

ORDINANCE O-17-10

AN ORDINANCE RELATING TO CHRONIC NUISANCE PREMISES

INTRODUCED BY ALDERMAN HENDRICKS

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 11, Chapter 7 of the Code of Ordinances of the City of Menasha, Wisconsin by creating SEC. 11-7-8 as follows:

Title 11 – Offenses and Nuisances

CHAPTER 7

Public Nuisances

SEC. 11-7-8 CHRONIC NUISANCE PREMISES.

(1) **Definitions.** The following terms shall be defined as follows in this subchapter.

(a) *Chief.* The Chief of Police or his/her designee.

(b) *Enforcement Action.* Arrest, the issuance of a citation, the issuance of a written or verbal warning, or an order to abate a code violation.

(c) *Nuisance Activity.* Any of the following activities, behaviors, or conduct whenever engaged in by property owners, operators, tenants, occupants, or persons associated with premises:

- a. An act of harassment, as defined in 947.013, Wis. Stats.
- b. Disorderly conduct, as defined in 947.01, Wis. Stats.
- c. Crimes of violence, as defined in Chapter 940, Wis. Stats.
- d. Obstructing or resisting an officer, as defined in 946.41, Wis. Stats.
- e. Crimes against sexual morality, as defined in Chapter 944, Wis. Stats.
- f. Any gambling crimes, as defined in Chapter 945, Wis. Stats.
- g. Animal violations, as defined in Chapter 7, City of Menasha Municipal Code.
- h. Theft, as defined in 943.20, Wis. Stats.
- i. Receiving stolen property, as defined in 943.34, Wis. Stats.
- j. Damage to property, as defined in 943.01, Wis. Stats.
- k. Arson, as defined in 943.02, Wis. Stats.
- l. Possession, manufacture, or delivery of a controlled substance or related offenses, as defined in Ch. 961, Wis. Stats.
- m. Trespassing, as defined in 943.13 and 943.14, Wis. Stats.
- n. Weapons violations, as defined in Chapter 11, City of Menasha Municipal Code.
- o. Noise violations, as defined in Chapter 11, City of Menasha Municipal Code.
- p. Alcohol violations, as defined in Chapter 11, City of Menasha Municipal Code and 125.07, Wis. Stats.
- q. Loitering and curfew violations, as defined in Chapter 11, City of Menasha Municipal Code.
- r. Reckless driving, as defined in 346.62, Wis. Stats.
- s. Any conspiracy to commit, as defined in 939.31, Wis. Stats., or attempt to commit, as defined in 939.32, Wis. Stats., any of the activities, behaviors, or conduct enumerated in subsections (1) (c) a. through r. above.
- t. The execution of arrest or search warrants at a particular location.
- u. City of Menasha inspection-related calls where the Police Department responds.

v. Violations of Fire and Safety Ordinances, as contained in Chapter 5, City of Menasha Municipal Code.

w. Violations of Public Nuisance Ordinances, as contained in Chapter 11, City of Menasha Municipal Code.

x. Violations of Building Code Ordinances, as contained in Chapter 15, City of Menasha Municipal Code.

Exception. Applicable drug, gangs, and prostitution offenses will be abated immediately as allowed in Chapter 823, Wis. Stats.

(d) *Owner*. The owner of the premises and his/her agents.

(e) *Persons associated with*. Any person who, whenever engaged in a nuisance activity, enters, occupies, patronizes, visits or attempts to enter, occupy, patronize or visit a property. Includes any officer, director, customer, agent, employee or independent contractor of a property owner, tenant, or occupant.

(f) *Premises*. An individual dwelling unit, an apartment building (all units included as one premises), or an individual business premises and associated common areas located in the City.

(2) **Notice**. Whenever the Chief determines that three or more nuisance activities resulting in enforcement action have occurred at the premises during a 12-month period, the Chief may notify the premises owner in writing. In calculating the requisite nuisance activities, the Chief may count separate qualifying nuisance activities resulting in enforcement action occurring on the same day (as long as they are distinct in time) or different days, but shall never count nuisance activities that were reported by the owner of the premises. The notice shall contain the street address or legal description sufficient to identify the premises, a description of the nuisance activities that have occurred at the premises, a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, and a notice as to the appeals rights of the owner.

(3) **Delivery of Notice**. The notice shall be deemed to be properly delivered if sent either by certified mail to the property owner's last known address, or if delivered in person to the property owner. If the property owner cannot be located, the notice shall be deemed properly delivered if left at the property owner's usual place of residence in the presence of a competent family member at least 14 years of age, or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by certified mail to the last known address of the owner as identified by the records of the tax roll.

(4) **Abatement Plan**. Any owner receiving notice pursuant to section (2) and (3), shall meet with the Chief, or his/her designee, within five business days of receipt of such notice. The parties shall review the nuisance activities occurring at the property and agree upon an abatement plan to end the nuisance activity on the property. The plan shall also specify a name, address, and telephone number of a person living within 60 miles of the property who can be contacted in the event of further police, fire, or inspection contact.

(5) **Additional Nuisance Activity**. Whenever the Chief determines that additional nuisance activity has occurred at a premises not less than 15 business days after notice has been issued, and that reasonable efforts have not been made to abate the nuisance activity, the Chief may calculate the cost of response and enforcement, by City personnel, for this and any subsequent nuisance activities. It shall also cause such charges and administrative costs to be assessed against the premises as a fee for current service authorized by 61.34 and 66.0628, Wis. Stats and collected as a special charge which the City may impose as a lien against the real estate upon which the premises is located.

- (6) **Appeal.** Appeal of the determination of the Chief of Police pursuant to either the notice, abatement plan, or the levying of special charges may be made solely to the City Council requesting a hearing. Notice of Appeal must be in writing and submitted to the City Council in care of the Mayor with a copy submitted to the Chief of Police within five business days. Chapter 68 of the Wisconsin Statutes does not apply to this ordinance.
- (7) **Penalties.** Any person who shall violate any provision of this subchapter shall be penalized pursuant to Section 11-7-9, City of Menasha Municipal Code, in addition to imposition of a fee for services constituting a special charge against the real estate imposed under section (5). Additionally, the City may pursue injunctive relief against the owner in the Circuit Court in the applicable county. All legal costs and attorney fees incurred by the City for enforcement of this Ordinance, pursuant to any remedy available, shall be payable to the City by the owner of the premises. Judgment for such obligations may be obtained by the City in either the Small Claims Court or Circuit Court for the applicable county.
- (8) **Severability.** If any portion of this Ordinance shall be deemed invalid or unconstitutional, the remaining portions of the Ordinance shall remain in full force and effect. Any invalid or unconstitutional provision of this Ordinance as determined by a Court of law may be severed from the Ordinance without affecting the validity or enforceability of the remaining provisions.

SEC. 11-7-9 PENALTY.

Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in section 1-1-7 of this Code, in addition to the specific penalties provided in this chapter. Each day in which a violation of this chapter occurs or continues shall be a separate offense. This section shall not preclude the City from maintaining any appropriate action to prevent or remove a violation of this chapter.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this _____ day of October, 2010.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk