

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Proposed Ordinance No. 675 - Chronic Nuisance Property
DEPARTMENT:	Planning and Community Development City Attorney's Office
PRESENTED BY:	Rachael Markle, Director of Planning and Community Development Julie Ainsworth-Taylor, Assistant City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On July 1, 2013 and January 27, 2014, the Council discussed the development of a chronic nuisance ordinance and reviewed a draft ordinance. Currently the City does not have adequate enforcement tools to hold property owners and other responsible individuals, such as tenants, accountable for alleviating repeated occurrences of both criminal and civil code violations on their property. A chronic nuisance ordinance is a tool that several other area jurisdictions have employed to effectively eliminate repeat violations at chronic nuisance properties. Proposed Ordinance No. 675 (Attachment A) would provide this tool for Shoreline.

RESOURCE/FINANCIAL IMPACT:

Existing staff resources from the Police Department, Planning and Community Development Department, and City Attorney's Office would need to be utilized to implement Proposed Ordinance No. 675. However, it is anticipated that the utilization of a chronic nuisance ordinance will help resolve repetitive criminal and civil code violations more quickly at chronic nuisance properties, reducing the total number of service calls and enforcement actions to those properties. The ultimate result will be a reduction in enforcement costs through a reduction in staff resources expended.

For example, the Cook residence, located at 1331 North 169th Street in Shoreline, had a history of 45 Police case reports and 31 Code Enforcement service requests since 2000. Of the Police case reports, 29 occurred since 2011, and of the service requests, 28 occurred since April 2012.

As well, a search warrant costs the City a minimum of \$10,000. In the case of the Cook residence, the cost was approximately \$66,000 for three (3) executed warrants. The potential for violence increased the cost in the Cook case due to the need for more surveillance and pre-dawn staging and execution. Also, the amount of stolen property

on the Cook site needing to be cataloged and transported, required a significant amount of additional staff time.

The above costs do not include the many hours spent by Shoreline Police and Code Enforcement staff responding to complaints about the Cook property before the Special Emphasis Team's operations. If the City had a chronic nuisance ordinance as proposed, the number of case reports, service requests, and warrants needed to address the issues at the Cook residence could have been reduced to three applicable activities and six (6) months of response time by Police and Code Enforcement staff.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 675 to define chronic nuisance properties and declare such properties a public nuisance subject to specific enforcement actions.

Approved By: City Manager ***DT*** City Attorney ***IS***

INTRODUCTION

In Shoreline, some properties are used for unlawful criminal purposes or in a manner that otherwise violates Shoreline's Municipal Code. In some cases, the property owners are the actual perpetrators of these crimes and violations, and continue them despite repeated and continued Police and Code Enforcement efforts to have the violations addressed. Other cases involve rental properties where the tenants are the parties violating criminal and/or civil codes, of which the property owner may or may not be aware. These types of properties are considered "chronic nuisance properties."

Chronic nuisance properties present serious health, safety, and welfare concerns by interfering with the quality of life, comfort, and calm of residential neighborhoods. Often the activities that occur at these properties result in numerous service calls by the police, fire, and/or other City departments. The numerous service calls generated by chronic nuisance properties not only create a financial burden on the City but create a negative living environment for surrounding neighbors.

Currently, the City does not have regulations in place that provide adequate tools to hold property owners and their tenants responsible when illegal activities and other code violations repeatedly occur on their property. On July 1, 2013, the Council discussed the development of an ordinance to address chronic nuisance properties. Staff returned with draft code language on January 27, 2014. The staff reports for these discussions can be found at the following links:

- <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2013/staffreport070113-9a.pdf>
- <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2014/staffreport012714-9a.pdf>

BACKGROUND

The Council last discussed the development of chronic nuisance regulations on January 27, 2014. The Council generally supported the concept of creating a definition for chronic nuisance properties and regulating these properties as public nuisances using new enforcement tools specific to the repeat nature of these violations. The Council directed staff to refine the draft regulations and provide additional information for consideration and possible adoption of Ordinance No. 675 at tonight's meeting.

Council identified the following items for consideration:

- Item 1:** Provide reassurance that proposed Ordinance No. 675 has been written to withstand legal challenges based on Constitutional grounds;
- Item 2:** Define "Chronic Nuisance Property" in a way that differentiates between a single family property and multi-unit properties for both commercial (multi-tenant shopping center) and residential multi-family units (apartments);

- Item 3:** The proposed method of determining whether a property is a chronic nuisance does not allow for any discretion; if the property meets the definition, it is a chronic nuisance. Some Council members were concerned that some properties will meet the definition of a chronic nuisance, but not represent a situation that creates a significant health, safety and welfare in a neighborhood;
- Item 4:** Clarify whether or not a property that has a no trespass order for an individual associated with it could potentially meet the definition of a chronic nuisance property if the police are called to respond to the trespass; and
- Item 5:** Clarify whether or not calls for Police to respond to an activity that is listed in SMC 9.30.030 Chronic Nuisance activity (ex. car prowling; shoplifting) by a commercial property owner or business operator could potentially meet the definition of a chronic nuisance property.

Below are the staff responses to the concepts and issues raised by Council at the January 27th meeting as noted above.

ALTERNATIVES ANALYSIS

Item 1

Provide reassurance that proposed Ordinance No. 675 has been written to withstand legal challenges based on Constitutional grounds.

Response:

RCW 35.22.280 empowers 1st class cities to address nuisances. RCW 35.A.160 grants code cities all of the powers any city of any class may have. The combination of these statutes provides broad authority to each class of municipality to define nuisances and provide for their abatement so long as local regulations are not in conflict with state laws. Thus, Shoreline clearly has the authority to adopt the ordinance. However, the Council's concern was whether or not the ordinance would withstand a constitutional challenge. There is no guarantee that any law will withstand a constitutional challenge; all a local government can do is adopt a solid ordinance that has a strong potential for surviving a challenge.

The key concerns raised by Council were the burden of proof and staff discretion in enforcement. Both of these items generally fall under the header of due process. For burden of proof, Council noted that the activities supporting a finding of chronic nuisance are not "proved" before the property is determined to be a chronic nuisance. Regarding staff discretion, Council expressed concerns that if the ordinance lacked a specific standard for burden of proof, the ordinance may not protect against arbitrary enforcement.

There are currently no published or unpublished appellate decisions in Washington or any other state (or federal court) that have addressed the constitutionality of a chronic nuisance property ordinance like the one being considered by the City. Some cases have been filed (e.g. the *Downtown Property Mgmt v. City of Cincinnati* case is US

District Court), but nothing has risen to a reviewable decision. But, the lack of appellate level cases may be an indication that these ordinances have withstood challenges in the lower courts with reasoned decisions so as to preclude a subsequent appeal.

There is a Washington case addressing constitutional issues for a similar type of ordinance where applied to innocent owners. *Seattle v. McCoy*, 101 Wn. App. 815 (2000) ruled on the constitutionality of the drug nuisance statute, chapter 7.43 RCW. That statute parallels chronic nuisance ordinances in that it provides for finding the *building* a nuisance, if illegal drug activity is present. The court order effectively abates both the building *and* the business activity by preempting reentry for any reason for one year. The Court found that where an owner is innocent and not complicit in the illegal conduct, this abatement of property could be viewed as a taking and a violation of the due process clause of the 14th Amendment. Chronic nuisance ordinances expand the list of illegal activities triggering a nuisance, but the *McCoy* ruling could apply with equal affect to innocent owners in chronic nuisance situations and the facts of *McCoy* should be avoided by the ordinance. Shoreline's ordinance includes a warning and opportunity to correct directed to the innocent owner in the Determination of Chronic Nuisance before an innocent owner will be subject to abatement or penalties (see new .040(A)(7) and .070(A). This follows the approach in separating the owner from the person in charge in Seattle's ordinance passed after the *McCoy* case.

Council was also concerned that a determination of a chronic nuisance property was based on unproven crimes, and punishment imposed without a quantum of proof satisfying due process. Council questioned not only if this was appropriate, but what level of proof should be used to prevent arbitrary application of the ordinance – beyond a reasonable doubt, preponderance of evidence, or reasonable suspicion.

