Request for City Council Committee Action

Date: July 27, 2005
To: Public Safety & Regulatory Services Committee
Referral to: N/A
Subject: Nuisance Night Hearing Program – Final Report

Recommendation: That the City Council receive and file this report and direct the Minneapolis City Attorney's Office, the Minneapolis Police Department as indicated.

Prepared by: Dana Banwer, Deputy City Attorney - Criminal Phones: 673-2014
Lois Regnier Conroy, Assistant City Attorney 673-5526

Approved by: _____
Jay M. Heffern
City Attorney

Presenters in Committee: Dana Banwer and Lois Regnier Conroy

Financial Impact (Check those that apply)
_X_ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
___ Action requires an appropriation increase to the Capital Budget
___ Action requires an appropriation increase to the Operating Budget
___ Action provides increased revenue for appropriation increase
___ Action requires use of contingency or reserves
___ Other financial impact (Explain):
___ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:
City Goals: Build communities where all people feel safe and trust the City's public safety professionals and systems; promote public, community, and private partnerships to address disparities and to support strong, healthy families and communities.

Background/Supporting Information See attached material.

REPORT TO PUBLIC SAFETY & REGULATORY SERVICES
FOURTH AND FINAL REPORT ON NUISANCE NIGHT HEARING PROGRAM

July 27, 2005

Background

On April 9, 2003, this Committee directed the Minneapolis City Attorney's Office to "work with the Minneapolis Police Department, in consultation with the chief judge of Hennepin County District Court, and others to explore the possibility of creating a nuisance night court, and the feasibility of piloting this program during the summer of 2003."

On May 7, 2003, the Minneapolis 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 Minneapolis 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 Minneapolis City Attorney's Office for the Committee to decide on a geographic area to use for a pilot program.

2. Two cycles-June 11: Committee to receive a written update from the Minneapolis 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 program this summer.

On May 21, 2003, the Minneapolis 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 Nuisance Night Hearing pilot program. 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 Nuisance Night Hearing Program."

On June 11, 2003, the Minneapolis 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 Minneapolis 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 Minneapolis 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 Minneapolis City Attorney's Office provided this committee with an oral report which briefly analyzed first precinct offenses and dispositions, and discussed the feasibility of initiating a program similar to Philadelphia's Summary Diversion Behavior Class and possible class referral processes.

On August 13, 2003, the Minneapolis 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 Minneapolis 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 Minneapolis 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 as changes to the Rules of Criminal Procedure necessary to implement the recommendations.

On September 26, 2003, based upon this committee's recommendations, the City Council approved the expanded use of the use of the Administrative Enforcement and Hearing Process. The City Council directed that, within the first 90 days, the Minneapolis City Attorney's Office:

- Hire permit intake clerk;
- Hire permit administrative clerk;
- Begin process to hire permanent intake and administrative clerks;
- Set up necessary telephone and computer equipment;
- Develop and print administrative citation forms;
- Distribute administrative citation forms;
- Train police officers on administrative citation forms;
- Hold first administrative hearing; and,
- Issue quarterly report to the Public Safety and Regulatory Service Committee regarding the program status.

On October 15, 2003, the City Council introduced the subject matter of the public urination and drug paraphernalia ordinances, and referred the proposed ordinances to this committee for public hearing. The City Council adopted the proposed public urination and drug paraphernalia ordinances on November 1, 2003.

On November 3, 2003, the Minneapolis City Attorney's Office and the Minneapolis Police Department jointly began utilizing the Minneapolis Administrative Enforcement and Hearing Process,[1] by implementing a Nuisance Night "Hearing" Program.[2] Under this program, when a police officer has a reasonable belief that a non-chronic offender in the First Precinct of the Minneapolis Police Department has committed one of the enumerated nuisance ordinance violations, he or she "personally serves" an administrative citation upon the offender. Administrative citations are issued under those circumstances in which an officer currently would not arrest and book the person. The administrative citation includes the date, time, and the nature of the violation; the name of the official issuing the citation; the appropriate civil fine schedule; and instructs the person to contact the intake clerk to request a hearing or confirm the fine amount and arrange payment.

Prior to November 3, 2003, the Minneapolis City Attorney's Office: 1) developed a specific implementation plan with the Minneapolis Police Department, 2) developed and printed administrative citation forms, 3) set up necessary office telephone and computer equipment, and 4) purchased recording equipment for the administrative hearings.

Beginning the week of November 3, 2003, the Minneapolis City Attorney's Office, in collaboration with the Minneapolis Police Department, began conducting eleven group training sessions and several individual training sessions on the Nuisance Night Hearing Program in which 62 police officers and 2 civilians have been trained in the First Precinct. The curriculum for the training included:

1. What enumerated nuisance ordinance violations are eligible for the Nuisance Night Hearing Program;
2. When an officer has a reasonable belief that a non-chronic offender has committed one of the enumerated nuisance ordinance violations;
3. When an officer should arrest and book the offender versus issuing an administrative citation;
4. How an officer completes an administrative citation;
5. How an officer "personally serves" an administrative citation;
6. How an officer enters the corresponding police report into CAPRS;
7. What information the officer should provide to offender upon service of the administrative citation;
8. What the clerk does when contacted by an offender;
9. How the clerk determines the civil fine;
10. What civil fine alternatives the intake clerk can extend to the offender;

[1] This administrative hearing process is outlined in Minneapolis Code of Ordinances, Chapter 2.

[2] Unlike Pennsylvania, the rules of criminal procedure in Minnesota prohibit trials *in absentia* and petty misdemeanor certification without the defendant's consent. See Minn. R. Crim. P. 26.03; Minn. R. Crim. P. 23.04. A Nuisance Night "Hearing" Process will more effectively address these legal limitations than a Nuisance Night Court, especially in light of existing interagency resistance to a Nuisance Night Court.

11. How the administrative hearings will be conducted; and,
12. How the administrative citations will be enforced.

In late December, 2003, the Minneapolis City Attorney's Office and the Minneapolis Police Department began using an interactive database, developed jointly by the Minneapolis Police Department and the Minneapolis Police Department named "Acite", for the Nuisance Night Hearing Program. Acite allows the intake clerk to access an offender's entire administrative file from one desktop application. Acite couples relevant information from each CAPRS report with a Microsoft Access application that contains triaging fields for the disposition process. This database allows multiple users to access the records simultaneously thereby eliminating the need for multiple paper copies of an offender's case. It further allows for a process that is virtually paperless in updating and retaining Nuisance Night Hearing Program records. Acite is also capable of creating limitless query permutations for statistical analysis. Acite allows an intake clerk to perform his or her job duties more efficiently than if the intake clerk used a traditional paper-based case management system. The Acite program is approximately four-times more efficient than a paper-based case management system.

On February 18, 2004, the Minneapolis City Attorney's Office, in collaboration with the Minneapolis Police Department trained the "dogwatch" officers in the Nuisance Night Hearing Program. Dogwatch officers were not originally included in the initial training of First Precinct officers because of the potential budgetary impact to the police department, should individuals cited by dogwatch officers request administrative hearings. Due to the dogwatch officers' schedules, the police department must pay dogwatch officers overtime to attend hearings. Since a very small percentage of offenders have requested hearings, the Minneapolis City Attorney's Office expanded the Nuisance Night Hearing Program to include the dogwatch officers.

Beginning in May of 2004, the Minneapolis City Attorney's Office established a partnership with CCNP's Restorative Justice Program to aid in contacting offenders that had failed to respond to his or her administrative citation. The City Attorney's Office began screening all current unresolved administrative citations and all new administrative citations cases for the CCNP's Restorative Justice Program. Any eligible citations where referred directly to the CCNP's Restorative Justice Program. CCNP's Restorative Justice Program contacts the offender through an "eligibility" letter and, if possible, a telephone call. This contact is in addition to the "failure to respond" letters sent by the Minneapolis City Attorney's Office.[3] During this contact, CCNP's Restorative Justice Program staff explains to the offender that if he or she is interested in the Restorative Justice Program, he or she may complete the program in lieu of the administrative citation fine. The direct contact by the CCNP's Restorative Justice Program has enhanced the Nuisance Night Hearing Program by dramatically increasing the number of offenders selecting this option as a fine alternative. In addition, an offender's community service after the Restorative Justice conference makes a positive contribution to the community.

In October, 2004, the Minneapolis City Attorney's Office and the Minneapolis Finance Department began working together to handle the unpaid debt. At present, the most efficient and cost-effective tool for debt collection is the Financial Information System for the City of Lakes

[3] The Minneapolis City Attorney's Office sends a "failure to respond" letter to all persons who have failed to respond to his or her administrative citation within 20 days. .

(here in after "FISCOL").[4] FISCOL is the City's customized version of the AMS ADVANTAGE 2000 Financial, version 2.2, software and related product. Therefore, the Minneapolis City Attorney's Office creates the FISCOL invoice and the Minneapolis Finance Department oversees the billing process by audit, mailing, receipting, collections and write-offs. FISCOL invoices are sent out monthly. After sixty days, the debt accumulates six percent (6%) interest. After ninety days, the Minneapolis Finance Department refers the debt to a collection agency. The collection agency will work the debt for eighteen months. After eighteen months the debt is returned to City and the debt is then be written off according to City policy. The Minneapolis City Attorney's Office entered over 100 citations into FISCOL, resulting from offenders' failure to respond to a letter indicating that the case is past due.

This report constitutes the fourth and final report on the Nuisance Night Hearing Pilot Program to this Committee.

Update

The Minneapolis City Attorney's Office and the Minneapolis Police Department continued to implement the Nuisance Night Hearing Program. From November 3, 2003 to July 1, 2005, Minneapolis Police officers have issued 269 administrative citations to offenders.

On average, the officers issued far fewer citations from November of 2004 through June of 2005. Specifically, the officers issued 12.8 citations per month from November 3, 2003 through June 30, 2005, compared to 4.5 citations per month from November 1, 2004 through June 30, 2005. This is a decrease of 8.3 citations per month. This decrease may be due to several factors such as the decrease in staffing levels at the First Precinct and a shift in priorities.

The Minneapolis City Attorney's Office and the Minneapolis Finance Department have worked together to handle the unpaid debt. At present, $12,640.00 of debt has been entered into the Financial Information System for the City of Lake (hereinafter "FISCOL").[5] To date, $800.00 has been recovered.

[4] The two primary means for enforcing the administrative citation include seeking a judgment in conciliation court, or referring the debt to a collection agency for recovery. The conciliation court option is no longer a cost-effective means for enforcing the administrative citation because the Hennepin County District Court has recently begun charging governmental agencies a $50 filing fee for filing a conciliation court case. Specifically, it may not be cost effective to pay a $50 filing fee in cases where the administrative citation fine is $80.

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1. Nuisance Night Hearing Outcomes

From November 3, 2003 to June 30, 2005, Minneapolis Police officers issued 269 administrative citations to offenders. One Hundred eight (108) offenders have resolved[6] the citation for a 40.7% of the administrative citations at an average rate of 31 days. The following table outlines the breakdown of the 108 resolved cases by disposition:

	Number of Administrative Citations By Disposition	**Percentage of Administrative Citations By Disposition**
Payment of Fine	52	48.1%
Restorative Justice Program	33	30.5%
Criminal Complaint	11	10.2%
Community Service	5	4.6%
Dismissed[7]	4	3.7%
Administrative Hearing	3	2.7%

[6] A case qualifies as "resolved "if the offender has committed to a resolution by paying at least part of the fine, has chosen and was referred to the Restorative Justice Program or choosing and , has chosen and was referred to a community service partner.
[7] Dismissed denotes a dismissal with no further action.

The following table outlines the breakdown of the 269 administrative citations by ordinance violation:

	Number of Administrative Citations By Offense(s)	Percentage of Administrative Citations By Offense(s)
Begging/ Aggressive Solitication[8] Mpls. Ord. 385.60	13	4.8%
Consuming in Public Mpls. Ord. 364.40	106	39.4%
Drug Paraphernalia In a Public Place Mpls Ord. 223.235	29	10.8%
Graffiti Mpls Ord. 244.495	0	0
Littering Mpls. Ord 427.30	1	0.3%
Loitering Mpls. Ord 385.50 & 364.45	36	13.3%
Lurking Mpls. Ord. 385.80	1	0.3%
Minor Consumption Mpls. Ord. 370.40	4	1.4%
Noise Violation Mpls. Ord. 385.65	1	0.3%
Public Urination Mpls. Ord. 227.180	78	29%

[8] After begging ordinance was ruled unconstitutional by a Hennepin County District Court judge in March, 2004, the Minneapolis City Council enacted a new "Aggressive Solicitation" ordinance.

The following table outlines the breakdown of the 269 administrative citations by ordinance violation and disposition:

	Fine	Restorative Justice	Com-plaint	Comm. Service	Dismiss	Admin. Hearing	Total Resolved	Total Issued	**Percent Resolved**
Begging/ Aggressive Solicitation	0	0	4	0	1	0	5	13	**38.4%**
Consuming in Public	11	11	4	4	2	1	33	106	**31.1%**
Drug Paraphernalia	2	1	3	0	0	1	7	29	**24.1%**
Graffiti	0	0	0	0	0	0	0	0	**0**
Littering	1	0	0	0	0	0	1	1	**100%**
Loitering	10	4	0	0	0	0	14	36	**38.8%**
Lurking	0	0	1	0	0	0	1	1	**100%**
Minor Consumption	1	3	0	0	0	0	4	4	**100%**
Noise Violation	0	0	0	0	0	0	0	1	**0**
Public Urination	32	7	1	1	1	1	43	78	**55.1%**

2. Nuisance Night Hearing Costs and Revenue

The Nuisance Night Hearing Program incurred $7,407.08 of costs and received $5,230.00 in revenue. The following table outlines the costs incurred and the revenue received:

Nuisance Night Hearing Revenue

Fines Paid Directly by Offenders	$4,430.00
Fines Paid by Offenders through FISCOL	$800.00
Total Revenue	$5,230.00[9]

Nuisance Night Hearing Costs

Citation Books[10]	$1,822.57
Recording Equipment for the Hearings[11]	$3,395.00
Administrative Clerk	$2,189.51
Total Costs	$7,407.08

Nuisance Night Hearing Net Revenue

Revenue	$5,230.00
Costs	$7,407.08
Net Revenue	**<-$2,177.08>**

3. Nuisance Night Hearing Quantitative Analysis

In order to assess the success of the Nuisance Night Hearing program, the following table compares the administrative citations in the Nuisance Night Hearing Program to criminal citations in the traditional criminal process.[12] According to the criminal citations statistics, the traditional criminal process resolves 40.1% of the criminal citations at an average rate of 38 days[13].

[9] There is $11,184 in un-recovered debt entered into FISCOL.
[10] One hundred and twenty (120) citation books were printed.
[11] The recording equipment is a one-time start-up cost. The recording equipment included one Advocate recorder, two microphones and two microphone stands.
[12] The criminal citations statistics are based on a control group of 93 randomly selected criminal cases. These criminal citations were issued from November 3, 2003 through March 31, 2004. In order to ensure the most statistically reliable control group, the criminal citations also reflect the same portion of offense-type as the administrative citations as of March 31, 2004.
[13] These statistics have remained relatively constant throughout the duration of the program.

The following table compares the outcome of the criminal citation versus the administrative citation:

	Criminal Percentage of Resolved Citations	**Administrative** Percentage of Resolved Citations
Payment of Fine or Community Service versus Plea of Guilty	22.6%	26.9%
Restorative Justice Program	1.0%	17.6%
Criminal Complaint	N/A	11.1%
Criminal Trial versus Administrative Hearing	0	1.8%
Dismissed[14]	17.2%	2.7%

The administrative citations for the Night Nuisance Hearing Program have a greater percentage of cases that reach a resolution than the traditional criminal process: 38.6% for administrative citations as compared to 22.6% for criminal citations. In addition, the administrative citations have a 1900% greater referral process to CCNP's Restorative Justice Program than criminal citations. The administrative citations have a substantially lower dismissal rate[15] than criminal citations. Finally, the administrative citations have a better disposition rate of 31 days versus 38 days for the criminal citations.

