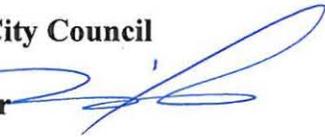




CITY OF
HAYWARD
HEART OF THE BAY

MEMORANDUM

DATE: October 29, 2013
TO: Mayor and City Council
FROM: City Manager 
SUBJECT: Item 3 on 10/29/13 Agenda: Proposed Social Nuisance Ordinance

The City conducted an outreach meeting on October 18, 2013, to follow up on questions posed at the October 1 Council work session. The Rental Housing Owners Association (RHA), representing the interests of landlords, raised a number of questions and concerns in the outreach meeting. Subsequent to the meeting, RHA submitted a list of twenty-four questions, concerns and suggestions to the City Attorney's Office (Attachment I).

The City Attorney's Office has reviewed and analyzed RHA's list of concerns, and attached is a point-by-point response (Attachment II). The City Attorney found merit with several concerns, as the analysis indicates. As to Concern 11, the proposed ordinance includes language responsive to RHA's concern. As to Concerns 3, 7, 12 and 18, the City Attorney has drafted language responsive to RHA's concerns (Attachment III), and it is recommended that Council adopt said language if a decision is made to introduce the proposed ordinance.

A copy of this memo and the attachments are being sent to RHA.

cc: City Attorney
Chief of Police
City Clerk

Attachments: Attachment I (RHA e-mail to City Attorney's Office)
Attachment II (City Attorney's analysis)
Attachment III (Suggested changes to proposed ordinance)

OFFICE OF THE CITY MANAGER

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ATTACHMENT I

Submitted via email to:

Rafael E. Alvarado Jr.
Assistant City Attorney
Hayward City Attorney's Office
777 B Street
Hayward, CA 94541

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Section 3-14.04 Application

SEC. 3-14.04 APPLICATION. The provisions of this ordinance shall apply generally to all property, whether owner occupied or rental, throughout the City of Hayward wherein any of the nuisances hereinafter specified, are found to exist. A criminal conviction is not required for establishing the occurrence of a nuisance violation pursuant to this ordinance. The provisions of this ordinance shall not apply to activities which constitute a bona fide exercise of constitutional rights.

This section states that a criminal conviction is not necessary to establish a nuisance violation. A later section states that the standard is "preponderance of the evidence." "Preponderance of the evidence" is a lower standard that what might be required for an eviction. We recommend a standard that will be more helpful in the unlawful detainer process. Perhaps "clear and convincing" to be the standard.

3-14.08 Penalties/Enforcement

SEC. 3-14.08 PENALTY FOR VIOLATIONS; ENFORCEMENT.

- a) The administrative enforcement described in this ordinance notwithstanding, the city attorney may bring a civil action for injunctive relief and civil penalties against any owner who violates this ordinance.
- b) Any person affected by a public nuisance described in this ordinance may bring a civil action for injunctive relief and damages against any owner who violates this ordinance.
- c) In any civil action brought pursuant to this ordinance, the court may award reasonable attorneys fees and costs to the prevailing party.

Subsection (a) only authorizes civil action against owner, not tenant. It should also allow for action against tenants.

Subsection (b) This allows an "affected" person to bring an action for public nuisance. Our understanding is that for a public nuisance claim an individual must be specially affected by the nuisance. We are not sure this is a principal that can be changed in a local ordinance. Please explain

Subsection (c) Prevailing party provision for attorney fees in a civil action. This creates incentive for eviction delay tactics and can create problems with ordinance compliance and as a result. It can exponentially increase the cost of an unlawful detainer case if held over for a jury trial. This is problematic and could cause serious consequences for an owner attempting to act in good faith.

Section 3-14.13 Administrative Expenses

SEC. 3-14.13 ADMINISTRATIVE EXPENSES. "Administrative expenses" shall include, but not be limited to:

- a) The costs associated with any hearings before a hearing officer.

RHA Comments Specific to the language in Hayward's proposed – Social Nuisance Behavior Ordinance

b) City's personnel costs, direct and indirect, incurred in enforcing this article and in preparing for, participating in or conducting any hearings subject to this article, including but not limited to attorney's fees.

c) The cost incurred by the city in documenting the safety violations, including but not limited to, the actual expense and costs of the city responding to the safety violation(s); investigating and enforcing statutory crimes related to the safety violation, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, administrative citations, and orders.