Burden of proof is not an issue with nuisance activities that are non-criminal. Each non-criminal, civil violation requires a "Notice and Order" to have been issued. When a Notice and Order is issued, it provides for a 14-day appeal period with expiration of that appeal period resulting in a final determination if no appeal has been filed. Thus, as long as a Determination of Chronic Nuisance Property is based on non-criminal activity, a failure to appeal the Notice and Order will result in the determination that there has been a violation of the civil code. If sustained on appeal, the Hearing Examiner would have found the violation was established by a preponderance of evidence under a civil burden of proof (more probable than not; 50%+).

The criminally-based nuisance activities (without convictions) set forth in E(1) do not have the same finality. In reviewing other ordinances, as is shown on the table below, jurisdictions do not use common standard of proof terms, such as preponderance of evidence or beyond a reasonable doubt, but instead use a variety of vague, undefined terms. In all cases, no jurisdiction actually requires a conviction of a criminal offense prior to making a determination that the property is a chronic nuisance. This was consistent with staff's concern that waiting for a criminal conviction to occur would result in a continuation of the negative impacts to the surrounding neighborhood for potentially a year or more.

City	Standard for Determining Chronic Nuisance
Burien	Police Chief receives and reviews “documentation confirming” the occurrence of nuisance activities; city issues a warning; if no response within prescribed time, property declared a chronic nuisance.
Bremerton	Same as Burien.
Everett	Police Chief receives and independently reviews police reports documenting the existence of a chronic nuisance property; following review, property is declared a chronic nuisance.
Tukwila	Police Chief investigates any activity “reasonably believed” to be a chronic nuisance activity; if, after investigation or based on complaints of residents or others the Police Chief may declare the property a chronic nuisance.
Seattle	Police Chief may declare a property a chronic nuisance when there are “specific facts and circumstances documenting the nuisance activities.”
Yakima	Same as Seattle.
Tacoma	Appropriate City Department “shall confirm the presence” of a chronic nuisance property.
Union Gap	Same as Seattle/Yakima.
Beaverton, Oregon	When Police (lieutenant or higher) have “reasonable grounds to believe” a nuisance activity has occurred, they will issue a warning; if Police have “reasonable grounds to believe” property has become a chronic nuisance after original warning, then declared as such.
Cincinnati, Ohio	When City Solicitor determines nuisance activities have occurred at the premise, then warning issued; if City Solicitor determines an additional nuisance activity has occurred more than 13 days after the notice, then City Solicitor determines the property is a chronic nuisance.

Since awaiting conviction of criminally-based nuisance activities frustrates the purpose of the Chronic Nuisance Property Ordinance, the concepts of “probable cause” or “reasonable suspicion” or “preponderance of evidence” have been raised. The Fourth Amendment requires “probable cause” for issuance of warrants, and execution of search warrants would necessarily have that determination from an independent magistrate; the Constitution does not define what probable cause is, leaving that task to the courts. The term “reasonable suspicion” is not of constitutional derivation, but was crafted by the court to describe a level of suspicion lower than probable cause.

In regards to probable cause, recently, in *State v. McReynolds*, 117 Wn. App. 309 (2003), our own Supreme Court stated:

"Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." Affidavits are viewed in a commonsense, not hypertechnical manner.

- *McReynolds*, at 325 (citing *State v. Thein*, 138 Wn.2d 133 (1999); *State v. Partin*, 88 Wn. 2d 899 (1977)).

Reasonable suspicion is the lesser companion of probable cause. Most cases addressing this standard are in relationship to a “Terry Stop,” which permits a police officer to briefly detain a person if the officer reasonably suspects the person of criminal activity. Reasonable suspicion does not amount to a mere guess or hunch. In addressing the requirements for a Terry Stop, the *McReynolds* court stated:

[A] well founded suspicion based on objective facts that [the person] is connected to actual or potential criminal activity.

- *McReynolds*, at 329 (citing *State v. Sieler*, 95 Wn.2d 43 (1980)).

