## **Staff Report – May 16, 2007**

# Review of Enforcement of the Noisy or Unruly Assembly Administrative Citation Process (§ 389.65(c))

## **Introduction**

On February 10, 2006, the City Council passed revisions to § 389.65 (Public Nuisance Noise) that incorporated into the ordinance an administrative citation process. Upon passage of the revisions, the Police Department and City Attorney's Office developed an interdepartmental protocol for enforcing the new process. City staff trained police officers, crime prevention specialists, administrative hearing officers, community attorneys, a legal process coordinator and community members, including rental dwelling licensees, on the changes to the ordinance and the process for enforcement.

On July 1, 2006, upon completion of the development of the enforcement protocol and large-scale trainings, the Police Department initiated enforcement of the administrative citation provisions.

The City Council passed a staff directive on February 10, 2006, instructing the Police Department to conduct a review of the noisy or unruly assembly administrative citation process beginning March 1, 2007, or as soon thereafter as practicable. The directive instructed the Police Department as follows:

- 1. To assess the costs of managing the administrative enforcement provisions established in section 389.65(c);
- 2. To assess the revenues raised from administrative citations issued pursuant to section 389.65(c);
- 3. To assess the success or lack thereof of the administrative enforcement process established in section 389.65(c);
- 4. To document in map form the properties to which the administrative enforcement process established in section 389.65(c) was applied; and
- 5. To document any other information the Police Department believes would assist in the evaluation of the administrative enforcement process established in section 389.65(c).

## **Overview of the Ordinance**

The administrative citation process codified in § 389.65(c) is designed to provide the City with an additional tool with which to address "chronic party houses" and other residential properties where late-night noisy assemblies are a frequent issue. It differs from the tool provided in § 244.2020 (Conduct on Licensed Premises) in several ways. First, it applies to all residential properties whereas § 244.2020 is limited to licensed rental properties. Second, it permits the City to issue an immediate warning letter after only a single documented instance of a noisy or unruly assembly. The Police Department protocol for enforcing § 244.2020 requires three incidents (at least one of which is documented) before a first warning letter may be issued for a noise violation. Third, it provides intermediate sanctions in the form of escalating fines rather than a license revocation.

The ordinance instructs crime prevention specialists to issue a warning letter to the property owner, rental license holder or landlord within 10 business days of a documented noisy or unruly assembly as defined in § 389.30. The warning letter informs the recipient of the date and time at which a noisy or unruly assembly occurred on the property. It warns the recipient that should another such assembly occur on that property within 180 days, the recipient may receive an administrative citation. Citations start at \$200 and can double to up to \$2,000 for subsequent violations.

A crime prevention specialist may rescind the notice and its accompanying 180-day probationary period if the recipient can show the specialist that he/she has taken "reasonable and necessary actions" to prevent the noise issue from becoming or remaining chronic in nature. The phrase "reasonable and necessary actions" is defined in § 389.30 as "[t]hose actions that would firmly convince a reasonable person that the frequency and severity of future noisy or unruly assemblies . . . would be substantially reduced."

Property owners, rental license holders or landlords may appeal the issuance of a warning notice or citation to an administrative hearing officer. Should an administrative hearing be held, the City must prove by a preponderance of the evidence that a noisy or unruly assembly occurred as stated in the warning. The recipient of a warning notice may also appeal a crime prevention specialist's decision not to rescind a notice. In that case, the recipient must prove by a preponderance of the evidence that he/she took reasonable and necessary actions to correct the problem.

Crime prevention specialists may, upon determining that the issuance of a notice would be contrary to public policy, elect not to issue a notice in certain situations. Such circumstances include when emergency services were summoned by a person taking part in the noisy or unruly assembly, when the noise arose from an incident of domestic abuse, or when the assembly is the product of uninvited guests or trespassers.

## **Enforcement Protocol**

Attached to this report is a flow chart illustrating in detail the noisy or unruly assembly enforcement protocol. The City's established enforcement protocol primarily depends upon police officers and crime prevention specialists. In limited circumstances it also involves the Department of Regulatory Services and the City Attorney's Office.

The process typically begins when police officers respond to 911 complaints regarding noisy or unruly assemblies. When the officers arrive at the scene, they document their observations in the form of brief remarks attached to the call-for-service report. Depending on the circumstances, they might also document the incident in a full police report.

A computer program generates a daily list of the calls-for-service reports most likely to involve a noisy or unruly assembly. The lists are then forwarded to crime prevention specialists across the city. Crime prevention specialists review the daily lists and determine if the remarks in each report show by a preponderance of the evidence that a noisy or unruly assembly occurred at the incident address. If the reports are unclear, crime prevention specialists may attempt to contact the officers for clarification.

