From:	Debbie Tarry
To:	Jesse Salomon
Cc:	Carolyn Wurdeman; Heidi Costello
Subject:	FW: Response to Council member Salomon"s Chronic Nuisance Questions - Will CMO"s office forward & place in Council folder?
Date:	Monday, January 27, 2014 3:04:09 PM

Jesse –

We are also adding these responses to I-Legislate.

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From: Rachael Markle
Sent: Monday, January 27, 2014 3:01 PM
To: Debbie Tarry; John Norris; Carolyn Wurdeman; Heidi Costello
Cc: Ian Sievers; Shawn Ledford - Contact; Shawn Ledford; Julie Ainsworth-Taylor; Kristie Anderson
Subject: Response to Council member Salomon's Chronic Nuisance Questions - Will CMO's office forward & place in Council folder?

1) What civil and criminal activities and health code violations did staff exclude as nuisance activities when cutting down the list? Why?

- Violation of stay out of areas drug activity SODA was removed because Shoreline does not have a mapped SODA yet.
- Liquor-related offenses as defined in chapters 66.28 and 66.44 RCW were removed in an effort to include just those criminal offenses that if allowed to repeatedly occur on a property can result in the degradation of health and safety of a greater area. Also as defined, liquor related offenses include violations such as underage drinking which more than likely is not what the chronic nuisance ordinance is intended to remedy.
- Marijuana and drug paraphernalia offenses as defined in chapter s 69.50 and 69.51A RCW – this was removed due to the recent changes in State law.
  Malicious Mischief and vandalism offenses as defined in chapter 9A.48 RCW was removed in an effort to include just those criminal offenses that if allowed to repeatedly occur on a property can result in the degradation of health and safety of a greater area. In thinking about the past cases where the City may have employed a chronic nuisance ordinance, malicious mischief and vandalism have not been violations at these properties.
- Nuisance-related activities as defined in Chapters 7.48, 7.48A, 9.66 and 35.22 RCW was removed and narrowed to just the specific criminal violations listed in 9.25.020(E)(1).

Civil Code Violations – Some Council members and Planning Commissioners expressed

concerns that the proposed list of potential violations that constitute chronic nuisances was too broad.

- License code (SMC Title 5)- removed – too broad.
- Animal control code (SMC Title 6) – was too broad and therefore narrowed to just include the following nuisances:
    - Any domesticated animal that habitually snaps, growls, snarls, jumps upon or otherwise threatens persons lawfully using the public sidewalks, streets, alleys or other public ways;
    - Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises. However, in addition to other remedies and penalties, the provisions of this chapter relating to vicious animals shall apply;
    - Any domesticated animal that howls, yelps, whines, barks or makes other oral noises, in such a manner as to disturb any person or neighborhood to an unreasonable degree;
- Health and safety code (King County Board of Health Regulations)- was too broad and therefore narrowed to those codes staff has noted on properties in the past have had repeated violations that greatly impact neighbors to the degree that health, safety, welfare and enjoyment of property are compromised. Specifically narrowed to rodent control, contaminated property and on-site sewage.
- Criminal code (Chapter 9.10 SMC) – too broad removed and covered by proposed 9.25.020.E(1).
- Use of Right-of-Way (Chapter 12.15 SMC) – too broad and not related to typical conditions would rise to the level of a chronic nuisance property.
- Development code (SMC Title 20). – too broad. Violations of Title 20 do not typically impact the health, safety, welfare and general enjoyment of property to the same degree as the list of narrowed criminal and civil nuisances.
- Washington State Clean Air Act violations – too broad.

2) Are we no longer considering allowing criminal charges against an owner of a determined nuisance property who refuses to abate? If so is this because the ordinance gives the city enough civil power to evict and forcibly abate the problem? At what cost to the City? Assuming the non-cooperative property owner is billed for the abatement what's to ensure they would pay? Would threat of a criminal sanction be an effective tool to get them to abate before the City incurs the expense?

Currently there are no criminal sanctions in this ordinance, although any of the underlying triggers , including nuisances have potential criminal sanctions. Rather, if the responsible individual does not voluntarily rectify the situation, the City can use the civil infraction process (authorized by RCW 7.48.250) as provided in SMC 9.25.070(B). Any person receiving a civil infraction will have a hearing in District Court (acting as Shoreline Muni Court). If there is no appeal, the infraction is considered final for any subsequent proceedings (see RCW 7.80.070). If this infraction is tried in District Court the case is

transferred to Superior Court for issuance of the warrant of abatement against the real property (RCW 7.48.260). Staff believes the use of civil infractions, which is currently being used as part of the general code enforcement process, gives the City the necessary ability to move forward with abatement of the property which is the ultimate use of this new ordinance where criminal sanctions for the behaviors have not proved adequate to stop a pattern of repeat offenses. The ordinance authorizes the Superior Court to order closure of the property as part of the abatement process (see SMC 9.25.070(C)). The Superior Court must try the issue of abatement in the same manner as if it had been originally commenced in that court (see RCW 7.48.260). Actual terms of the final abatement is ultimately in the hands of the Superior Court. Additional criminal sanctions (or the threat) would probably not create any additional incentive for voluntary abatement.

The costs of abatement (including relocation costs for innocent tenants) can be recovered as a property lien (see RCW 35.80.030; SMC 20.30.760(I); SMC 20.30.770(E): SMC 20.30.775). In such situations, abatement costs are collected as taxes by King County. Or, as allowed by SMC 20.30.775(C), the City can commence a civil action for collection in court. We have not expended our resources where the lien has been filed with the County since the past due lien incurs the same penalties and interest as overdue taxes if not paid promptly and will be collected by foreclosure if delinquent three years.

3) Re: 9.25.020 (b) 2) and (b) e) ; Search warrants and incident reports are not really considered standards of proof. Why not require a finding of a criminal act by at least a preponderance of the evidence? A conviction would meet this burden. Or a hearing could be held requiring the officers on the arrest to testify at a non-jury hearing. That would make cross examination available but any credible police testimony would likely meet the burden. A police report is not generated based on any legal standard that I'm aware of. A search warrant is based on allegations of criminal activity and reasons why such is suspected, but is not a determination of truth of illegal activity.

As to the standard of proof, this was a question raised during the drafting of the ordinance. Obtaining a criminal conviction or civil infraction burden of proof could take months if not years with disruptive activities at a location continuing to occur. The execution of a warrant is such an event; it is based on an independent assessment of probable cause, is easy to track and prove, similar to determination of guilt on a criminal complaint or notice of infraction. It is included because the actual execution of the warrant and subsequent search/arrest is what disturbs the community whether or not a later crime or infraction are later proved or even charged as a result of the warrant. Thus, although incident reports and warrants do not *prove* that a convictable offense occurred, they do *prove* an activity that disturbs and degrade the neighborhood. We may need to define *police incident report* to: "The following activities, behavior or conduct that leads to reasonable suspicion, or probable cause that criminal activity is occurring and results in a criminal investigation, or recommendation that charges be filed".

a. Harassment

b. Assault, etceteras

In addition, the responsible persons have a due process opportunity to challenge the supporting elements which are not convictions with the administrative appeal hearing process established in SMC 9.25.050. This process will allow any property owner and/or responsible individual to challenge the determination of chronic nuisance. At the administrative hearing, the City would be required to present its supporting evidence, including officer or staff testimony, to the hearing examiner for a ruling on the merits of the determination, with an opportunity for the owner to cross examine and present evidence. A secondary layer of protection would be available if the responsible individual appealed the issuance of a civil infraction to the courts, and before abatement the owner will be afforded the infraction hearing if they fail to correct according to the Determination or fail to comply with the Compliance Agreement. As stated above terms of abatement receive oversight from the Superior Court in ordering the Warrant of Abatement.