Also referencing a Terry Stop, the court has stated:

A brief investigate stop is permissible whenever the police officer has a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been or is about to be involved in a crime. In evaluating the reasonableness of an investigative stop, courts consider the totality of the circumstances, including the officer’s training and experience.

- *State v. Acrey*, 148 Wn.2d 738, 747 (2003)

A good comparison of probable cause and reasonable suspicion was stated by the US Supreme Court in *Alabama v. White*, 496 U.S. 325 (1990):

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause ... Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors--quantity and quality--are considered in the "totality of the circumstances--the whole picture," that must be taken into account when evaluating whether there is reasonable suspicion.

- *Alabama*, at 330 (Internal citations omitted).

While not a convictable standard, probable cause is probably the best criminally-based standard to fulfill the purpose of the Chronic Nuisance Ordinance. Staff considered two options utilizing this standard. Since probable cause is required to be determined by a judge in a criminal matter, “on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant arrest”¹ at the preliminary appearance within 48 hours of arrest or in a pretrial motion following arraignment, a judicial determination of probable cause does not cause delay comparable to a final conviction that would frustrate the effectiveness of the chronic nuisance ordinance. Prosecutors will file and get a judicial determination of probable cause for felonies

¹ CRR 3.2.1

typically within 3-4 weeks after filing the incident report by the police, and less time for misdemeanors.

However, staff notes that county prosecutors may decline charging for considerations other than sufficient probable cause, such as limited resources or poor prospects for conviction. Recent publicized examples would include the decline of marijuana felony possession or the policy to charge felony property crimes at a higher dollar value than set in criminal statutes. A police incident report that established probable cause as determined by the police for the criminal chronic nuisance activities listed in the ordinance would allow use of more events to establish a chronic nuisance than using the judicial determination of probable cause. Thus, this alternative approach to criminal activities in meeting the definition of chronic nuisance has been included in Section 9.30.040(A) of the proposed ordinance.

Item 2

Define “Chronic Nuisance Property” in a way that differentiates between a single family property and multi-unit properties; both commercial (multi-tenant shopping center) and residential multi-family units (apartments).

Response:

Staff amended the draft regulations to include a chart that defines the number of nuisance activities in relationship to the number of units for both multi-family residential and multi-tenant commercial properties. A property with only one unit can be defined as a chronic nuisance property if three or more nuisance activities occur in any 180 day period; or five or more nuisance activities have occurred during any 12 month period. The proposed chart increases the number of occurrences of nuisance activities that constitute a chronic nuisance property to better correlate with the number of individual units on a property. However, if a single unit is responsible for three or more nuisance activities within a 180 day period; or five or more nuisance activities in any 12 month period, then the City may determine that the unit is a chronic nuisance. The repetitive activities of a single unit verses nuisance activities spread throughout a multi-unit complex still should be treated as a chronic nuisance requiring abatement.

Item 3

The proposed method of determining whether a property is a chronic nuisance does not allow for any discretion; if the property meets the definition, it is a chronic nuisance. Some Council members were concerned that some properties will meet the definition of a chronic nuisance, but not represent a situation that creates a significant health, safety and welfare in a neighborhood.

Response:

SMC 9.30.040(A), Determination of Chronic Nuisance Property, has been edited to state that the property owner of record and person in charge of the property “may”, instead of “shall”, be served with a Notice of Determination of Chronic Nuisance Property.

Item 4

Clarify whether or not a property that has a no trespass order for an individual associated with it could potentially meet the definition of a chronic nuisance property if the police are called to respond to the trespass.

Response:

These calls for service would be considered calls from a victim and in accordance with proposed SMC 9.30.020(E)(4):

Police incident reports generated by calls for service to aid victims on the property shall not be used to determine a chronic nuisance.

Item 5

Clarify whether or not calls for Police to respond to an activity that is listed in SMC 9.30.030 Chronic Nuisance activity (ex. car prowling; shoplifting) by a commercial property owner or business operator could potentially meet the definition of a chronic nuisance property.

Response:

These calls for service would be considered calls from a victim and in accordance with proposed SMC 9.30.020(E)(4):

Police incident reports generated by calls for service to aid victims on the property shall not be used to determine a chronic nuisance.