When crime prevention specialists identify a sufficiently documented noisy or unruly assembly, they check the history of the address. If no active notices exist, the crime prevention specialist mails a written notice to the property owner, landlord or rental license holder. If an active notice already exists, an administrative citation is issued.

Frequently the property owner, rental license holder or landlord contacts the crime prevention specialist when a notice is received. The crime prevention specialist and the recipient then discuss what would constitute "reasonable and necessary actions" on the part of the recipient to correct the noise problem. What constitutes "reasonable and necessary actions" varies depending on the nature of the violation and history of the address. If recipients later believe they have taken reasonable and necessary actions to correct the problem, they may ask the crime prevention specialists to rescind the notice.

If the notice is rescinded, the 180-day probationary period is lifted and the property is no longer subject to administrative citations. In these circumstances, upon a future violation, the crime prevention specialist issues a new warning notice rather than a citation. If the crime prevention specialists believe that reasonable and necessary actions have not been taken to address the problem, they will decline to rescind the notice and the probationary period will continue until the recipient takes sufficient steps or the period expires.

Property owners, rental license holders or landlords who wish to challenge the issuance of a warning notice or citation, or wish to challenge a decision not to rescind a warning notice, are instructed to contact the crime prevention specialist who issued the notice or citation. That specialist will forward recipients the forms necessary to appeal the decision to an administrative hearing officer.

When a recipient returns the appeal forms to the crime prevention specialist, that specialist will contact a legal process coordinator at the Department of Regulatory Services to arrange for a hearing officer, assign a location for the hearing, and notify the recipient of the date and location of the hearing. With assistance from the City Attorney's Office, the crime prevention specialist will issue notices to officers and civilians who may serve as witnesses for the hearing. An assistant city attorney will also appear at the hearing to present the City's case. A legal process coordinator records the hearing, drafts the hearing officer's findings and processes payments.

## **Cost of Managing the Administrative Enforcement Provisions**

The administrative enforcement process primarily requires the participation of staff from the Police Department, namely crime prevention specialists and police officers. When the recipient of a notice or citation files a challenge, the process also requires an assistant city attorney, a hearing officer and a legal process coordinator.

Crime prevention specialists citywide issued 100 warning notices and one citation during the 37-week period between when enforcement began, on July 1, 2006, and the time at which this review was commenced, on March 21, 2007. Only one recipient challenged his warning notice. No recipients challenged a citation or a crime prevention specialist's decision not to rescind a notice.

**Crime Prevention Specialists.** The participation of crime prevention specialists in the administrative citation process constitutes by far the primary expenditure in enforcing this provision. Police Department crime prevention specialists reported spending an average of one hour per week during the reporting period analyzing calls-for-service and CAPRS reports for qualifying noisy or unruly assemblies and issuing notices.

Approximately 34% of notice recipients have contacted crime prevention specialists with questions, to explain their strategies to address the problem, or to work with crime prevention specialists to develop solutions. Follow-up discussions between notice recipients and crime prevention specialists generally took the form of telephone calls that averaged between five and 15 minutes each.

One hearing was scheduled to challenge the issuance of a notice. A crime prevention specialist appeared at that hearing. A typical hearing is expected to last approximately one hour.

Thirteen crime prevention specialists, earning an average of \$34.70 per hour, spending an hour per week reviewing reports totals \$446.10 per week. Over the course of the 27-week reporting period that total amounts to \$12,044.70. Thirty-four telephone conversations between crime prevention specialists and notice recipients, averaging 10 minutes per conversation, totals an additional \$195.00. The single appearance of a crime prevention specialist at an administrative hearing totals an additional \$34.70. The total cost for 13 crime prevention specialists citywide to regularly review police reports for noisy or unruly assemblies, send notices, speak with notice recipients, and appear at a

hearing over the 27-week period is an estimated \$12,274.40. Extrapolation of that figure estimates the costs for crime prevention specialists at \$454.60 per week and \$23,639.20 per year.

**Police Officers.** Police officers participate in enforcement by recording their observations in calls-for-service and CAPRS reports. However, as officers would be required to create these records in the absence of the administrative enforcement process, this creates no added costs.

Officers who must attend a hearing receive four hours of pay, at \$38.35 per hour. That amounts to \$153.40 per officer per appearance. Hearings have thus far been rare events. A single officer was noticed for the only hearing scheduled during the reporting period. Therefore, the total cost in police officer time is \$153.40. Extrapolation of that figure estimates the costs for police officers at \$5.68 per week and \$295.36 per year.

**Legal Process Coordinator.** The legal process coordinator arranges for a wide variety of administrative hearings, including any hearings generated through the noisy or unruly assembly enforcement process. Her services are only necessary when a recipient files a challenge.