This is a very detailed list of expenses that will vary tremendously from one matter to another. If the City plans to charge this as a fee (without it getting passed as a tax), they will probably have to calculate it individually for each owner. Any standard amount is going to either be insufficient or be too large and therefore not really a "fee."

Section 3-14.14 Public Nuisance

SEC. 3-14.14 PUBLIC NUISANCE. It is hereby declared a public nuisance and a violation of this ordinance for an owner or tenant of any premises in this City to permit those premises to be used in such a manner that any one or more of the activities described in the following subsections are found to occur and to occur repeatedly thereon:

f) The frequent gathering, or coming and going, of people who have an intent to purchase or use controlled substances on the premises.

j) The creating or causing to be created any unreasonable noises which disturbs the peace, quiet, and comfort of the community, or any portion thereof.

k) Allowing the occupancy load to exceed the permitted number within a public assembly, as established by the California Building Code, when alcohol and/or drugs are being consumed or accessible to the gathering;

This requires a violation to "occur repeatedly." How many times is that? In what span of time? Needs to be more concise.

Subsection (f) should say "illegally use controlled substances." What status would medical marijuana use have under these provisions?

Subsection (j) "unreasonable noises which disturb... the community, or any portion thereof." How many people need to be disturbed? Does an individual/habitual caller to the Police department constitute a public nuisance? (Say, a cranky neighbor?) Is there an objective plan to deal with this?

Subsection (k) Is it a nuisance to illegally overcrowd a place in the absence of alcohol or drugs? What does "accessible to the gathering mean"? Review terms and clarify in ordinance.

Section 3-14.15 Courtesy Notice

SEC. 3-14.15 COURTESY NOTICE.

a) To commence enforcement of this ordinance, the city manager shall notify the property owner of the occurrence of a nuisance violation on the owner's property. The city manager shall communicate with the owner to request that the owner voluntarily cooperate with the city to abate the nuisance. The city manager may concurrently give notice thereof to the property manager where applicable.

b) The city manager shall also concurrently give written notice to the tenants, where applicable, identifying the nuisance violations.

c) The courtesy notice shall contain the following information:

RHA Comments Specific to the language in Hayward's proposed – Social Nuisance Behavior Ordinance

- 1) The street address where the nuisance violation is occurring.
- 2) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance.
- 3) A statement that the tenant(s) have the right to contest the allegations of nuisance at an informal meeting with the city manager as described in subsection (d). The request for meeting with the city manager must be made within fifteen (15) calendar days of the initial notification. Notice to the tenant or unit need not be given when the city manager determines that doing so would endanger persons or compromise an ongoing police investigation.
- d) The city manager shall hold an informal meeting pursuant to subsection (c)(3) no later than fifteen (15) calendar days after the tenant's request. At the meeting, the tenant shall be given the opportunity to demonstrate that he or she is not causing a nuisance. The city manager shall mail copies of a letter describing the results of the informal meeting to the tenant and the property owner.
- e) The Courtesy Notice shall be served in the manner prescribed by Section 3-14.24.
- f) An "Order to Abate" shall not be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to city communications and requests, active professional property management, taking steps to repair physical conditions which contribute to the nuisance, and utilizing any and all legal remedies to abate and/or remedy the nuisance.

The first step in enforcement is a "courtesy notice" to the owner, manager and tenant—where applicable. When is notice to the tenant(s) "applicable?" Does notice go to the violating tenant or to all tenants?

Subsection (c)(2) The statement contains information about the offense, but it is not clear whether any of it would take the form of something the owner could use as evidence in an unlawful detainer, such as police reports, statements from other tenants, etc. Please clarify to include documents that could be used by the owner in the unlawful detainer process, such as police reports, statements from other tenants, etc.

Subsection (c)(3) describes the process for the tenant to contest the allegation of nuisance. There is no process for the owner to challenge the owner's alleged violation at this stage. There is also no process for the owner to be involved in the tenant's hearing, even though the owner may have relevant evidence and there is no mechanism to provide that to the City. Modify to include both.

