

ORDINANCE NO. 21-07

**ORDINANCE TO CREATE
ARTICLE VI, CHAPTER 22 OF THE MUNICIPAL CODE
OF THE VILLAGE OF BUTLER
RELATED TO CHRONIC NUISANCE PREMISES**

WHEREAS, the Chapter 22 of the Village of Butler Code of Ordinances regulates public nuisances; and

WHEREAS, the Village Board finds that certain premises within the Village receive and require more than the general, acceptable level of Police services and/or Building Inspection Services, thereby placing an undue and inappropriate burden on those Village Departments that and further resulting in unnecessary additional costs to Village of Butler taxpayers, and constitute public nuisances; and

WHEREAS, the Village Board finds that adoption of the regulations set forth in this Ordinance will promote the public health, safety and welfare;

NOW, THEREFORE, The Village Board of the Village of Butler DO ORDAIN AS FOLLOWS:

SECTION I: Article VI, of Chapter 22 of the Village of Butler Municipal Code is hereby created to read as follows:

Article VI, CHRONIC NUISANCE PREMISES.

22-201 Findings.

The Village Board finds that:

- (a) Certain premises within the Village receive and require more than the general, acceptable level of Police services and/or Building Inspection Services, place an undue and inappropriate burden on Village of Butler taxpayers, and constitute public nuisances.
- (b) Nuisance activity contributes to the general decay of an affected neighborhood and negatively impacts law-abiding residents in these neighborhoods. The vast majority of properties with chronic nuisance activity are non-owner occupied. This ordinance is enacted to encourage premises owners to recognize their responsibility to ensure that activities occurring on their premises conform to the law and do not unduly burden the Village's police and Building Inspection resources and to provide a mechanism for the Village to take action against premises owners who fail to ensure premises they own do not require a disproportionate level of police and Building Inspection resources to be devoted to such premises.

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- (c) This ordinance provides a method for Police and the Building Inspector to use in a progressive manner when working with property owners to abate nuisance activities occurring on their premises.
 - (d) Therefore, the Village Board determines that the Village will charge the owners of such premises with the costs associated with abating nuisance activity at premises where nuisance activities chronically occur.
 - (e) This section is not intended to discourage crime victims or a person in legitimate need of police services from requesting them. This section does not affect a Premises owner's duty to comply with the Fair Housing Laws, nor does it affect a Premises owner's duty to comply with all other laws governing residential tenancies which are contained in Chapter 704 of the Wisconsin Statutes, Chapter ATCP 134 of the Wisconsin Administrative Code.

22-202 Definitions. For the purposes of this Article VI:

- (a) "Chronic Nuisance Premises" means a premises that meets any of the following criteria:
 - 1. Is a Premises which has generated three (3) or more calls for police services or building inspection services that have resulted in Enforcement Action for Nuisance Activities on three (3) separate days within a ninety (90) day period. Three (3) or more calls for police services resulting in Enforcement Action for Nuisance Activities includes Enforcement Action taken against any person associated with the Premises while at or within two hundred (200) feet of the Premises for a Nuisance Activity; and/or has generated a number of cases from the Building Inspection Department for Nuisance Activities from separate inspections occurring within a one (1) year period, with such calls resulting in Enforcement Action based on the following:
 - a. Five (5) cases with one resulting in Enforcement Action, or
 - b. Four (4) cases with two resulting in Enforcement Acton, or
 - c. Three (3) cases all resulting in Enforcement Action; or
 - 2. Is a Premises for which a Waukesha County Court of law has determined that, pursuant to a search warrant request, probable cause exists that manufacture, distribution or delivery of a controlled substance has occurred on or in association with the Premises within thirty (30) days prior to the date of the search warrant application; or
 - 3. Is a Premises which has had at least one (1) Enforcement Action associated with the Premises resulting from the manufacture, delivery or distribution of a controlled substance(s) as defined in Chapter 961 of the Wisconsin Statutes.
 - (b) "Chronic Nuisance Premises Notice" means the notice issued by the Chief of Police and/or the Building Inspector and referred to in Section 22-203(a).
 - (c) "Enforcement Action" means any of the following: The physical arrest of an individual(s), the issuance of a citation for a law violation, and/or referral of a citation or charges by the Police or the Building Inspector to the Village Attorney or District Attorney for prosecution for Nuisance Activities.
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(d) "Nuisance Activities" means any of the following activities, behaviors or conduct:

1. An act of harassment as defined in s. 947.013, Wis. Stats.
2. Disorderly conduct as defined in § 947.01, Wis. Stats.
3. Crimes of violence as defined in ch. 940, Wis. Stats.
4. Resisting or obstructing an officer as prohibited § 946.41, Wis. Stats.
5. Crimes against sexual morality under Ch. 944, Wis. Stats.
6. Receiving stolen property, as prohibited in § 943.34, Wis. Stats.
7. Damage to property as prohibited by § 943.01, Wis. Stats.
8. The production or creation of noises in violation of sec. 24-31 of this Code.
9. Gambling crimes under Ch. 945, Wis. Stats.
10. Discharge of a firearm as prohibited by Sec. 24-29 of this Code.
11. Crimes involving illegal possession of firearms as defined in §§ 941.23, 941.26, 941.28, 941.29 and 948.60, Wis. Stats.
12. Trespass to land as defined in § 943.13, Wis. Stats. or criminal trespass to dwelling as defined in s. 943.14, Wis. Stats.
13. Obstructing a public way, as prohibited by Sec. 30-63 of this Code.
14. Theft as defined in § 943.20, Wis. Stats.
15. Arson as defined in § 943.02, Wis. Stats.
16. Unlawful dumping as prohibited by Sec. 30-36 of this Code.
17. Loitering for purposes of soliciting prostitutes, as prohibited by Sec. 24-72 of this Code.
18. Loitering and/or curfew violations under Chapter 24 of this Code.
19. Selling, offering for sale or giving away of any intoxicating liquors or fermented malt beverages without a license as provided in § 125.04(1), Wis. Stats.
20. Possession, manufacture, distribution or delivery of a controlled substance or related offenses as defined in ch. 961, Wis. Stats.
21. Maintaining a drug dwelling as defined in § 961.42, Wis. Stats.
22. Illegal gambling as defined in § 945.02, Wis. Stats.
23. Alcohol violations as defined in Chapter 24 of this Code or Chapter 125, Wis. Stats.
24. Animal violations under Chapter 6 of this Code.
25. Violations of the Property Maintenance requirements set forth in Ch. 50, Art. VI of this Code.

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26. Violations of Public Nuisance Ordinances, as contained in Chapter 22, Village of Butler Municipal Code.
 27. Violations of Minimum Housing Standards Ordinances, as contained in Chapter 18, of this Code.
 28. Violations of the Fire and Safety ordinances set forth in Chapters 14 and 22 of this Code.
 29. Weapons violations under Chapter 24 of this Code.
 30. Violations of Building Code Ordinances set forth in Chapter 14, Village of Butler Municipal Code.
- (e) "Person" means any natural person, agent, association, firm, partnership, limited liability company, corporation or other entity capable of owning, occupying or using property in the Village of Butler.
 - (f) "Person Associated With" 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, customer, agent, employee, or any independent contractor of a property, person in charge, or owner of a premises.
 - (g) "Person in Charge" means any person, in actual or constructive possession of a Premises including but not limited to an owner or occupant of Premises under his or her ownership or control.
 - (h) "Chief of Police" means the Village of Butler Police Department Chief of Police or designee.
 - (i) "Building Inspector" means the Village of Butler Building Inspector or designee.
 - (j) "Premises" means a place of abode, a residence, a house or multiple dwelling unit for one (1) or more persons including, for example, apartments, duplexes, rooming houses, and associated common areas, yards, and parking lots. In the case of multiple dwelling units, "Premises", as used in this Section, may consist of any single unit providing complete, independent living facilities for one (1) or more persons, including provisions for living, sleeping, eating, cooking and sanitation.

22-203 Procedure.

- (a) Upon finding that a Premises meets the definition of a Chronic Nuisance Premises, the Chief of Police or the Building Inspector may declare the Premises a Chronic Nuisance Premises. The Chief of Police or the Building Inspector shall provide written notice of his or her determination to the Premises owner of record as identified by the Village of Butler Assessor's records for that Premises. The Chronic Nuisance Premises Notice ("CNP Notice") shall be deemed delivered if sent either by First Class mail to the Premises owner's last known address or delivered in person to the Premises owner. If the Premises owner cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the Premises owner's usual place of abode in the presence of some competent member of the family at least 14 years of age, or a competent adult currently residing there and who shall be informed of the contents of the CNP Notice. If a current address cannot be located, it shall be
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deemed sufficient if a copy of the CNP Notice is sent by first class mail to the last known address of the owner as identified by the records of the Village Assessor. The CNP Notice shall contain the following information:

1. Street address, parcel number or a legal description sufficient to identify the Premises.
 2. A concise statement, including descriptions and dates of the relevant incidents supporting the determination that the Premises is a Chronic Nuisance Premises.
 3. A statement that the owner shall immediately notify the Chief of Police or Building Inspector of any change in address to ensure receipt of future notices.
 4. A statement that the cost of future enforcement may be assessed as a special charge against the Premises.
 5. A statement that the owner shall, within ten (10) days of receipt of the CNP Notice, respond to the Chief of Police, or the Building Inspector as the case may be, either with an appeal or to propose a written course of action to abate the Nuisance Activities. The Statement shall direct the Premises owner to schedule a meeting with the Chief of Police and/or Building Inspector to discuss the Nuisance Activity and the Premises owner's intent regarding abatement.
 6. A statement that the Premises owner shall, when appropriate, consider and implement alternatives to eviction when formulating an abatement plan.
 7. A statement that the Premises owner shall at all times comply with the fair housing laws when considering any action against a tenant based upon a CNP Notice.
 8. A statement that the Premises s owner may be subject to a forfeiture action with a penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), plus costs, for permitting a Chronic Nuisance Premises and may be subject to imprisonment for failure to pay such forfeiture.
 9. A statement that if the Premises is not an owner-occupied residential Premises, the Premises owner shall attend a landlord training, approved by the Office of the Village Administrator, within thirty (30) days of issuance of the CNP Notice.
- (b) In reaching a determination that a premises is a Chronic Nuisance Premises, activities that were reported to the Police or Building Inspector by the Premises owner or on-site Premises manager shall not be included as Nuisance Activities.
- (c) Section 968.075, Wis. Stats., broadly defines "domestic abuse". Therefore, in reaching a determination that a Premises is a Chronic Nuisance Premises, activities that are "domestic abuse" incidents pursuant to Wis. Stat. § 968.075, shall not be included as Nuisance Activities unless the incidents have been reviewed by the Chief of Police and the Office of the Village Attorney and a determination is made that, based upon the specific facts of each incident, the activities should be deemed Nuisance Activities under Section 22-202(d). In determining whether to include such activities, the Chief of Police and Village Attorney shall consider the strong public
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policy in favor of domestic victims reporting alleged abuses, and this ordinance shall not operate to discourage such reports.

- (d) If the owner responds to the CNP Notice pursuant to Sec. 22-203(a) with a nuisance abatement proposal, the Chief of Police or the Building Inspector may accept, reject or work with the owner to modify the proposal. The plan is acceptable if it may reasonably be expected to result in abatement of the Nuisance Activities described in the CNP Notice within sixty (60) days.
- (e) Premises owners shall be counseled regarding nuisance abatement methods and strategies and shall be encouraged to submit a comprehensive nuisance abatement plan that considers alternatives to eviction in situations where eviction is not the sole remedy available to abate the nuisance activity.
- (f) Premises owners shall be counseled regarding use of available resources, including community service providers, when Nuisance Activity associated with the Premises is not caused or contributed to by the direct actions of a tenant.
- (g) If the Premises owner meets with the Chief of Police and/or the Building Inspector and presents an acceptable abatement plan and initiates action to abate the Nuisance Activities occurring on the Premises, the Police Department and/or Building Inspector will delay further enforcement of this ordinance, including cost recovery under Section 22-204(a).
- (h) If the Premises owner ceases to cooperate with the efforts to abate the Nuisance Activities, the Chief of Police and/or Building Inspector will reinstitute enforcement of this ordinance and the Premises owner will be sent a Change In Status Letter. This letter will document the Police Department and/or Building Inspector's efforts to contact and/or obtain cooperation of the owner.
- (i) Failure by the Premises owner to respond within ten (10) days as directed in this subdivision shall result in a forfeiture of one thousand dollars (\$1,000) plus court costs and fees.
- (j) Any Premises owner who has been notified by the Chief of Police or the Building Inspector that their non-owner-occupied Premises is a Chronic Nuisance Premise shall attend a landlord training approved by the Village Administrator within thirty (30) days of said notification.
- (k) Whenever the Chief of Police or the Building Inspector determines that any of the following have occurred:
 - 1. A Premises owner has failed to respond to the CNP Notice in Section 22-203(a), or
 - 2. Enforcement action for an additional Nuisance Activity has occurred at a Premises for which Notice has been issued pursuant to Subdivision (a) and this Enforcement Action has occurred not less than fifteen (15) days after the CNP Notice has been issued, or
 - 3. A course of action submitted pursuant to Section 22-203(a)(5) has not been completed,

Then the Chief of Police and/or the Building Inspector may calculate the cost of enforcement to abate this and any subsequent Nuisance Activities and may refer such cost to the Village Administrator so that the cost may be billed to the Premises owner. The Chief of Police and/or the Building Inspector shall notify the Premises owner of the decision to refer the cost of enforcement to the Village Administrator. Delivery of this notice, along with a copy of the Chief's or Building Inspector's referral letter to the Village Administrator, shall be made as set forth in Subdivision (a). The notice shall contain:

- a. The street address or legal description sufficient for identification of the premises.
 - b. A Statement that the Chief of Police and/or the Building Inspector has referred the cost of enforcement to the Village Administrator with a concise description of the Nuisance Activities and the relevant sections of the ordinances.
 - c. Notice of the premises owner's right to appeal pursuant to Section 22-205.
- (l) Each subsequent incident of enforcement action for Nuisance Activity shall be deemed a separate violation and costs will continue to be assessed pursuant to Section 22-204(a) until the nuisance is abated pursuant to Section 22-209.