She reports spending an average of one hour scheduling a room, arranging for a hearing officer, corresponding with the appellant, and drafting findings each time a hearing occurs. She reports spending an additional hour attending and recording the hearing. At an average of \$35 per hour, her cost is approximately \$70 for each hearing. Extrapolation of that figure estimates the costs for a legal process coordinator at \$2.59 per week and \$134.68 per year.

**Assistant City Attorney.** An assistant city attorney appears at an administrative hearing to assist in the presentation of the City's case. At \$50.72 per hour, the single hearing scheduled during the reporting period cost the City \$50.72. Extrapolation of that figure estimates the costs for an assistant city attorney at \$1.87 per week and \$97.24 per year.

**Hearing Officers.** A hearing officer presides over any administrative hearing and renders judgment. His/her services are necessary only when a challenge is filed. The hearing officer's cost is \$150 per session. Only one hearing was scheduled during the reporting period. Therefore, the total cost was \$150. Extrapolation of that figure estimates the costs for a hearing officer at \$5.55 per week and \$288.60 per year.

#### **Total Cost.**

	Week	<u>Year</u>
Crime prevention specialists:	\$454.60	\$23,639.20
Police officers:	\$5.68	\$295.36
Legal process coordinator:	\$2.59	\$134.68
Assistant city attorney:	\$1.87	\$97.24
Hearing officer:	\$5.55	\$288.60
TOTAL:	\$470.29	\$24,455.08

# Revenues Raised from Administrative Citations Issued Pursuant to § 389.65(c)

The noisy or unruly assembly administrative enforcement process was not predicted to be revenue generating. The goal of the ordinance is to encourage property owners and landlords to cooperate with City staff and exercise control over their properties sufficient to prevent noisy or unruly assemblies from becoming chronic problems. Police Department reports indicated that of the 100 properties issued warning notices during the reporting period, only one property was the location of a recurring noisy or unruly assembly during its probationary period.

The citation was issued in sector 1 of third precinct. It totaled \$200 and was not contested.

# **Success or Lack Thereof of the Administrative Enforcement Process**

On March 21, 2007, crime prevention specialists were asked to report both positive and negative experiences with the administrative citation enforcement provisions. The final section of this report, *Documentation of Additional Information*, provides a number of their comments, both positive and negative, representing their viewpoints as a whole.

**Conclusions.** Crime prevention specialists seem to largely agree that the noisy or unruly assembly administrative citation amendments have provided them with a useful tool to combat chronically noisy addresses. However, they tend to believe that it is a more useful tool in some areas of the city than others. The distribution pattern of notices to date seems to support that conclusion.

They are pleased with the new flexibility they now have in enforcing the noise laws. Previously, they depended on § 244.2020 (Conduct on Licensed Premises), which offered the "all or nothing" remedy of a license revocation without effective intermediate sanctions. They were also widely displeased with the difficulty they consistently encountered in advancing to a revocation hearing under § 244.2020 when the underlying issue was chronic noise. Current Police Department policy requires three reported instances of noise (one of which must be documented) before a first disorderly use letter can be issued. Five reported instances within a two- or three-year period are required before a revocation hearing can commence.

Crime prevention specialists also reported a number of obstacles to effective enforcement. Many of them commented that the process was cumbersome and that the time it took them to review the daily lists of reports caused them to divert attention away from other projects. Others reported that their sectors had higher priorities, and therefore, they would frequently sacrifice enforcement of the administrative citation provisions in favor of other areas that needed their attention. Some crime prevention specialists

remarked that the notes from police officers on calls-for-service reports were often inadequate to determine whether a qualifying noisy or unruly assembly had occurred at an address. They suggested additional officer training on report writing.

Molly Grove, Director of Municipal Affairs with the Minnesota Multi-Housing Association, was asked to solicit comments from rental dwelling licensees to the administrative citation process now that it has been in effect for 10 months. Licensees generally reported that while they continue to oppose the ordinance because it imposed liability on landlords, it has not negatively affected their businesses.

# <u>Documentation of the Properties to Which the</u> Administrative Enforcement Provision was Applied

Attached to this report is a map displaying the breakdown of warning notices issued per precinct and sector. The breakdown is as follows:

Precinct 1 Sector 1: 3 Precinct 1 Sector 2: 2

Precinct 2 Sector 1: 44 Precinct 2 Sector 2: 12

Precinct 3 Sector 1: 2 Precinct 3 Sector 2: 2 Precinct 3 Sector 3: 0 Precinct 3 Sector 4: 0

Precinct 4 Sector 1: 2 Precinct 4 Sector 2: 1 Precinct 4 Sector 3: 0

Precinct 5 Sector 1: 19 Precinct 5 Sector 2: 9 Precinct 5 Sector 3: 4 **TOTAL:** 100

### **Documentation of Additional Information**

Crime prevention specialists were asked to provide input as to the success or lack thereof of the ordinance during the reporting period. Their comments follow, organized by precinct.

