

## **Councilmember Salomon's Follow-up Questions – July 29, 2013**

### **1. I see notice and order are for misdemeanors. Is the misdemeanor offense not complying with the notice and order? Can you send me the statute/ ordinance number?**

Yes, any code violation as defined in SMC 20.30.740 can be prosecuted as a misdemeanor. The Notice and Order process is intended to serve as the due process for the responsible party(ies) by specifying noticing procedures and providing for appeal.

Below are the SMC cites pertaining to infractions & misdemeanor:

#### **Various Applicable Statutes**

##### **(Development Code)**

##### **20.30.770 Enforcement provisions.**

...B. Misdemeanor. Any person who willfully or knowingly causes, aids or abets a Code Violation by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine not to exceed \$1,000 and/or imprisonment in the county jail for a term not to exceed 90 days. Each week (seven days) such violation continues shall be considered a separate misdemeanor offense. A misdemeanor complaint or notice of infraction may be filed as an alternative, or in addition to, any other judicial or administrative remedy provided in this subchapter or by law or other regulation.

##### **(Animal Code)**

##### **SMC 6.40.060 Penalties**

...B. Misdemeanor.

1. Generally. Any person who allows an animal to be maintained in violation of this title is guilty of a misdemeanor punishable by fine of not more than \$250.00 and/or imprisonment for a term not to exceed 90 days.
2. Violations of SMC 6.30.070, Disposition of Fowl and Rabbit. Any person, firm or corporation violating SMC 6.30.070 is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$300.00 and/or by imprisonment for a period not to exceed 30 days.

##### **(Noise Code)**

##### **SMC 9.05.020 Violation – Penalty.**

Any person who violates the provisions of this chapter shall be subject to a civil fine not to exceed \$250.00 for the first offense. For second and subsequent offenses, the person shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.010(2). [Ord. 121 § 2, 1997]

##### **RCW 9A.20.010**

##### **Classification and designation of crimes.**

(1) Classified Felonies. (a) The particular classification of each felony defined in Title 9A RCW is expressly designated in the section defining it.

(b) For purposes of sentencing, classified felonies are designated as one of three classes, as follows:

- (i) Class A felony; or

- (ii) Class B felony; or
- (iii) Class C felony.

(2) Misdemeanors and Gross Misdemeanors. (a) Any crime punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both such fine and imprisonment is a misdemeanor. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.

(b) All crimes other than felonies and misdemeanors are gross misdemeanors.

**2. To issue an infraction for a noise violation, can the officer simply write a ticket? How does the notice and order provisions come into play?**

Yes, a police officer can simply write a ticket for the noise violation.

Trained code enforcement staff can issue an infraction or issue a Notice and Order to responsible party(ies) to correct verified violations as defined in SMC 20.30.740 "Declaration of public nuisance, enforcement". By Code, issuance of an infraction is not required as a prerequisite to issuing a Notice and Order. See SMC 20.30.760 below:

**20.30.760 Notice and orders.**

Whenever the Director has reason to believe that a Code Violation exists or has occurred, the Director is authorized to issue a notice and order to correct the violation to any responsible party. A stop work order shall be considered a notice and order to correct. Issuance of a citation or stop work order is not a condition precedent to the issuance of any other notice and order.

In addition, under 6.40.030(4)(b) animal control has the discretion to just issue a notice and order or "If the director of the animal care and control authority determined to assess a civil penalty, the order shall require the penalty shall be paid within 14 days from the order;"