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January 27, 2004

Councilmember Larry Reid and Members
Public Safety Committee
Oakland City Council

**Re: REPORT AND RECOMMENDATIONS ON THE IMPLEMENTATION
OF THE "PUBLIC NUISANCE ORDINANCE" AND THE "NUISANCE
EVICTION ORDINANCE"**

Councilmember Reid and Members of the Committee:

On November 4, 2003, the City Council adopted the Public Nuisance Ordinance (PNO) (Ordinance No. 12550 C.M.S.) which amended the Oakland Municipal Code to expand the grounds for administrative public nuisance actions and established the position of a public nuisance Case Manager within the City Manager's Office (CMO).

On December 9, 2003 the Public Safety Committee considered adopting the "Nuisance Eviction Ordinance" (NEO) which would (1) require that rental property owners evict tenants who engage in specified illegal activities on the premises and certain off-premises illegal drug related activity; and (2) authorize the City Attorney to evict rental property owners' tenants in certain circumstances. NEO is envisioned to work in a complementary fashion with the PNO.

On December 9, 2003 the Public Safety Committee asked staff to return in January 2004 with recommendations for implementing the PNO and the NEO, including recommendations to fund the new activities and the staff positions required for those activities.

We recommend that the Case Manager oversee the implementation of both ordinances, and that a series of fees and civil penalties be adopted to encourage compliance and defray administrative and legal costs associated with implementation. With City Council direction, staff will prepare amendments to the Master Fee Schedule. The City Attorney has prepared amendments to the NEO to authorize the proposed additional fees and penalties; the ordinance is being heard in a separate agenda item.

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FISCAL IMPACT

We estimate that the cost of funding the new Nuisance Enforcement Unit in the City Manager's Office would be approximately \$300,000 per year. Included in this amount are a Case Manager, administrative support, City Attorney hours and office costs.

It is estimated that the PNO and NEO fees and penalties described in this report will cover the costs of the Nuisance Enforcement Unit.

BACKGROUND

Public Nuisance Ordinance

At the request of Council President De La Fuente and Councilmember Quan, a team comprised of Council Aides, the City Attorney's Office, the Neighborhood Law Corps, and the Oakland Police Department developed ordinance amendments, known as the Public Nuisance Ordinance (PNO), to better address nuisance properties in the City of Oakland. The City Council adopted the Ordinance on November 4, 2003.

Complaints of property-related nuisance activities are submitted to the City through several different avenues, including the Mayor, Council members and their aides, City departments and agencies--such as CEDA, Code Enforcement, and OPD Beat Health--and Neighborhood Law Corps attorneys. Additionally, City inspectors and public safety officers such as police and fire personnel in the field observe property-related nuisances in the course of their work. Currently, when there is substantial, current evidence of criminal or other public nuisance activity in relation to a particular property, an action for injunctive relief can be filed for abatement. When property owners agree to comply with the City's demands, these actions can be settled expeditiously.

There are numerous cases, however, in which some evidence of nuisance activity exists but further investigation is needed; in which community members may be reluctant to testify in court but would testify in a more informal setting; in which previously cited owners become repeat offenders and cases which simply need a more expeditious process than currently available in the courts. The PNO expanded the grounds for administrative public nuisance actions and established the position of a public nuisance Case Manager within the City Manager's Office (CMO).

Nuisance Eviction Ordinance

Pursuant to Councilmember Reid's request, the City Attorney's Office drafted a Nuisance Eviction Ordinance (NEO) that would require (1) that rental property owners evict tenants who engage in (a) specified illegal activities on the premises and (b) certain off-premises illegal drug related activity; and (2) authorize the City Attorney to evict rental

property owners' tenants in certain circumstances. The ordinance is being heard again in the Public Safety Committee concurrently with this report.

The Nuisance Eviction Ordinance (NEO) proposes to give the City additional tools to address the situation of illegal activity by tenants on and around rental property. It does this in several ways:

- NEO requires a landlord to bring an eviction action against a tenant who commits certain illegal activities on the rental property or for illegal drug activity occurring off-premises;
- For landlords who may have concerns for their safety and/or the safety of others should the landlord attempt to evict a tenant engaged in illegal activity, the landlord may request assignment of the eviction cause of action to the City Attorney to carry out the eviction, with the landlord bearing the eviction costs;
- The City may cite a landlord for maintaining a nuisance if the landlord fails to bring an eviction action against a tenant after being apprised by the City that the tenant has engaged in illegal activity.

On December 9, 2003 the Public Safety Committee asked staff to return in January 2004 with recommendations for implementing the PNO and the NEO, including recommendations to fund the new activities and the staff positions required for those activities.

PROGRAM DESCRIPTION

Implementation of the PNO and NEO is expected to positively impact the quality and value of Oakland neighborhoods by reducing and eliminating the number of nuisance properties and tenants engaging in illegal activities that negatively impact and influence the neighborhoods. It is also expected to reduce the negative impacts of illegal activity such as additional vehicle traffic, criminal gangs, loitering, fear, gun possession, etc., and will assist in achieving safe, attractive neighborhoods for all Oakland residents.

In order to implement the PNO and potentially the NEO, the City must develop administrative processes to harness nuisance and eviction cases and route them through the most expeditious process to abatement. The PNO authorized a Case Manager to review and oversee the disposition of the PNO cases. The Case Manager could handle the NEO cases as well.