Subsection (d) should provide for notice to the owner when tenant establishes s/he is not causing a nuisance. Modify to include proper notice to owner when tenant is found not be causing nuisance

Subsection (f) states that an order to abate will not be issued if the owner is making good faith efforts, however, there is no time period for compliance with the courtesy notice or a specific process to verify it. Please be more specific.

Section 3-14.16 Order to Abate

SEC. 3-14.16 ORDER TO ABATE – CONTENT. The Order to Abate shall contain:

- a) The street address where the nuisance violation is occurring.

RHA Comments Specific to the language in Hayward's proposed – Social Nuisance Behavior Ordinance

- b) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance, and reasonable actions which the city manager orders the owner to take to abate the nuisance.
- c) A statement advising the owner to abate the nuisance within thirty (30) calendar days of mailing of the Order to Abate, or such longer time as the city manager may order. An extension of time to abate the nuisance shall be granted if the owner is making good faith efforts to abate the nuisance and those efforts are delayed due to judicial proceedings relating to the property.
- d) A statement advising the owner that he or she has the right to request a hearing to contest the Order to Abate.
- e) A statement advising the owner that an administrative penalty in an amount not to exceed five thousand dollars (\$5000.00) shall be imposed upon the owner and made a lien/special assessment on the property involved if the nuisance is not abated as required by the Order to Abate and no written request for hearing is filed within thirty (30) days of receipt of the Order to Abate.

Subsection (c) provides that an owner may get an extension if his good faith efforts are delayed due to judicial proceedings. This is the only permissible grounds for an extension. There are other grounds that would be also appropriate, such as correcting building code violations that may take longer than 30 days depending on the severity of the problem. Modify to accommodate other reasonable delay causes as cited above.

Subsection (e) states that there will be a penalty assessed unless the owner has complied with the order or has requested a hearing. It is not clear what happens if the owner has been granted an extension. Is that still compliance with the order? Please clarify in ordinance.

Section 3-14.18 Order to Abate – Fee

SEC. 3-14.18 ORDER TO ABATE – FEE. In addition to administrative penalties, the city may impose a fee on the owner of any property for which an Order to Abate is issued pursuant to this ordinance. The fee shall be calculated to recover any and all administrative expenses incurred by the city. The fee shall be a personal obligation of the owner and a lien/special assessment against the property which is the subject of the Order to Abate. Any fee not paid within the time specified shall be recovered pursuant to Section 3-14.35 – 3-14.39 of the Hayward Municipal Code.

Depending on how much the city charges and for what– this may not be valid. That is a question of how ordinance is implemented.

Section 3-14.18

SEC. 3-14.18 CITY MANAGER'S REVIEW OF COMPLIANCE. After the time for abatement set forth in the Order to Abate has expired, the city manager shall determine whether the owner has taken action ordered by the city manager and whether the nuisance has been abated. If the city manager determines that the owner has complied with the city manager's order and the nuisance has been abated, the owner and any tenants other than the owner shall be notified in writing of such determination and the administrative action shall be suspended. If the city manager suspends the administrative action, he/she may continue to monitor the property and activity associated with it. If the city manager determines that the nuisance activity recurs and/or the owner has failed to comply with the previously issued Order to Abate within eighteen months (18) of suspension of the case, the city manager may impose an administrative penalty as provided in Section 3-14.20.

What does "any tenants other than the owner" mean? Please clarify

Section 3-14.20(c)

c) No owner shall pass on to tenants penalties incurred pursuant to this ordinance.

Does this prohibition on pass-through's mean that if the tenant is clearly the cause of the nuisance and when the tenant is evicted the City is satisfied that the nuisance has been abated, the owner cannot recover damages from the tenant, to reimburse the owner for the "administrative fee" that was only necessary because of the tenant's conduct? That does not seem reasonable.

Hearing Rights – Section 3-14.21 and following

There is no hearing process available to the owner at the "courtesy notice" stage. Making this available at this stage might also create the dialogue desired and provide due process. Please modify.

Section 3-14.25

SEC. 3-14.25 HEARINGS - GENERALLY. At the time set the hearing officer shall proceed to hear the testimony of city staff, the owner, any tenants, and other persons regarding the nuisance-creating behaviors on the premises and the steps necessary to abate the nuisance, the imposition of an administrative penalty or any fee imposed.

