

**ORDINANCE CREATING CHAPTER 7.42
REGULATIONS CONCERNING NEIGHBORHOOD PRESERVATION
(POLICE RELATED NUISANCE ACTIVITIES)**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

SECTION 1. Chapter 7.42, Regulations Concerning Neighborhood Preservation (Police Related Nuisance Violations), is hereby created to read as follows:

Sections:

7.42.010	Definitions.
7.42.020	Notice.
7.42.030	Abatement Plan
7.42.040	Additional Police Related Nuisance Activity
7.42.050	Appeal
7.42.060	Violations – Penalties – Remedies – Injunctive and other relief.

7.42.010 **Definitions.** The following terms shall be defined as follows in this chapter:

- A. **Chief.** The Chief of Police or his or her designee.
- B. **Enforcement Action.** Arrest, the issuance of a citation, the issuance of a written warning, the issuance of an order to correct.
- C. **WWMC.** Whitewater Municipal Code.
- D. **Police Related Nuisance Activity.** Any of the following activities, behaviors or conduct occurring upon a premises or arising out of the use of a premises (unless the owner or occupant of the property is the victim of the crime or act by a non-occupant):
 - 1. POLICE RELATED NUISANCE ACTIVITY**
 - a. An act of Harassment, as defined in §947.013, Wis. Stats.
 - b. Disorderly Conduct, as defined in §947.01, Wis. Stats.

- c. Battery, Substantial Battery, or Aggravated Battery, as defined in §940.19, Wis. Stats.
 - d. Lewd and Lascivious Behavior, as defined in §944.20, Wis. Stats. and Sexual Assault as defined in §940.225, Wis. Stats.
 - e. Prostitution, as defined in §944.30, Wis. Stats.
 - f. Theft, as defined in §943.20, Wis. Stats.
 - g. Receiving Stolen Property, as defined in §943.34, Wis. Stats.
 - h. Arson, as defined in §943.02, Wis. Stats.
 - i. Possession, Manufacture, or Delivery of a Controlled Substance or related offenses, as defined in Ch. 961, Wis. Stats.
 - j. Gambling, as defined in §945.02, Wis. Stats.
 - k. Obstructing or resisting an officer, set forth in WWMC 7.02.
 - l. Failure to obey a police officer, set forth in WWMC 7.03.
 - m. Possession of marijuana, set forth in WWMC 7.26.
 - n. Disturbance of the peace, set forth in WWMC 7.36.
 - o. Underage alcohol violation, set forth in WWMC 7.63.
 - p. Furnishing alcohol to underage persons, set forth in WWMC 7.66.
 - q. Fireworks violation, set forth in WWMC 5.08.
 - s. Noise violation as set forth in WWMC 19.58.
 - t. Parking and other vehicle violations under WWMC Title 11 which tend to cause a nuisance.
 - u. Any other activity similar to the above violations and any activity enforced by the Whitewater Police Department which is in violation of Whitewater ordinances or state statutes and tends to cause a nuisance.
- E. **Owner.** The owner of the premises and his or her agents.
- F. **Premises.** An individual dwelling unit used for residential purposes whether or not owner occupied; an individual business or commercial property; and

associated common areas thereof.

7.42.020 Notice.

A. Whenever the Chief determines that three (3) or more Police Related Nuisance Activities resulting in enforcement action have occurred at a premises on separate days during a 12-month period the Chief, or his/her designee, may notify the premises owner and tenant, if appropriate, in writing, of the violations. In reaching this determination, the Chief shall not include police related nuisance activities resulting in enforcement actions that were reported by the owner of the premises. Only the Chief may initiate and implement the procedure and enforcement for Police Related Nuisance Activities under this Section. A copy of the notice shall be delivered to the occupant of the premises by regular mail.

B. The notice shall contain the street address including unit number if applicable or legal description sufficient to identify the premises, a description of the nuisance activities and enforcement actions 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 appeal rights of the owner.

C. The Chief's written notice shall be delivered to the owner of the premises by one of the following methods: personal service, certified mail, first class mail, posting and/or publication, such other means as provided by law for service of process in a civil action, as the Chief may determine appropriate under the particular facts and circumstances.