While the Night Nuisance Hearing Program quantitatively performs better than the traditional criminal process, qualitatively, the costs for implementing this program are greater than the criminal process. This is due, in part, to the internal structure of the Minneapolis City Attorney's Office and the Minneapolis Police Department. The City does not have a parallel structure to efficiently process citations in the same manner that the Court can process a traditional case. Therefore, the program has required implementation costs, as well as, a substantial amount of time from an Assistant City Attorney and a Legal Typist to maintain the program. Moreover, the program has not remained revenue neutral. The program has incurred more cost than revenue collected.

During the extension of the Nuisance Night Hearing Pilot Program, the Minneapolis City Attorney's Office and the Minneapolis Police Department have assessed the feasibility of creating a hybrid of the Nuisance Night Hearing Program that utilizes the criminal citation process in tandem with a pre-court diversion option and referral to CCNP's Restorative Justice Program. Specifically, the Minneapolis City Attorney's Office and the Minneapolis Police Department, in collaboration with the University of Minnesota Police Department, created a program known as The Minor Consumption Diversion Program. From October 1, 2004 through December 30, 2004,

[14] Dismissed denotes a dismissal with no further action.
[15] A percentage cannot be calculated for the difference between criminal dismissal rate and the administrative dismissal rate since the administrative dismissal rate is zero.

Minneapolis police officers and University of Minnesota police officers issued 116 Minor Consumption Diversion Program notices. Of the 116 cited persons, 38% of the persons successfully completed the Minor Consumption Diversion Program. Successful completion included the following:

- called the Restorative Justice Program and expressed interested in the program;
- enrolled in the program;
- attended a community conference;
- completed 8-16 hours of community service; and,
- have not re-offended.

The Minor Consumption Diversion Program has a greater percentage of cases that reach a resolution than the traditional crime process: 38.0% for the diverted cases as compared to 22.6% for criminal citations. In addition, the diverted cases have a substantially greater referral rate to CCNP's Restorative Justice Program since the cases are directly referred to the Restorative Justice Program. In addition, the cost of the program has been limited to the printing of the notices. Finally, there is no separate structure needed to track these cases since any case that is diverted is tracked by CCNP's Restorative Justice Program, and any case that is not diverted is tracked by the Hennepin County criminal justice system.

Conclusions

The Nuisance Night Hearing Pilot Program was developed in response to the City Council's desire to encourage the criminal justice system to better address livability offenses plaguing the City's neighborhoods. While initially resistant to making changes in the District Court structure that might provide relief to the City, the District Court has recently made changes that, while still new, show promise in terms of handling low level livability offenses. Some of the changes include: 1) in custody and out of custody arraignments on livability offenses are handled by Judge Hopper in community court; and 2) a bail schedule has been reinstated for individuals who commit misdemeanor livability offenses. In addition, recent changes (Community Attorneys in all police precincts, greater use of restorative justice programs, booking and identification of livability offenders, etc.) in how both the Minneapolis City Attorney's Office and the Minneapolis Police Department handle livability offenses have contributed to a greater emphasis on holding offenders accountable. These changes, combined with a less than successful Nuisance Night Hearing Pilot Program demonstrate the need to refocus our collective energies on a program that may be more successful.

Recommendations

Based on the above, we recommend that the City Council:

1) Receive and file this report;

2) Direct the Minneapolis City Attorney's Office and the Minneapolis Police Department to end the Nuisance Night Hearing Pilot Program; and,

3) Direct the Minneapolis City Attorney's Office and the Minneapolis Police Department to adapt the Nuisance Night Hearing Pilot Program to a program similar to the Minor Consumption Diversion Program, for livability crimes in the First Precinct.