COUNCIL GOAL(S) ADDRESSED

Council Goal 5 calls for the promotion and enhancement of the City's safe community and neighborhood programs and initiatives. Passing and enforcing a chronic nuisance ordinance addresses Goal 5 by alleviating citizen fears caused by the presence of repetitive illegal activity promulgated by residents or proprietors of a particular property.

RESOURCE/FINANCIAL IMPACT

Existing staff resources from the Police Department, Planning and Community Development Department, and City Attorney's Office would need to be utilized to implement Proposed Ordinance No. 675. However, it is anticipated that the utilization of a chronic nuisance ordinance will help resolve repetitive criminal and civil code violations more quickly at chronic nuisance properties, reducing the total number of service calls and enforcement actions to those properties. The ultimate result will be a reduction in enforcement costs through a reduction in staff resources expended.

For example, the Cook residence, located at 1331 North 169th Street in Shoreline, had a history of 45 Police case reports and 31 Code Enforcement service requests since 2000. Of the Police case reports, 29 occurred since 2011, and of the service requests, 28 occurred since April 2012.

As well, a search warrant costs the City a minimum of \$10,000. In the case of the Cook residence, the cost was approximately \$66,000 for three (3) executed warrants. The potential for violence increased the cost in the Cook case due to the need for more surveillance and pre-dawn staging and execution. Also, the amount of stolen property

on the Cook site needing to be cataloged and transported, required a significant amount of additional staff time.

The above costs do not include the many hours spent by Shoreline Police and Code Enforcement staff responding to complaints about the Cook property before the Special Emphasis Team's operations. If the City had a chronic nuisance ordinance as proposed, the number of case reports, service requests, and warrants needed to address the issues at the Cook residence could have been reduced to three applicable activities and six (6) months of response time by Police and Code Enforcement staff.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 675 to define chronic nuisance properties and declare such properties a public nuisance subject to specific enforcement actions.

ATTACHMENTS

Attachment A: Ordinance No. 675

Exhibit A: Chapter 9.30, Chronic Nuisance Property

ORDINANCE NO. 675

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON ADOPTING SANCTIONS FOR MAINTAINING PROPERTY AS A CHRONIC NUISANCE; AND ADDING A NEW CHAPTER, 9.30 CHRONIC NUISANCE PROPERTIES, TO THE SHORELINE MUNICIPAL CODE.

WHEREAS, the City of Shoreline, as a noncharter code city, has broad authority to define, prevent, abate, and impose fines upon persons creating or allowing a nuisance under Title 35A RCW; and

WHEREAS, the City Council's 2013-2015 Goals include Goal 5 which seeks to "promote and enhance the City's safe community and neighborhood programs and initiatives;" and

WHEREAS, some persons who own or control property in the City have allowed or may allow their properties to be used on multiple occasions for illegal purposes constituting a chronic nuisance; and

WHEREAS, the City Council finds that chronic nuisance properties present health, safety, and welfare concerns that negatively impact the quality of life in the neighborhoods where they are located; and

WHEREAS, the City Council has determined that neighboring property owners and residents should be able to own, use, or possess property without the negative impacts caused by chronic nuisance properties; and

WHEREAS, the City Council finds that chronic nuisance properties cause a financial burden upon the City by the numerous calls for service to the properties because of the illegal activities that repeatedly occur or exist on such properties; and

WHEREAS, in response to repeated occurrences of nuisance activity on properties within the City, the City Council has expressed concern and a desire to do more to protect city residents; and

WHEREAS, the City Council finds that current nuisance provisions found in Shoreline's Municipal Code do not provide adequate tools for abating chronic nuisance properties; and

WHEREAS, at its July 1, 2013 regular meeting, the City Council directed City staff to develop a chronic nuisance property ordinance; and

WHEREAS, the City's Department of Planning and Community Development and the City's Police Department collaborated in the development of regulations to address chronic nuisance property in the City; and

WHEREAS, at its January 27, 2014 regular meeting, the City Council discussed the proposed chronic nuisance ordinance and provided City staff with additional direction; and

WHEREAS, the SEPA Responsible Official for the City of Shoreline has determined that the proposed amendment to Title 9 is categorically exempt from SEPA review under WAC 197-11-800(19); and

WHEREAS, the City Council has determined the adoption of a chronic nuisance properties ordinance promotes the public health, safety, and welfare of the City; now therefore

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON
DO ORDAIN AS FOLLOWS:**

Section 1. New Chapter. A new Chapter 9.30 *Chronic Nuisance Properties* is added to Title 9 of the Shoreline Municipal Code as set forth in Exhibit A to this Ordinance.

Section 2. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or circumstance.

Section 3. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON MARCH 3, 2014.

Mayor Shari Winstead

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Ian Sievers
City Attorney

Date of Publication: , 2014

Effective Date: , 2014

Shoreline Municipal Code

**Chapter 9.30
CHRONIC NUISANCE PROPERTY**

Sections:

- 9.30.010 Purpose.
- 9.30.020 Definitions.
- 9.30.030 Chronic Nuisance Activities - Violation.
- 9.30.040 Determination of Chronic Nuisance Property.
- 9.30.050 Appeal of Chronic Nuisance Property Notice.
- 9.30.060 Voluntary Compliance Plan.
- 9.30.070 Enforcement.
- 9.30.080 Additional Enforcement Provisions.

9.30.010 Purpose.

Chronic nuisance properties present significant health, safety, and welfare concerns with a tremendous negative impact upon the quality of life in the neighborhoods where they are located. This chapter provides a remedy for chronic nuisance activities that repeatedly occur or exist on such properties.

9.30.020 Definitions.

For purposes of this chapter, the following words and phrases shall mean:

A. “**Chief of Police**” means the Chief of Police for the City of Shoreline or, his/her designee.

B. “**Chronic nuisance property**” is a property on which:

1. For single-family residential property or single-unit commercial property, when three or more nuisance activities described in SMC 9.30.020(E) have occurred on different days during any one hundred eighty (180) day period or five or more nuisance activities have occurred on the property on different days during any twelve (12) month period; or

2. For any type of property, a search warrant has been served twice within a twenty-four (24) month period; or

3. For multi-family residential or multi-tenant commercial property, within a one hundred eighty (180) day period, the following number of nuisance activities described in SMC 9.30.020(E) have occurred on different days:

- a. Property with 2 or 3 units: 6 nuisance activities.
- b. Property with 4 to 19 units: 12 nuisance activities.
- c. Property with 20 to 39 units: 18 nuisance activities.
- d. Property with 40 to 100 units: 24 nuisance activities.
- e. Property with over 100 units: 30 nuisance activities.

A single unit within a multi-family residential and multi tenant commercial property that meets the definition of SMC 9.30.020(B)(1) or SMC 9.30.020(B)(2) is a chronic nuisance property.

And

4. Designated by the Chief of Police and the Director after a review of official documentation such as police incident reports, notices and orders to correct, and case files to determine if there are sufficient facts and circumstances to establish probable cause to find the occurrence of nuisance activities.

- C. **“Control”** means the power or ability to direct or determine conditions and/or activities located on or occurring on a property.
- D. **“Director”** means the City of Shoreline Director of Planning and Community Development or, his/her designee.
- E. **“Chronic Nuisance activity”** means:
 - 1. The following criminal activities, behaviors or conduct that results in a police incident report:
 - a. Harassment offenses as defined in chapter 9A.46 RCW.
 - b. Assault or reckless endangerment as defined in chapter 9A.36 RCW.
 - c. Disorderly conduct as defined in section 9.10.320 SMC.
 - d. Indecent exposure and prostitution offenses as defined in chapter 9A.88 RCW and section 9.10.550 SMC.

~~e. Fraud related offenses as defined in chapter 9A.60 RCW.~~

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~~f-e.~~ Possession, manufacture or delivery of a controlled substance or related offenses as defined in chapter 69.50 RCW and violations relating to Precursor Drugs as defined in chapter 69.43 RCW.

