



**REPORT TO PUBLIC SAFETY & REGULATORY SERVICES  
COMMITTEE ON NUISANCE NIGHT HEARING PROPOSED PUBLIC URINATION AND DRUG  
PARAPHERNALIA IN A PUBLIC PLACE ORDINANCES**

**October 15, 2003**

**Background**

On April 9, 2003, this Committee directed the City Attorney's Office to "work with the Minneapolis Police Department, in consultation with the chief judge of Hennepin County District Court (and other court resources), and others to explore the possibility of creating a nuisance night court, and the feasibility of piloting this program during the summer of 2003." The City Attorney's Office was further directed to report back to this Committee on May 7, 2003.

On May 7, 2003, the City Attorney's Office presented a report to this Committee that outlined the court options available to the City to address livability offenses. Based on a "best practices" analysis of the Midtown Manhattan Community Court and the Philadelphia Nuisance Night Court, the report recommended further study of two main models: 1) Same Day/Night Court and/or 2) Next Day Court.

This Committee then directed staff to move "aggressively forward, with the City Attorney's Office being the coordinator of the project." The Committee action included a reporting schedule encompassing the next three meeting cycles as follows:

1. One cycle-May 21: The CCP/SAFE Team shall provide information through the City Attorney's Office for the Committee to decide on a geographic area to use for a pilot project.
2. Two cycles-June 11: Committee to receive a written update from the City Attorney's Office in terms of the stakeholders' involvement (i.e. the courts being a partner, possible location for the court, resource needs and demands on the various departments).
3. Three cycles-June 25: Staff to provide in person update looking at the specific things that would need to be done in order to implement the project this summer.

On May 21, 2003, the City Attorney's Office and CCP/SAFE presented a report, which outlined the type, incidence, and location of livability offenses occurring within the City in order to provide guidance to the Committee in selecting a geographic area to use for a pilot project. At a special meeting of the Public Safety & Regulatory Services Committee on June 2, 2003, the Committee "identified Downtown as the geographic area for a Pilot Project."

On June 11, 2003, the City Attorney's Office provided a written report to this Committee outlining stakeholders' involvement in the Nuisance Night Court proposal, including courtroom staffing and facilities/equipment needs.

On June 25, 2003, The City Attorney's Office provided a written report to this Committee summarizing the visit to observe Philadelphia's Nuisance Night Court and Summary Diversion

Program, estimating staffing and cost requirements of night court/same day or next day court, and outlining next steps and recommendations. The City Attorney's Office was directed to develop "a general idea of the resources needed and the feasibility of initiating a program similar to Philadelphia's Summary Diversion Behavior Class, including a potential Restorative Justice component" and the use of the City's Administrative Adjudication Process on a dual track.

On July 16, 2003, the City Attorney's Office provided this committee with an oral report which briefly analyzed first precinct offenses and dispositions, and discussed of the feasibility of initiating a program similar to Philadelphia's Summary Diversion Behavior Class and possible class referral processes.

On August 13, 2003, the City Attorney's Office provided this committee with a written report that summarized the July 16, 2003 oral report and additionally discussed how several other communities have approached administrative enforcement systems. The City Attorney's Office and the Minneapolis Police Department were directed to develop specific recommendations regarding expanded use of the Administrative Enforcement and Hearing Process as well as a pre-charging diversion process and a post-charging diversion process through the Traffic Violations Bureau; including specific staffing and cost requirements for each process; to outline a proposed curriculum for a Livability Offenses Behavior Class; and to work with the City's IGR staff to pursue the legislative options discussed in the August 13, 2003 report.

On September 17, 2003, the City Attorney's Office provided this committee with a written report outlining the specific steps necessary to expand the use of the Administrative Enforcement and Hearing Process, to develop the Livability Offenses Behavior Class curriculum, implement a pre-charging diversion process and to modify the Traffic Violations Bureau process to allow post-charging diversion. The report also identified important municipal and state legislative changes, as well changes to the Rules of Criminal Procedure necessary to implement the recommendations.

Based upon this committee's recommendations, the City Council approved the expanded use of the use of the Administrative Enforcement and Hearing Process on September 26, 2003. In addition, the City Council introduced the subject matter of the proposed public urination and drug paraphernalia ordinances, and referred the proposed ordinances to this committee for public hearing on October 15, 2003.

### **Summary of Proposed Ordinances**

#### **I. Proposed Public Urination Ordinance (Minneapolis Code of Ordinances, Title 11, Health and Sanitation, Chapter 227.180)**

There currently is not a "public urination" ordinance. People who urinate in public are typically charged with disorderly conduct or indecent exposure. We believe this approach dilutes both of those more serious offenses because it is difficult to tell whether a prior conviction was for public urination, for a bar fight or for indecent exposure (i.e. flashing). Correspondingly, persons who urinate in public will no longer be placed in a position of having to explain that their disorderly conduct or indecent exposure conviction was based a public urination incident. This approach may also provide relief for the overburdened arraignment calendars because public urination charges could be made payable offenses, unlike disorderly conduct and indecent conduct charges that involve mandatory court appearances.

The City Attorney's Office recommends that the City Council enact a new ordinance prohibiting public urination as more fully set forth in Attachment A ("Public Urination Ordinance - Official Language").

II. Proposed Possession of Drug Paraphernalia in a Public Place Ordinance<sup>1</sup> (Minneapolis Code of Ordinances, Title 11, Health and Sanitation, Chapter 223.235).

General possession of drug paraphernalia is a petty misdemeanor. Its possession or use in a public place is injurious to the public welfare and warrants more significant penalties. The City Attorney's Office recommends that the City Council enact a new ordinance prohibiting the possession of drug paraphernalia in a public place as more fully set forth in Attachment B (Possession of Drug Paraphernalia in a Public Place Ordinance - Official Language").

---

<sup>1</sup> Minn. Stat.152.205 expressly grants authority to pass municipal ordinances regarding drug paraphernalia. It reads:152.205. Local regulations

Sections 152.01, subdivision 18, and 152.092 to 152.095 do not preempt enforcement or preclude adoption of municipal or county ordinances prohibiting or otherwise regulating the manufacture, delivery, possession, or advertisement of drug paraphernalia.

As long as the state has not expressly precluded local regulation, there is no conflict when the state regulates a topic and the local government adds additional regulations that provide consequences greater than those already provided. See *City of Duluth v. Evans*, 158 Minn. 450, 452 197 N.W. 737, 737 (1924)(cited in *Hannan v. City of Minneapolis*, 623 N.W.2d 281 (Minn. Ct. App. 2001)(upholding a city ordinance with more severe provisions than the state statute).