D. In an effort to foster early and fair resolutions to nuisance related concerns; and to avoid actions being brought under this chapter, and to encourage the full and fair reporting of nuisance activities in the City of Whitewater, the City Council authorizes the following procedure:

The City Manager shall have the power to designate a Neighborhood Preservation Board which will act as a mediator concerning nuisance matters that may lead to actions under this chapter. The Board shall also inform and assist residents who are aggrieved by nuisance activities in the City of Whitewater. The Board shall be formed upon its own initiative, and its members shall not be appointed by the City of Whitewater. The makeup of the Board shall be determined by the Board, and the Board will not be an official Board of the City of Whitewater.

Each neighborhood shall submit a number of potential members for inclusion in the Board roster. The landlords will submit their roster of representatives. Two appropriate neighborhood representatives and two appropriate landlord representatives will hear each case. The Board roster shall be re-formed bi-annually, and must be approved by the City Manager. After formation of a Board roster, the Board shall request that the City recognize it as the Neighborhood Preservation Board to act under this chapter. The City Manager shall only designate a Board as the Neighborhood Preservation Board if its makeup and organization fairly represents the best interests of the City of Whitewater.

This Board may be invoked by referral from the Police Chief after the second violation of the

ordinances and/or codes contained within the chronic nuisance statutes. It is acknowledged that there will be occasions when the nature and timing of two incidents do not present an appropriate circumstance for a referral to the Board. Therefore, the Police Chief shall have the discretion to make the decision as to whether or not to refer matters to the Board.

The primary functions of the Board shall be the following:

1. Regarding the pattern of offenses which invoked the ordinance, the Board will:
 - a. serve as a forum to discuss, educate, encourage negotiations, and mentor the parties on the issues involved;
 - b. identify neighborhood and property owner's concerns,
 - c. attempt to achieve resolution of the complaint(s) and the underlying issue(s) involved so as to potentially resolve the current complaint and to prevent further violations of the ordinances and codes contained within the chronic nuisance statutes,
 - d. to provide property owners with a forum to express their position regarding administration and enforcement of the ordinance as it relates to the complaint, and
 - e. offer recommendations to the Police Chief as well as the individuals directly affected by the complaint.

If the Board's actions do not resolve the conflict, the Board shall provide an advisory recommendation to the Police Chief regarding the matter. If the Board cannot come to a majority recommendation on the issue in question, the procedures set forth in the ordinance shall continue as if there were no Board. The Board must meet and make recommendations in a timely fashion. The Board must convene within a month of the referral from the city and provide a recommendation within two weeks of the meeting. Failure to meet in said timely fashion will result in the ordinance procedures progressing as if there were no Board. The Police Chief shall have the full discretion to decide if the action under this chapter shall continue, be modified, or be dismissed. In making his or her decision, the Police Chief shall consider any recommendation made by the Board.

7.42.030 Abatement plan.

Any owner (or the owner's representative) receiving such notice shall personally meet with the Police Chief, or with his or her City designee, within seven (7) days of receipt of such notice. The Chief and owner shall review the problems occurring upon the premises and/or property. Within ten (10) days of this meeting, the owner shall submit to the Chief or his or her designee, a detailed written abatement plan designed to forthwith and effectively end all the police related nuisance activity upon the premises. The plan shall also specify a name, address, and telephone number of a person living within sixty (60) miles of the premises who can be contacted in the event of further police, fire, or inspection activities and/or contact.

7.42.040 Additional police related nuisance activity.

Whenever the Chief determines that:

1. Additional police related nuisance activity and/or enforcement action has/have occurred upon a premises for which written notice has been issued under this Chapter; and
2. This additional police related nuisance activity and/or enforcement action has/have occurred more than seventeen (17) days after written notice was served; and
3. Reasonable effort has not been made by the owner of the premises to abate the police related nuisance activity;

Then, for the next 24 months, the Chief may calculate all of the cost, fees and expenses arising from and/or pertaining to any and all such police and related City responses and enforcement including, but not limited to, actual burdened labor, overtime, materials, vehicle use, and related administrative time and efforts for this and any subsequent nuisance activities and enforcement actions upon, for and/or pertaining to the premises. The Chief shall then cause all such costs, fees and expenses to be charged against the owner of the premises and the premises itself, and if unpaid in 30 days, charged, assessed, levied and collected by the City as a special charge against the premises/property.