**First Precinct.** "There may simply not be enough volume of these cases in the First Precinct to judge one way or the other. For me it has been a useful tool not for rental property but for unlicensed condos that are being rented out. But that would be moot if

the city were better at ferreting out the owners who invest with intent to rent and freeze them out when they rent their units out illegally."

**Second Precinct.** "It is hard to tell [if the process is successful] as more properties don't re-offend without any contact [with me] than those that do contact me. It does give us more opportunities to get the message out about the rental property owners workshops that we offer."

"I feel that there is some difficulty because two ordinances are addressing the same thing. What seems the most difficult to me is the fact that 244.2020 is dealing with 3 incidents in the building and then losing the license and 389.65 is dealing with repeated incidents in the same unit. For buildings such as Melrose apartments, they are very afraid of losing their license because of 244.2020, but feel that 389.65 is user friendly for them. They are afraid to call the police themselves because of the ordinance 244.2020, but have no problems with 389.65, because they are able to pass the fine on to the tenants."

"The 21-day grace period [that notice recipients receive before enforcement may begin has caused us to miss opportunities for enforcement.]"

**Third Precinct.** "Noise violations don't seem to occur so often in my sector, and they appear to be among the least causes of community concern in my sector. Thus they are a low item on my priority list. In cases where 911 was called because of noise or noisy assembly and police were dispatched, the results were "unfounded" and "advised" and rarely were there return visits by the police. Most of my landlords seem to come down pretty hard on noisy tenants and guests. (Although I do have one building in my Bossen area that might be developing such a problem. If so, I would sure use this tool and every other one I could to resolve the problem.)"

"First, it's hard to know when the incidents [of noisy or unruly assembly] have occurred, unless it's a property I am already tracking because it's a problem property. Time constraints, because of my work load, also makes it difficult to monitor for new incidents that might qualify. The Police Department is sending out emails that list recap codes by address that might trigger an incident. The problem is that you have to go through a fairly time consuming process with ECHOS and CAPRS, to determine if the incident qualifies or not. If I get 2 or 3 potential incidents a day, that eats up a lot of time that normally doesn't lead to an incident that qualifies. I think you should consider implementing a process similar to the screening for incidents used by SAFE Central to initiate Conduct on Premises letters."

"Scanning for new incidents means I have to give up time needed to work on more pressing issues due to my work load. How about finding a clerical person or administrative assistant to do this task like SAFE Central uses for Conduct on Premises letters?"

**Fourth Precinct.** "It's hard for me to judge its success, although I believe that it has the potential to be a very useful tool. The more resources and avenues we have to pursue our

mission the more effective we can be. In my experience in the past, there have been more than a few instances where the Conduct on Premise Ordinance hasn't been effective because of the high threshold required to enforce it for Party and Disorderly house cases. This ordinance provides us with another tool to encourage rental property owners to address the livability issues that their tenants sometimes cause."

"With my very limited use of 389.65 I really can't give an "expert" opinion. I do believe that this is a tool and I am definitely all for having more tools in the 'tool box'. It would be helpful in problem addresses. I have just not had the experience in dealing with them."

**Fifth Precinct.** "I like that we have the Ordinance as it lets the neighbors and myself address properties that won't otherwise be held accountable under the other Ordinances. My sector has relatively low crime for the City so I don't often see a lot of huge issues like drug houses or disorderly houses. 389.65 helps me because I'm more likely to get calls about problems with neighbors than I am anything else. I am able to tell them that if their issue is a noisy/unruly assembly problem then along with mediation they can be calling 911 to make sure it's documented. Despite the obstacles/issues, I do like that we have 389.65 and I think it can be a useful tool to solve some livability issues related to noise. Although, for me, most of my noisy alerts are actually domestic issues, kids running up and down hallways, or not during the designated times for the ordinance."

"Overall, I think that the Ordinance is a quite useful tool. I've sent out 19 letters in the last six months and would've sent out a few more had the 10-day notification time not lapsed. I would like to see a long-term study or perhaps a survey conducted on whether or not the owners/landlords actually take the notifications seriously. I know that the community appreciates the additional tool because they are typically the ones most affected by the noisy or unruly actions."

"It's a very good tool. The 244.2020 process for parties is cumbersome and too lengthy for problem addresses. The City's interpretation to use 3 parties before sending out a letter of Nuisance under 244.2020 really hampers the effectiveness of that ordinance for use with party calls."