or other parts of the Brookfield Municipal Code. Where the provisions of this chapter conflict with another section of the Brookfield Municipal Code, the more stringent provision shall apply.

F. Court Order. Except when great and immediate danger to the public health and safety is present or a violation of Subsection 8.32.050.DD of this Code occurs, a City Official may not use force to obtain access to private property to abate a public nuisance, but must request permission if such premises are occupied and, if denied, shall apply to any court having jurisdiction for an order granting access to the property to abate the nuisance. For Subsection 8.32.050.DD violations, the police department is authorized to abate such nuisance by resetting or disconnecting the same, if possible or necessary, and to enter in or upon the property to do so.

PART VI. Section 8.32.065 is created to state:

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Section 8.32.065 Chronic Public Nuisance

- A. Whenever a City Official identifies a chronic public nuisance, they must notify the property owner in writing of that fact and that they may be required to pay the cost of City's employees enforcement efforts to abate the nuisance.
- B. The chronic public nuisance notice must be sent in the same manner as in Section 8.32.060.C. of this Code.
- C. Upon receipt of the notice, the property owner has 10 days to submit to the City a written abatement plan the property owner will take in response to the notice or file an appeal as set forth in Section 8.32.080.
- D. The City Official who issued the notice will review the written abatement plan, and accept, suggest modifications, or reject the proposed plan in writing.
- E. Property owners have 45 days to implement the accepted or City Official modified plan. If the property owner completes the plan within 45 days, the City will not bill the property owner for employee enforcement costs under this section. If the chronic public nuisance activity continues beyond the 45 days, the City Official may request that the property owner modify the accepted written plan or notify them that the accepted written plan is insufficient and, therefore, terminated and the property owner is now required for paying future employee enforcement costs.
- F. Whenever a property is identified as a chronic public nuisance, and a City Official determines that an additional nuisance activity has occurred at that property, the appropriate City Official will calculate the cost of enforcement and track employee enforcement time for the nuisance activity and refer that information to the Finance Department to bill the property owner for the cost as a special charge, pursuant to Wis. Stat. Sec. 66.0627, when one of the following circumstances applies:
 - 1. The additional nuisance activity has occurred at least 13 days after the chronic public nuisance notice has been served and the property owner failed to appeal; submit a written abatement plan in the time frame required; proposed a plan that the City rejected, or the City terminated the written plan.
 - 2. 46 days after the City accepts a proposed abatement plan and the property owner fails to properly complete the accepted plan.
 - 3. The Administrative Review Board affirms the chronic nuisance premises determination if an appeal was timely filed.
- G. The City Official shall notify the property owner in writing in the same manner as set forth in Paragraphs A and B of this section when the situation has met one of these conditions and

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refer the enforcement costs and employee enforcement time to the Finance Department to bill the property owner for the cost as a special charge and the City Attorney for enforcement.

H. A chronic public nuisance designation expires one year after the notice was served or after the Administrative Review Board affirms the chronic public nuisance determination, whichever occurs later; or the date the City Official confirms that the property owner successfully completed the abatement plan. Chronic public nuisance designations may be extended for another year if 2 nuisance activities occur at the property within 180 days prior to the expiration date. The City Official shall notify the property owner as set forth in Paragraphs A and B of this section of the decision to renew the chronic nuisance premises designation.

PART VII. Section 8.32.080 is repealed.

PART VIII. Section 8.32.085 is created to state:

8.32.085 Appeal.

- A. Property owners may appeal the initial designation of their property as a public nuisance, chronic public nuisance, additional nuisance activities, or extension of the designation as a chronic public nuisance, but not the costs imposed under this Chapter, to the Administrative Appeals Board and must utilize the procedure set forth in Section 2.08.080 of this Code. The appeal must be filed within 10 days of receipt.
- B. The City elects not to be governed by Chapter 68, Wis. Stats., for any notice or order issued pursuant to this Chapter 8.32.

PART IX. Section 8.32.090 is amended to read:

Any person, firm, partnership, or corporation who violates any part of this chapter shall be subject to the penalty and enforcement provisions in Chapter 1.12. Each occurrence of a nuisance activity constitutes a separate offense, with each day the nuisance exists constituting a separate offense.

PART X. All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART XI. If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

PART XII. The provisions of this ordinance shall be in full force and effect from and after its passage and publication.

Adopted this [insert day] day of [insert month] [insert year].

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Approved:

Attested:

Mayor Steven V. Ponto

City Clerk Michelle Luedtke

Publication Date: [insert month, day, year]