22-204 Penalties and Remedies.

- (a) Cost Recovery. The Chief of Police and the Building Inspector shall keep an accurate account of the cost of enforcement and shall report it to the Village Administrator. The Village Administrator shall establish a reasonable charge for the costs of enforcement of this section based upon costs actually incurred by the Village. Upon receipt of a notice from the Chief of Police or the Building Inspector issued pursuant to Section 22-202(k), the Village Administrator shall charge any Premises owner found to be in violation of this section the costs of enforcement in full or in part. Such costs shall be billed to the Premises owner by invoice sent by regular mail and must be paid within thirty (30) days of the date on the invoice. Any unpaid invoice shall be a lien on such Premises and may be assessed and collected as a special charge pursuant to Wis. Stat. § 66.0627. A one hundred dollar (\$100) administrative fee shall be added to the cost of enforcement charged to the benefited premises any time the premises is declared a chronic nuisance premises.
- (b) Suspension of Cost Recovery. If after the receipt of a billing notice from the Village Administrator, the Premises owner develops an acceptable plan and initiates action to abate nuisance activities occurring on the Premises, the Chief of Police and/or Building Inspector will suspend further enforcement of this ordinance. The Premises owner is still responsible for any enforcement costs incurred prior to the Premises owner's submitting an abatement plan, including the administrative fee. If the Premises owner ceases to cooperate with the efforts to abate the Nuisance Activities, the Chief of Police and Building Inspector will reinstitute enforcement of this ordinance after sending the Premises owner a Change In Status letter.
- (c) Forfeiture. A forfeiture action may be commenced by the Village Attorney for each Enforcement Action for Nuisance Activity occurring after the Premises has been
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declared a Chronic Nuisance Premises. The forfeiture shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each enforcement action. Upon default of payment, the Premises owner may be imprisoned in the county jail for a period of not more than ninety (90) days.

22-205 Appeal. Appeal of the determination of the Chief of Police and/or the Building Inspector pursuant to either Section 22-203(a), or the action of the Village Administrator imposing special charges pursuant to Section 22-204(a) against the Premises, may be submitted in writing in accordance with Article II, Chapter 9 of this Code.

22-206 Eviction or Retaliation Prohibited.

- (a) 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 Building Inspector 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 Nuisance Activity associated with a Premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the 12-month period following receipt of the complaint by the Chief of Police or Building Inspector constitutes unlawful retaliation under this Article. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing Nuisance Activity as defined in Section 22-203(d); for the commission of waste upon the Premises; violating the terms and conditions of the lease agreement or periodic tenancy or as otherwise provided in Wis. Stat. ch. 704, and Wis. Admin. Code ch. Ag. 134. A landlord's failure to renew a lease agreement or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this Article.
- (b) "Good cause" as used in this Article means that a landlord must show good cause for his or her actions, other than one related to or caused by the operation of this section.
- (c) Penalty. Any person violating this Article shall be subject to a forfeiture of not less than \$100 nor more than \$2000 for each violation and upon failure to pay said forfeiture, may be imprisoned in the county jail for a period of not more than ninety (90) days.

22-207 Injunction. This section may be enforced by injunction.

22-208 Abatement In Accordance With State Law. Nothing in this section shall be construed as prohibiting the abatement of public nuisances by the Village or its officials in accordance with the laws of the State.

22-209 When Nuisance Is Deemed Abated. The public nuisance created by a Chronic Nuisance Premises shall be deemed abated when no Enforcement Action to address Nuisance Activities occurs for a period of six (6) consecutive months from the date stated on the notice declaring the Premise a Chronic Nuisance Premises and/or there are no building inspection cases generated for a period of six (6) consecutive months from the date stated on the notice declaring the Premises a Chronic Nuisance Premises.

22-210 **Severability.** The provisions of any part of this Article are severable. If any provision or section hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this section that the same would have been adopted had such invalid provisions, if any, not been included herein.

22-211 **Report.** The Chief of Police shall annually report to the Village Board on the following:

- (a) How many Premises were declared Chronic Nuisance Premises.
- (b) How many Premises that were declared Chronic Nuisance Premises were abated and the length of time it took for abatement to occur.
- (c) How often the Cost Recovery provision have been used and the dollar amount collected under this provision.

SECTION 2: SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof 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. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 7th day of September, 2021.

Village of Butler

Patricia Tiarks, Village President

ATTEST:

Kayla J. Thorpe, Village Administrator/Clerk

Published and/or posted this _____ day of _____, 2021.