~~g-f.~~ Violation of stay out of areas of prostitution (SOAP) orders as defined in section 9.10.560 SMC.

~~h-g.~~ Gambling-related offenses as defined in chapters 9.46 and 9.47 RCW.

~~i-h.~~ Gang-related activity as defined in section 9.94A.030 RCW.

~~j-i.~~ Firearms and dangerous weapons offenses as defined in chapter 9.41 RCW.

~~k-j.~~ Public disturbance noises as defined in chapter 9.05 SMC.

~~l-k.~~ Stolen property and trafficking of stolen property offenses as defined in chapters 9A.56 and 9A.82 RCW.

~~m-l.~~ Execution of criminal arrest or criminal arrests from property.

~~n-m.~~ Human trafficking as defined in section 9A.40.100 RCW and 9A.88.060 RCW.

~~o-n.~~ Any attempt, solicitation or conspiracy to commit any of the above activities, behaviors or conduct, as defined in section 9.10.110 SMC.

2. Activities, behavior or conduct that is contrary to any of the following:

- a. SMC 15.05 Construction and Building Codes for which a Notice and Order has been issued in accordance with SMC 20.30.760 or an infraction has been issued in accordance with SMC 20.30.770(A);
- b. Animal control code SMC Title 6.30.010 (A)(6)(7)(8) Nuisances prohibited; and SMC Title 6.30.020(A)(1)(2)(3) Cruelty to animals prohibited; for which a Notice and Order has been issued in accordance with SMC 6.40.030; or
- c. Code of the King County Board of Health, Chapter 8.06 Rodent Control; Chapter 11.01 Contaminated Property; Chapter 13.04 On-Site Sewage.

3. Multiple nuisance activities contained in a single police incident report are not counted as separate nuisance activities.

4. Police incident reports generated by calls for service to aid victims on the property shall not be used to determine a chronic nuisance property.

F. **“Person in charge”** means any person in actual or constructive possession of the property, including but not limited to an owner, lessee, tenant, occupant, agent, or manager with control of the property.

9.30.030 Chronic Nuisance Activities - Violation.

It shall be unlawful for any person to permit a chronic nuisance property.

9.30.040 Determination of Chronic Nuisance Property.

The Police Chief and the Director shall review official documentation such as police incident reports, notices and orders to correct, and case files to determine if there are sufficient facts and circumstances to establish probable cause to find the occurrence of

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nuisance activities to support a designation of the property as a chronic nuisance property, which meet the definition of a chronic nuisance property as defined in this chapter. If a

9.30.050 Notice of Determination of Chronic Nuisance Property,

A. When a property is determined to be a chronic nuisance property, the property owner of record and person in charge of the property ~~may~~shall be served with a Notice of Determination of Chronic Nuisance Property with the following information:

1. The name and address of the person to whom the letter is issued;
2. The location of the subject property by address or other description sufficient for identification of the subject property;
3. A statement that the City has determined the property to be a chronic nuisance property;
4. A concise description of the nuisance activities upon which the determination was based, and documentation of the chronic nuisance activities including police case number(s), police incident report numbers, and City of Shoreline code enforcement case numbers;
5. A demand that the property owner of record or the person in charge of the property respond within seven (7) days of service to the Notice as directed to abate chronic nuisances which may include submission of a proposed compliance plan for City approval;
6. A warning that the persons in charge of the property are potentially civilly and criminally liable and subject to civil infractions and abatement at the owner's expense for continuing to allow chronic nuisance activities, as defined in this chapter, to occur upon the property;
7. A warning that the property owner of a chronic nuisance property permitted by a person in charge other than the owner or the owner's agent, must promptly take all steps requested in the Notice of Determination of Chronic Nuisance Property to assist in abatement of the nuisance property, including pursuing eviction of the person in charge, available to the owner pursuant to any lease and consistent with state law. A statement advising that any person named in the Notice of Determination of Chronic Nuisance Property or having any record or equitable title in the property against which the Notice of Determination is recorded may appeal from the Notice to the City of Shoreline Hearing Examiner within fourteen (14) calendar days of the date of issuance of the Notice;
8. A statement advising that a failure to appeal the Notice of Determination of Chronic Nuisance Property within the applicable time limits renders the Determination a final determination that the conditions described in the Notice existed and constituted a Chronic Nuisance, and that the named party is liable as a responsible party; and
9. Name and telephone number of the City representative who is responsible for handling inquiries regarding the Notice including a statement advising the property owner and person in charge of the property of his or her duty to notify the City of any actions taken to achieve compliance with the Notice of Determination of Chronic Nuisance Property.

