Item No. 3(c)(1)
February 24, 2014

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Proposed Chronic Nuisance Ordinance (CNO) to provide the Police Department with an additional tool to prevent and/or reduce crimes associated with certain business establishments and residences.

STAFF CONTACTS

Linda Pillo, Chief of Police 452-4334
Police Department

Siona Windsor, Assistant City Attorney 452-4086
City Attorney's Office

POLICY CONSIDERATION

Should the City enact an ordinance that permits the Chief of Police to declare a business or residence to be a chronic nuisance when certain activities have occurred on the property?

- The CNO would permit the Chief to declare a business or residence to be a chronic nuisance property when:
  - Three or more defined nuisance activities have occurred on the property within 60 days or seven nuisance activities have occurred within a 12-month period; and/or
  - The property has been the subject of a court determination 2 or more times within a 12-month period that probable cause exists that certain specified crimes have occurred on the property.
  - See proposed Ordinance Sections 9.10A.020 and 030 for definitions of crimes covered by the CNO and what constitutes a violation of the ordinance.
- The CNO would require the Chief to follow specified procedures to give notice to a person in charge of the property (including the property owner) that the Chief has declared the property to be a chronic nuisance. The Chief's notice of declaration of chronic nuisance would advice the person in charge on how to remedy the nuisance determination and the consequences for failing to do so. (See proposed Ordinance Section 9.10A.040 for declaration of chronic nuisance property).
- The proposed Ordinance would give the person in charge the ability to quickly challenge the Chief's declaration of a chronic nuisance. (See proposed Ordinance Section 9.10.040 E.)
- The notice is designed to elicit the cooperation of the person in charge to abate the nuisance. If the person in charge agrees to the correction for abating the nuisance, an agreement would be entered into between the person and the City (see proposed Ordinance Section 9.10A.050)
- If the person in charge fails to take the required action to abate the nuisance, the person would be subject to penalties (proposed Ordinance Section 9.10A.060) and either Court action or an administrative hearing to enforce the declaration of chronic nuisance property (see proposed Ordinance Section 9.10A.070)
- The process for the administrative hearing is described in proposed Ordinance Sections 9.10A.080 and 090 and the Court process is described in proposed Ordinance Sections 9.10A.100 and 110. The administrative hearing process is separate from the civil violation

process contained in BCC 1.18. For a chronic nuisance, the hearing process would commenced by serving the person in charge with a notice of failure to comply. The procedure would be somewhat similar to the civil violation process, but was separated from BCC 1.18 to enhance speed of enforcement.

DIRECTION NEEDED FROM COUNCIL

___ Action
_X_Discussion
___ Information

Staff seeks Council direction on scheduling consideration of a chronic nuisance ordinance at a future Regular Session.

BACKGROUND

In early 2011, the Munch Bar opened in The Bellevue Square Mall. It quickly became a destination property for primarily young adults to consume alcoholic beverages. From February 2011 to December 24, 2012, Bellevue Police responded to 377 calls for service at that location. This was a significant strain on the Department's resources and became an officer safety and public safety risk as many of the people the officers dealt with were intoxicated and uncooperative. Noteworthy calls during that timeframe included: 22 calls regarding assaults, a firearms related call, a traffic fatality, a DUI-related collision linked to drivers drinking earlier at the Munch Bar, and the homicide that occurred on December 24, 2012. Throughout the 23 months the business was open, officers worked closely with Kemper Security, the Fire Inspector, the Munch Bar management and the Liquor Control Board in an attempt to reduce the need for police calls for service to maintain public safety.

Researching what other cities did to control these types of nuisance properties, staff spoke to the City of Seattle which had enacted a Chronic Nuisance Ordinance. The proposed chronic nuisance ordinance is modeled on the Seattle City ordinance (taking into consideration variations in each City's administrative processes for hearings, etc.). The City of Seattle has had success in preventing and/or addressing problems arising from properties like the Munch Bar. For this reason, Bellevue Police staff familiar with the problems at these types of venues support this proposed ordinance.

ALTERNATIVES

1. Direct staff to return with the proposed Ordinance for adoption at a future meeting.
2. Direct modifications to the proposed Ordinance for adoption at a future meeting.
3. Provide alternative direction to staff.

RECOMMNEDATION

1. Direct staff to return with the proposed Ordinance for adoption at a future meeting.

ATTACHMENT

DRAFT Ordinance

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE relating to Chronic Nuisance Properties, adding a new Chapter 9.10A to Title 9 of the Bellevue City Code (Health and Safety)

WHEREAS, the State of Washington legislature has enacted legislation related to nuisances and has also empowered cities such as the City of Bellevue to define and abate nuisances and punish practices dangerous to public health and safety; and

WHEREAS, the Bellevue City Council desires to enact local legislation to supplement state legislation and existing Bellevue City Code to define and provide penalties for properties defined as chronic nuisances; and

WHEREAS, the Bellevue City Council finds that nuisance activities can greatly impact quality of life, that chronic criminal conduct, illegal use of property, weapons, noise, and health and safety-related violations can convey the message that an area may be vulnerable to crime and affect the livability and commercial vitality of a neighborhood, and that controlling nuisances enhances safety and quality of life in communities; and

WHEREAS, the Bellevue City Council desires to prevent and prohibit Chronic Nuisance Properties, as defined below, that reduce the value of property, interfere with the enjoyment of public and private property, create and constitute safety and health hazards, and generally create a degradation of the character of neighborhoods; and

WHEREAS, the Bellevue City Council finds that the provisions of this Ordinance are necessary for public health, safety and welfare; now therefore;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 9.10A of the Bellevue City Code is hereby adopted, as follows:

Chapter 9.10A
CHRONIC NUISANCES

Sections:

9.10A.010 Purpose
9.10A.020 Definitions
9.10A.030 Violation
9.10A.040 Declaration of Chronic Nuisance Property and Procedure
9.10A.050 Correction Agreement

9.10A.060 Penalties
9.10A.070 Commencement of Action—Enforcement
9.10A.080 Notice of Failure to Comply
9.10A.090 Hearing before the Hearing Examiner
9.10A.100 Burden of Proof
9.10A.110 Remedies

9.10A.010 Purpose.
People should be able to enjoy ownership, use and possession of property without negative interference from Chronic Nuisance Properties. The intent of the Bellevue City Council in enacting this chapter of the Bellevue City Code is to exercise specific powers granted by the State of Washington to optional code cities to declare what shall be a nuisance, prevent and abate nuisances, and to impose fines and other penalties upon parties who create, continue, or suffer nuisances to exist. In addition, the Bellevue City Council intends to exercise the specific power granted by the State to provide for the punishment of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating City ordinances.

9.10A.020 Definitions.
For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

A. "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the Chief of Police determines is necessary in the interest of the general health, safety and welfare of the community.

B. “BCC” means Bellevue City Code as in effect at the date of enactment of this ordinance or as thereafter amended.

C. "Chief of Police" means the Chief of Police of the City of Bellevue or his or her designees.

D. “City Attorney” means the City of Bellevue City Attorney or his or her designees.

E. "Chronic Nuisance Property" means the following:

1. A property on which three or more nuisance activities as described in Bellevue City Code Section 9.10A.020G exist or have occurred during any sixty-day period or seven or more nuisance activities have occurred during any twelve-month period; or
2. A property which, upon a request for execution of a search warrant, has been the subject of a determination by a court two or more times within a twelve-month period that probable cause exists that illegal possession, manufacture or delivery of a controlled substance or related offenses as defined in RCW Chapter 69.50 has occurred on the property; and
3. The Chief of Police has declared the property to be a chronic nuisance as provided under BCC 9.10A.040.

F. "Control" means the power or ability to direct or determine conditions, conduct, or events occurring on a property.

G. "Nuisance activity" includes the following:

1. A "most serious offense" as defined in RCW Chapter 9.94A;
2. A "drug related activity" as defined in RCW 59.18.130;
3. Promoting, advancing or profiting from prostitution as defined in Chapter 9A.88 RCW;
4. Any of the following activities, behaviors or criminal conduct:
    a. Assault, Stalking, Harassment, Reckless Endangerment, Failure to Disperse, Obstructing a Police Officer as defined in BCC Chapter 10.03.050;
    c. Prostitution offenses, as defined in BCC Chapter 10.03.050;
    d. Provoking assault, disorderly conduct, illegal gambling as defined in BCC Chapter 10.06;
    e. Weapons violations, as defined in BCC 10.03.040;
    f. Liquor related offenses as defined in RCW Chapters 66.28 and 66.44 and in BCC 10.03.110;
    g. Public Morals offenses as defined in BCC Chapter 10.04;
    h. Any attempt, solicitation, or conspiracy to commit any of the above activities, behaviors or conduct as defined in BCC Chapter 10.03.050.

H. "Owner" means any person who, alone or with others, has title or interest in any property.

I. "Person" means an individual, group of individuals, corporation, partnership, association, club, company, business trust, joint venture, organization, or any other legal or commercial entity or the manager, lessee, agent, officer or employee of any of them.

J. "Person in charge" of a property means the owner and, if different than the owner, any or all other persons in actual or constructive possession of a property, including but not limited to, a lessee, tenant, occupant, agent, or manager of a property under his or her control.

K. "Property" means any land that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof.

L. "RCW" means the Revised Code of Washington, as in effect at the date of enactment of this ordinance or as thereafter amended.

9.10A.030 Violations.

A. Any property within the City of Bellevue which is a Chronic Nuisance Property is in violation of this chapter and subject to its remedies.

B. Any person in charge of a property declared to be a Chronic Nuisance Property shall be in violation of this chapter and subject to its remedies.

9.10A.040 Declaration of Chronic Nuisance Property and Procedure.

A. The Chief of Police may declare that a property is a Chronic Nuisance Property, as defined in this chapter, when there are specific facts and circumstances documenting (1) the occurrence of three or more nuisance activities on a property within sixty days or seven or more nuisance activities within a twelve month period, or (2) activity on a property as described in BCC 9.10A.020E2.

B. The Chief of Police shall provide written notice of this declaration to the person in charge of the property. The notice shall be sent by first class mail or

personally served, and a copy shall be sent by certified mail. If the person in charge cannot after due diligence be personally serviced within King County and if an address for mailed service cannot after due diligence be ascertained, the Notice of Declaration shall be served by posting a copy of said Notice conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

C. The notice shall include:

1. The street address or a legal description sufficient for identification of the property and the name and address of other persons in charge receiving the Notice of Declaration;
2. A declaration that the Chief of Police has determined the property has become a Chronic Nuisance Property with a concise description of the nuisance activities that exist or that have occurred;
3. A notice that the person in charge of the property is subject to monetary penalties as set forth in BCC 9.10A.060;
4. A demand the person in charge responds to the Chief of Police within fifteen days of service of the notice to discuss a course of action to correct the nuisance. Service of the notice shall be considered the date the person in charge is personally served or the date on which the Notice is mailed certified mail;
5. A notice that, if the person in charge does not respond to the Chief of Police as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the Chief of Police, the City may initiate an action to abate the property as a Chronic Nuisance Property pursuant to BCC 9.10A.070 and/or take other action against the property or person in charge as provided in this chapter or as otherwise permitted by law.

D. If the person in charge responds as required by the notice issued pursuant to 9.10A.040 and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements of BCC 9.10A.050 shall be executed.

E. If the person in charge believes the Chief's declaration of a Chronic Nuisance Property is not consistent with the BCC 9.10A or existing law, the person wishes to propose an alternative course of action and/or other persons in charge should be included in the required corrective action, the person in charge may challenge said declaration by responding to the Chief of Police in writing within 15 days of the date of the Notice of Declaration stating all reasons for disputing the declaration of Chronic Nuisance Property. The Chief of Police shall consider the information and respond to the person in charge within 15 days whether the information has caused the Chief to withdraw or modify the declaration of Chronic Nuisance Property.

F. If (1) the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of issuance of the notice pursuant to BCC 9.10A.040, or within such longer period as permitted by the Chief of Police in writing or (2) the person in charge fails to respond as required by the notice, the Chief of Police may, after conferring with the City

Attorney, refer the matter to the City Attorney for initiation of court proceedings or issue a Notice of Failure to Comply pursuant to BCC 9.10A.070.

G. Each person in charge shall be jointly and severally liable with all other persons in charge for any penalty, order or other remedy assessed and/or entered against any person in charge of the Chronic Nuisance Property. The Chief of Police's failure to send a Notice of Declaration to all persons in charge shall not be a defense to liability under this chapter for any person in charge who is provided as provided by this chapter.

9.10A.050 Correction Agreement.

A. A correction agreement is a contract between the City and the person in charge of the Chronic Nuisance Property in which such person agrees to promptly take all lawful and reasonable actions, which shall be set forth in the agreement to abate the nuisance activities within a specified time and according to specified conditions. The agreement shall be signed by the person in charge. The agreement shall include the following:

1. The name and address of the person in charge of the property;
2. The street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring;
3. A description of the nuisance activities;
4. The necessary corrective action to be taken, and a date or time by which correction must be completed;
5. An agreement by the person in charge that the City may inspect the property as may be necessary to determine compliance with the correction agreement;
6. An agreement by the person in charge that the City may abate the nuisance and recover its costs and expenses and monetary penalties pursuant to this chapter from the person in charge for the nuisance if the terms of the correction agreement are not met;
7. An acknowledgment of the existence of the violation and waiver of the right to later dispute that the violation occurred.

9.10A.060 Penalties.

A. Except as provided in this section, in addition to any other sanction or remedial procedure that may be available, the person in charge is subject to a daily civil penalty from the date of the notice issued pursuant to BCC 9.10A.040 until the Chief of Police confirms that the property is no longer a Chronic Nuisance Property as follows:

1. First day of each violation, $100.00;
2. Second day of each violation, $200.00;
3. Third day of each violation, $300.00;
4. Fourth day of each violation, $400.00;
5. Each additional day of each violation beyond four days, $500.00 per day.

B. If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of the notice issued pursuant to BCC 9.10A.040, or such longer period allowed by the Chief of

Police in writing, the matter shall be closed without further action or penalty against the person in charge.

C. A person in charge who has previously been found to have violated BCC 9.10A related to the same Chronic Nuisance Property within the preceding two years shall be subject to double the penalties provided in BCC 9.10A.060A.

D. The monetary penalty constitutes a personal obligation of the person in charge. Any monetary penalty assessed must be paid to the City within 10 calendar days from the date of mailing of the hearing examiner's decision or a notice from the City that penalties are due. The city attorney or her designee is authorized to take appropriate action to collect the monetary penalty. The person in charge is not relieved of the duty to correct the violation by paying the penalty associated with such violations.

9.10A.070 Commencement of Action.

A. Court Enforcement: Upon referral pursuant to BCC 9.10A.040F, the City Attorney may initiate an action in any court of competent jurisdiction to abate a Chronic Nuisance Property, and seek penalties pursuant to this chapter, alternative remedies under city or state laws and seek any other relief authorized by law; or

B. Administrative Hearing Enforcement: The Chief of Police may initiate an administrative proceeding before the hearing examiner pursuant to BCC 9.10A.090 by issuing a Notice of Failure to Comply against a person in charge to abate a Chronic Nuisance Property, and/or seek penalties pursuant to this chapter, alternative remedies under city or state laws and seek any other relief authorized by law.

9.10A.080 Notice of Failure to Comply.

A. Content:

1. The name and address of the person in charge responsible for the violation;
2. The street address or description sufficient for identification of the building, structure, premises, or land upon which the violation has occurred or is occurring;
3. A description of the violation and a reference to the provision(s) of this chapter that has been violated;
4. The required corrective action and the date and time by which the correction must be completed to avoid the hearing as provided in BCC 9.10A.070B;
5. The Notice of Failure to Comply shall state the date, time, and location of the administrative hearing before the hearing examiner which will be at least 10 days from the date of this Notice;
6. A statement that the costs and expenses of abatement incurred by the City pursuant to BCC 9.10A.070 and a monetary penalty in an amount per day for each violation as specified in BCC9.10A.060 may be assessed against the person to whom the Notice of Failure to Comply is directed as specified and ordered by the hearing examiner;
7. The Declaration of Chronic Nuisance Property pursuant to BCC 9.10A 040 shall be attached to the Notice of Failure to Comply.

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B. Service:

The Chief of Police shall serve the Notice of Failure to Comply upon the person in charge and produce a proof of service in the same manner as provided in BCC 9.10A.040B.

9.10A.090 Hearing before the Hearing Examiner.

A. Hearing: The hearing will be scheduled as provided in BCC 9.10A.080A5.

B. Procedure: The hearing examiner shall conduct a hearing on the Notice of Failure to Comply pursuant to the rules of procedure of the hearing examiner. The Chief of Police or his/her designee and the person in charge to whom the Notice of Failure to Comply was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to show by a preponderance of the evidence that the property is a Chronic Nuisance Property under this chapter and that the corrective action is reasonably calculated to abate the chronic nuisance. Copies of police incident reports and reports of other city departments documenting nuisance activities shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions.

C. Decision of the Hearing Examiner:

1. The hearing examiner shall affirm, vacate, or modify the City's decisions regarding the alleged violation and corrective action and mail a copy of the decision to the person in charge and to the Chief of Police within 10 working days of the hearing.
2. The hearing examiner shall have authority to impose remedies for violation of this chapter as provided in BCC 9.10A.110. The hearing examiner shall issue an order to the person in charge responsible for the violation which contains the following information:
    a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
    b. The required corrective action;
    c. The date and time by which the correction must be completed;
    d. The monetary penalties assessed based on the criteria in BCC 9.10A090C3;
    e. Make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the City to take action to abate nuisance activities from occurring upon the property if other hearing examiner orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such City action are to be paid for by the person in charge of the property;
    f. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in BCC 9.10A.060.
    a. The hearing examiner shall have the following options in assessing monetary penalties:
        (i) Assess monetary penalties beginning on the date of the Declaration of Chronic Nuisance Property pursuant to BCC 9.10A.040; or
        (ii) Some other date after the Declaration of Chronic Nuisance Property; or
        (iii) Assess no monetary penalties.
    b. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
        (i) Whether the person in charge responded to the Chief of Police's attempts to contact the person and cooperated with efforts to correct the violation;
        (ii) Whether the person in charge failed to appear at the hearing;
        (iii) Whether the violation was a repeat violation;
        (iv) Whether the person in charge showed due diligence and/or substantial progress in correcting the violation;
        (v) Whether a genuine code interpretation issue exists; and
        (vi) Any other relevant factors.

D. Failure to Appear. If the person in charge to whom the Notice of Failure to Comply was issued fails to appear at the scheduled hearing, the hearing examiner will enter an order finding the violation as stated in the Notice of Failure to Comply, and ordering the appropriate remedies as provided in BCC 9.10A.110. The city will carry out the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person in charge.

E. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within 20 calendar days from the date the hearing examiner's decision was mailed to the person in charge to whom the Notice of Failure to Comply was directed, or is thereafter barred.

9.10A.100 Burden of Proof.

In any civil action to enforce this chapter, the burden of proof and admissibility of evidence shall be as provided in this BCC 9.10A.090B unless otherwise provided by law.

9.10A.110 Remedies.

A. If the Court determines a property is a Chronic Nuisance Property pursuant to this chapter the court may order any of the following:

1. Order the person in charge to immediately abate nuisance activity from occurring on the property;
2. Order that the Chief of Police shall have the right to inspect the property to determine if the court's orders have been complied with;

3. Impose a penalty as provided in BCC 9.10A.060 and BCC 9.10A.090C3 against the person in charge for each day from the date the notice pursuant to BCC 9.10A.040 was issued until the Chief of Police confirms that the property is no longer a Chronic Nuisance Property;
4. Make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the City to take action to abate nuisance activities from occurring upon the property if other court orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such City action are to be paid for by the person in charge of the property.

Section 2. This ordinance shall take effect and be in force five (5) days after passage and legal publication

Passed by the City Council this _____ day of _____, 2014 and signed in authentication of its passage this _____ day of _____, 2014.

(SEAL)

_____
Claudia Balducci, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

_____
Siona D. Windsor, Assistant City Attorney

Attest:

_____
Myrna L. Basich, City Clerk

Published _____

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