If the owner asks for a hearing can tenants be compelled to attend? Include in ordinance.

Section 3-14.29

c) Any relevant evidence shall be admitted if it is of the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

Subsection (c) defines rules of evidence for these hearings that contradict the state Evidence Code. This may be a violation of an owner's due process rights, as well as preempted by state law. How would this work? An owner could be found liable for a nuisance caused by a tenant on evidence that would not be admissible if the owner tries to evict the tenant. What if the owner seeks judicial review of the administrative action? Does this change the rules of evidence for the California Superior Court? Please address specifically in your response or modify to clarify.

Section 3-14.32

a) If it is shown by a preponderance of evidence that behaviors occurring on the premises constitute a public nuisance and that the owner of the premises has not taken adequate steps to abate the nuisance as prescribed by the city manager, the hearing officer shall issue a written decision declaring the premises a public nuisance. The hearing officer may order the owner to take such action the hearing officer deems appropriate to abate the nuisance. The actions ordered shall be reasonable and may include, but shall not be limited to:

- 1) Provision of additional exterior lighting;
- 2) The posting of security personnel on the premises;
- 3) Installation of appropriate fencing;

4) Posting of signs on the premises, and provisions in rental applications and agreements, which state that nuisance-creating behaviors on the premises, including but not limited to the nuisance-creating behaviors identified in this ordinance, shall be grounds for eviction;

Subsection (a) (4) The provision regarding what should be in an application or rental agreement is vague. What are "nuisance creating behaviors" other than the ones listed in the ordinance? Vague contracts can create liability. Please clarify.

c) The hearing officer shall not have the authority to order that the owner evict a tenant or any other person from the premises.

Subsection (c) While the hearing office can't order owner to evict, they should at least offer that as a range of options, because it will help the owner do it. Please include.

h) The decision of the hearing officer shall be final. Any person aggrieved by the administrative decision of a hearing officer may seek judicial review, as specified in Section 3-14.34.

Subsection (h) "any person aggrieved" may seek judicial review. Does this include people who were not the subject of the abatement action? Like for example, the tenant? Please clarify.

Section 3-14.35 Notice of Lien

SEC. 3-14.35 NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid inspection fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

Who are all "applicable" owners? Please clarify.

Section 3-14.36

SEC. 3-14.36 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing by written request within 10 days of receipt of the notice of lien/special assessment. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by any person liable to be charged for the work of abating cited code violations and related charges associated with their property. The city manager shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the hearing officer may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the hearing officer, including inspection charges and administrative expenses shall, after being confirmed by the city council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to judicial review shall be governed California Code of Civil Procedure Section 1094.5.

Does the second to last sentence mean that there is a lien while the hearing is going on? Please clarify.

ATTACHMENT II

Comment/Concern No. 1:

Section 4-15.04 (Application): RHA recommends using a “clear and convincing” standard to establish a violation of the Social Nuisance Ordinance (herein “Ordinance”).

Response: The use of the “preponderance of the evidence” standard in the Ordinance is in harmony with the evidentiary standard applicable to civil actions, including unlawful detainer actions. A standard of “clear and convincing” is more akin to the standard used in criminal cases (“proof beyond a reasonable doubt”) and conflicts with the intent of the Ordinance to address violations that may fall short of criminal prosecution.

Comment/Concern No. 2:

Section 4-15.08 (Penalties/Enforcement): RHA recommends adding language to authorize the City Attorney to bring actions against tenants who engage in the nuisance-creating behaviors. The Ordinance currently authorizes the City Attorney to bring an action against a property owner who violates the Ordinance.

Response: The purpose of the Ordinance is to enforce minimum standards relating to the management of all properties in Hayward and creates a process for addressing property owners who allow continued nuisance behaviors to occur on their property. The City Attorney having authority to bring an action against the property owner effectuates this purpose. Additionally, the City has the inherent authority to bring an action against a tenant for a violation of the municipal code.

Comment/Concern No. 3:

Section 4-15.08 (Penalties/Enforcement): RHA is concerned that the Ordinance allows any “affected” person to bring a civil action against a property owner who violates the Ordinance. RHA requests that only a person “specially affected” by the nuisance should be allowed to bring an action.