B. _____ The Notice of Determination of Chronic Nuisance shall be served on the property owner of record and the person in charge of the property by the following methods:

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1. By posting the Notice of Determination of Chronic Nuisance Property in a conspicuous place on the property where the violation occurred and concurrently mailing the Notice to the property's address; and
2. By personal service, or
3. By mailing a copy by certified mail return receipt requested, to the property owner of record at the address shown on King County tax records and to the person(s) in charge of the property at his/her last known address or at the address of their place of business.

9.30.050-060 Appeal of Chronic Nuisance Property Notice.

Any person named in a Notice of Determination of Chronic Nuisance Property may file a notice of appeal to the Shoreline Hearing Examiner within fourteen (14) calendar days from the date of service of the Notice of Determination of Chronic Nuisance. Appeals shall be filed in writing with the City Clerk as provided in SMC 20.30.220 and shall be conducted as provided in SMC 20.30.790.

9.30.060-070 Voluntary Compliance Plan.

As provided in SMC 9.30.040(A)(5), a Voluntary Compliance Plan may be approved to remedy the chronic nuisance activities. The property owner of record or the person in charge of the property, if not the owner, is responsible for development and submittal of a written compliance plan acceptable to the City. The Police Chief, and the Director, in consultation with the City Attorney, shall review the plan for approval. The plan shall establish, at a minimum, the necessary corrective action(s) to be taken to abate the chronic nuisance activity or activities, deadlines for implementation and completion of the plan, and an acknowledgment by the property owner and person in charge of the property that the City may abate the chronic nuisance(s) and recover its costs, expenses, and penalties pursuant to local and state law if the terms of the plan are not met.

9.30.070-080 Enforcement.

- A. Any person in charge of property that has been determined to be a chronic nuisance property is in violation of this chapter and any property owner of record who fails to comply with 9.30.040(A)(7) shall be subject to the remedies described herein unless he/she can show that he/she is in compliance with a Voluntary Compliance Plan, as described in SMC 9.30.060.
- B. If the property owner of record or the person in charge of the property does not respond to a Notice of Determination of Chronic Nuisance Property within the time proscribed, the person responsible shall be issued a civil infraction, punishable by a maximum penalty of one thousand dollars (\$1,000.00).
- C. If the person responsible does not respond to the issued infraction or continues to violate the provisions of this chapter, including the Voluntary Compliance Plan, the matter shall be referred to the Office of the City Attorney for further action. The City Attorney may initiate legal action to abate the chronic nuisance activity which may include vacating any building and securing it against unauthorized access, use, and occupancy for a period of up to one year, with costs of abatement assessed against the owner and, if applicable, payment of

relocation assistance costs as provided in SMC 15.05.070(D), 20.30.770(D)(5), and 20.30.770(E)(3).

9.30.~~080-090~~ Additional Enforcement Provisions.

- A. Nothing in this chapter shall be construed to prevent or prohibit the City from pursuing immediate relief from nuisance activities at a property by any other means available by law, including but not limited to summary abatement under SMC 20.30.770(E) and an order of the fire code official under the Shoreline fire code. Penalty and enforcement provisions provided in this chapter shall not be deemed exclusive and the City may pursue any remedy or relief it deems appropriate.
- B. Whenever the city issues a Notice of Determination of Chronic Nuisance Property to more than one person because of a violation of this chapter, those persons shall be jointly and severally liable.
- C. The failure of the City to prosecute an individual for violation(s) ~~constitution-constituting~~ chronic nuisance activities is not a defense to an action under this chapter.
- D. The Police Chief and the Director shall have the authority to promulgate procedures for administering this chapter.