7.42.050 Appeal.

A. Appeal by Affected Property Owner. An affected owner of the premises may appeal the Police Chief's determination and invoiced special charges arising from and imposed for the police and related costs, fees and expenses set forth in this Ordinance in the manner set forth in this subsection.

B. The appeal shall be in writing, filed with the City Clerk, stating with specificity the grounds for the appeal and the relief requested. The appeal must be filed within thirty (30) days of the invoice from the City Clerk.

C. The appeal shall be considered only if filed within 30 days of the date of the invoice from the Clerk and prior to the time that any unpaid special charges imposed against the premises/property under this chapter are turned over by the Treasurer to be placed on the tax roll.

D. Chapter 68 of the Wisconsin Statutes shall not apply to such an appeal nor shall any other provision of state law or city ordinance to the contrary. The appellate procedure set forth herein shall govern and be exclusive.

E. Upon receipt of the written appeal, the Clerk shall set the matter for a hearing for a meeting of the Common Council not less than thirty (30) days nor more than sixty (60) days after the filing of the written appeal.

F. The Clerk shall provide written notice to the appellant and to the Chief of Police of such hearing date, time and place.

G. The parties may agree to continuances and stipulations as to procedure and substance.

H. The hearing shall be open to the public, recorded by a sound recording device and the recording preserved for seven (7) years by the City Clerk. A party may have a court reporter record the hearing but the requesting party shall pay all costs of the court reporter in advance regardless of the determination of the appeal.

I. The appellant and the Chief of Police may each present witnesses who testify upon oath after being duly sworn in by the City Clerk, the Deputy City Clerk, or any other person authorized by law to administer oaths.

J. After the hearing, the Common Council in open session shall deliberate and then make a determination by recorded motion, second and vote. A majority of Council Members voting shall decide the matter.

K. The City Clerk and Treasurer shall adjust all invoices, tax and related City records in accord with the Council's determination.

L. The procedures initiated by notice under Section 7.42.020 shall be stayed until the Common Council rules on any timely appeal filed under this section.

7.42.060 Violations – Penalties – Remedies – Injunctive and other relief.

In addition to the special charges authorized and described above, the following penalties and remedies are cumulative and not exclusive; may be jointly and severally sought and/or employed by the City, and may be ordered and/or imposed, as applicable, by the courts:

A. First Offense. Any individual, corporation or party who shall violate any provision of this chapter or any regulation, rule, or order made hereunder shall forfeit and pay to the City not less than \$100 nor more than \$1,000, together with the costs of prosecution. It shall be considered a violation of this chapter by the property owner if additional police related nuisance activity under section 7.42.040 takes place at a premises within a period of two years after a notice under 7.42.020 is given concerning a premises.

B. Subsequent Offenses. Any individual, corporation, or party who shall violate any provision of this chapter or any regulation, rule, or order made hereunder within twenty-four (24) months after committing a previous violation shall forfeit and pay to the City not less than \$200 nor more than \$2,000, together with the costs of prosecution.

C. The City, in addition to the above monetary penalty(ies) and special charges may from time to time seek and obtain, and the court may order, temporary and/or permanent injunctive relief, abatement, and such other legal and/or equitable relief, remedies, judgments, and/or orders of the court against any person(s) and/or property(ies) as the court may, from time to time, deem necessary, appropriate and/or desirable to effectuate the intent of this chapter and the public good, peace, order, welfare, and/or safety.

D. It shall be the responsibility of the convicted person(s) to immediately abate each and every violation upon the premises property as expeditiously as possible, unless otherwise directed by the City or the court.

E. This chapter is cumulative in its legal affect and is not in lieu of any and all other legal and equitable remedies under City ordinances, state statutes, state administrative codes, and common law, including, but not limited to, forfeiture of the property to the City under the applicable state statutes.

SECTION 2. This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Council member _____, who moved
its adoption. Seconded by Council member _____.

AYES:

NOES:

ABSENT:

ADOPTED:

Kevin Brunner, City Manager

Michele R. Smith, City Clerk