Response: City staff will propose amended language at the City Council meeting. In order to maintain consistency through the Ordinance, the terms “any person aggrieved” will be added to Section 4-15.08(b).

Comment/Concern No. 4:

Section 4-15.08 (Penalties/Enforcement): RHA is concerned that the attorney fees provision will encourage delay tactics in eviction proceedings and thwart compliance with the Ordinance.

Response: The Ordinance authorizes a Superior Court judge to award attorney fees to a prevailing party in a civil action: (1) by the City Attorney against the property owner in violation of the Ordinance; and (2) by a person affected by a public nuisance against a property owner in violation of the Ordinance. The attorney fee provision is not applicable to an unlawful detainer action between a landlord and a tenant.

Comment/Concern No. 5:

Section 4-15.13 (Administrative Expenses): RHA is concerned that the imposition of administrative expenses should occur on a case-by-case basis and should not be imposed as a standard figure applicable in all cases.

Response: The Ordinance authorizes the City to recover any administrative expenses arising from enforcement of the Ordinance. The administrative expense is calculated on a case-by-case basis and depends on the actual expense and costs of the City responding to safety violations.

Comment/Concern No. 6:

Section 4-15.14 (Public Nuisance): RHA questions and comment – “This [Public Nuisance definition] requires a violation to ‘occur repeatedly.’ How many times is that? In what span of time? Needs to be more concise.”

Response: The purpose of the Ordinance is to put in place a remedy for the City to take administrative action against property owners who fail to abate chronic nuisance behaviors. To that end, the definition of public nuisance states that it is a violation to permit nuisance behavior to “occur repeatedly” on a property.

The Ordinance does not seek to punish first-time offenders, but nonetheless requires the City to issue a “Courtesy Notice” for first time offenses. A second offense within an 18-month period of time results in an “Order to Abate” and the imposition of a monetary penalty.

Comment/Concern No. 7:

Section 4-15.14 (Public Nuisance): RHA comment and question – “Subsection (f) should say ‘illegally use controlled substances.’ What status would medical marijuana use have under these provisions?”

Response: First, City staff agrees the language of subsection (f) can be tightened. City staff will propose amended language at the City Council meeting.

Second, medical marijuana use is regulated by California law and any interpretation of the legality of medical marijuana use is based upon application of state law. The Ordinance does not penalize any person for legal behavior.

Comment/Concern No. 8:

Section 4-15.14 (Public Nuisance): RHA question – “Subsection (j) ‘unreasonable noises which disturb... the community, or any portion thereof.’ How many people need to be disturbed? Does an individual/habitual caller to the Police department constitute a public nuisance? (Say, a cranky neighbor?) Is there an objective plan to deal with this?”

Response: The Ordinance makes it a public nuisance to create unreasonable noises that disturb the peace, quiet, and comfort of the community. The focus is on the repeated existence of unreasonable noises on a property and not the number of people disturbed.

State law addresses the issue of annoying or harassing calls to the police department. California Penal Code 653x makes it unlawful for any person to call the 911 emergency line with the intent to annoy or harass another person. The Hayward Police Department evaluates such matters on a case-by-case basis.

Comment/Concern No. 9:

Section 4-15.14 (Public Nuisance): RHA question– “Subsection (k) Is it a nuisance to illegally overcrowd a place in the absence of alcohol or drugs? What does ‘accessible to the gathering mean’? Review terms and clarify in ordinance.”

Response: Overcrowding alone is not a nuisance behavior under the terms of the Ordinance. In other words, if no drugs/alcohol are involved at an overcrowded assembly, it is not a violation under the Ordinance.

Comment/Concern No. 10:

Section 4-15.15 (Courtesy Notice): RHA question– “The first step in enforcement is a ‘courtesy notice’ to the owner, manager and tenant – where applicable. When is notice to the tenant(s) ‘applicable?’ Does notice go (sic) the violating tenant or to all tenants.”

Response: Where City staff becomes aware of nuisance-creating behavior on a property, the first step in enforcement is the issuance of a “Courtesy Notice.” The Courtesy Notice is issued to the property owner and/or tenant who engages in public nuisance behavior.

Comment/Concern No. 11:

Section 4-15.15 (Courtesy Notice): RHA requests language that allows a property owner to use police reports in an unlawful detainer process.