Working with a team from Beat Health, Code Enforcement and the City Attorney's office, the Case Manager would review and evaluate PNO cases; determine the proper abatement strategy; issue notices levying fees and penalties; coordinate and direct City resources to abate or collect evidence for an administrative hearing; establish and participate in the case defense; participate in negotiating settlements or provide court testimony.

For the NEO, the Case Manager, again working with OPD and the City Attorney's office, would evaluate arrest records and collect reports and other evidence; issue and follow up on notices to evict; and issue citations.

Between the PNO and NEO, the Case Manager and the Nuisance Enforcement Unit could be reviewing hundreds of reports per year, resulting from the expanded authority contained in the new ordinances. The Case Manager will need strong skills in administration, negotiation, investigation, and teamwork, as well as familiarity with nuisance law.

The proposed Nuisance Enforcement Unit would be a clearing house for and enforcer of streamlined methods to eliminate nuisance activities on private property in Oakland. Both the PNO and NEO rely on evaluation of evidence from other City Agencies, particularly Police, in coordination with the City Attorney's Office. Staff from the Police Department, Code Enforcement, City Attorney's office, and City Manager's office have collaborated in preparing these recommendations.

Public Nuisance Ordinance Cases

The PNO expands the grounds for administrative public nuisance actions to include the illegal sale, use or possession of controlled substances or other illegal drugs and substances; the illegal possession, use or sale of firearms, public urination or defecation; acts of violence affecting the community, neighborhood or considerable number of people; illegal discharge of a firearm or explosives; the making of loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood; intentional obstruction of pedestrians or vehicular traffic in the public right-of-way; the solicitation or occurrence of prostitution; illegal gambling; unlawful activities of a criminal street gang; drug loitering; the presence of unregistered vehicles or improperly stored, inoperative, wrecked, or dismantled vehicles on property and any activities or conduct that are detrimental to the protection, health, safety and general public welfare of the residents of the city. Currently, the City may seek abatement of nuisance properties, particularly those with illegal drug activity through nuisance-based litigation or through an administrative process designed to obtain abatement through civil penalties and/or citations.

With the expanded authority under the new PNO, it is unclear exactly how many new administrative and court cases will surface to be handled by the Nuisance Enforcement Unit. However, based on the list of nuisances above, the new caseload could be much larger than the current one. Currently the Beat Health Unit of the Oakland Police Department processes Drug Nuisance Abatement cases, which most closely resemble the cases that the Nuisance Unit would handle. With Beat Health now generating up to 10 court cases per year, we estimate that the Nuisance Enforcement Unit could generate up to 15-20 cases annually. In these cases the costs for the Case Manager and City Attorney hours, as well as potential penalties of \$1,000 per day, would be invoiced to the property owner. Further it is estimated that five cases annually may become court cases in which

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costs are recoverable. An allowance has been made in the budget estimates for uncollectible penalties.

In addition, approximately 50 of the 200 Drug Nuisance Abatement letters now sent annually by Beat Health are sent to repeat offenders, i.e., property owners who have previously received letters. We recommend that the Nuisance Enforcement Unit charge these property owners as repeat offenders an estimated fee of \$2,000. Staff recommends that a Nuisance Repeat Offender fee be established in the Master Fee Schedule.

Nuisance Eviction Ordinance Cases

The NEO would require (1) that rental property owners evict tenants who engage in (a) specified illegal activities on the premises and (b) certain off-premises illegal drug related activity; and (2) authorize the City Attorney to evict rental property owners' tenants in certain circumstances.

In 2002 OPD arrested nearly 400 people for drug offenses at their home addresses. We estimate that at least 200 could have resulted in tenant eviction letters per the NEO. We believe that some of the costs for the investigations and letters, estimated at \$300 each, are recoverable through a Nuisance Eviction Letter fee in the Master Fee Schedule. The proposed NEO is amended so that landlords can be charged for the costs of investigation whenever a notice to evict a tenant is sent to a landlord. The City Attorney's Office would perhaps handle the evictions for five of the 200 cases. In addition, it is anticipated that five of the 200 cases would result in the City issuing citations for civil penalties for multiple violations or where a landlord fails to bring an eviction action against the tenant. City costs in most of these cases would be recoverable.

CONCLUSION AND RECOMMENDATIONS

We recommend that the City Council accept this proposal for implementation of the PNO and the NEO, should it be adopted, by establishing a series of fees and civil penalties to support the Nuisance Enforcement Unit in the City Manager's office. The proposed fees will become a deterrent to nuisance activity in Oakland. They will also serve as a mechanism for the City to recover its costs from those who create or allow the nuisances to exist.

Public Nuisance Ordinance: Summary of proposed fees and civil penalties

- \$2,000 per case Repeat Offender fee (50 letters estimated)
- \$3,000 per case Fees for administrative cases
- \$1,000 per day Civil Penalty for non compliance
- \$17,200 per case Documentation and investigation fees for Court Cases

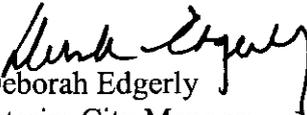
Nuisance Eviction Ordinance: Summary of proposed fees and civil penalties

- \$300 per case Documentation fees
- \$3,000 per case Handling the eviction

- \$2,500 per case Administrative costs for Civil Penalty citation
- \$500 per case Attorney fees for Civil Penalty citation

We request that the City Council review and comment on the proposed Nuisance Enforcement Unit and its implementation of the PNO and the NEO, should it be adopted, through fees and civil penalties. If accepted, staff will refine the schedule of fees and penalties and prepare the necessary amendments to the Master Fee Schedule for Council's consideration.

Respectfully submitted,


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