Response: At the October 18, 2013 public meeting, rental housing stakeholders expressed a similar comment. In response to the comment, City staff created “Section 4-15.34, Access To

Records and Evidence”, which allows a property owner to use enforcement records in any judicial action, subject to any applicable rules of evidence.

Comment/Concern No. 12:

Section 4-15.15 (Courtesy Notice): RHA comments that an owner should (1) be allowed to challenge an owner’s alleged violation of the Ordinance at the “Courtesy Notice” stage; and (2) be notified if tenant successfully challenges a violation at the “Courtesy Notice” stage.

Response: City staff agrees with the comment and will propose amended language at the City Council meeting.

Comment/Concern No. 13:

Section 4-15.15 (Courtesy Notice): RHA comments that the Ordinance should include language identifying the time period for compliance with a “Courtesy Notice.”

Response: The Ordinance does not identify a specific period of time for compliance with a “Courtesy Notice,” but instead identifies the factors that City staff will consider in determining whether an owner is making good faith efforts. The Ordinance allows for flexibility, as some efforts (e.g., taking steps to repair physical conditions which contribute to the nuisance) may take longer than others (responding to City communications).

Comment/Concern No. 14:

Section 4-15.16 (Order to Abate): RHA comments that the Ordinance requires compliance with an Order to Abate to occur within a thirty-day period, but should accommodate extensions.

Response: Section 4-15.16 addresses the specific language to be included in an “Order to Abate.” The section requires an Order to Abate to include “[a] statement advising the owner to abate the nuisance within thirty (30) calendar days of mailing of the Order to Abate, *or such longer time as the city manager may order.* Therefore, the language sets a standard of thirty (30) days for compliances, but provides flexibility to the City Manager to increase the time for compliance where warranted.

Comment/Concern No. 15:

Section 4-15.18 (Order to Abate Fee): RHA comments on the Order to Abate Fee – “Depending on how much the city charges and for what – this may not be valid. That is a question of how ordinance is implemented.”

Response: The Ordinance authorizes the City to recover any administrative expenses arising from enforcement of the Ordinance. The administrative expense is calculated on a case-by-case basis and depends on the actual expense and costs of the City responding to safety violations. The Ordinance provides a definition of the recoverable “administrative expenses” in Section 4-15.13.

Comment/Concern No. 16:

Section 4-15.20 (Notice of Administrative Penalty): RHA question and comment concerning the administrative penalty: “Does this prohibition on pass through’s [of an administrative penalty imposed upon to landlord] mean that if the tenant is clearly the cause of the nuisance and when the tenant is evicted the City is satisfied that the nuisance has been abated, the owner cannot recover damages from the tenant, to reimburse the owner for the “administrative fee” that was only necessary because of the tenant’s conduct. That does not seem reasonable.”

Response: An administrative penalty is imposed upon a property owner only where that owner has failed to comply with an Order to Abate and continues to allow the nuisance creating-behavior to occur on the owner’s property. Therefore, it is the property owner’s behavior that results in the imposition of an administrative penalty. The Ordinance prohibits a landlord from passing this administrative penalty onto a tenant.

Comment/Concern No. 17

Section 4-15.21 (Right to Hearing): RHA comments that [“t]here is no hearing process available to the owner at the ‘courtesy notice’ stage. Making this available at this stage might also create the dialogue desired and provide due process. Please modify.”

Response: The Ordinance provides an informal meeting process at the “Courtesy Notice” stage and a hearing process at the “Order to Abate” stage of enforcement. This creates a progressive enforcement process and provides due process for property owner and tenants.

Comment/Concern No. 18

Section 4-15.25 (Hearings Generally): RHA question – “If the owner asks for a hearing can tenants be compelled to attend? Include in ordinance.”

Response: This is a good point. City staff will propose amended language at the City Council meeting.

Comment/Concern No. 19

Section 4-15.29 (Evidence Rules): RHA comments that the Ordinance “defines rules of evidence for [administrative] hearings that contradict the state Evidence Code.”

Response: The Ordinance provision regarding administrative hearings do not conflict with the state Evidence Code. Municipalities are not preempted from creating administrative hearing rules that expand the categories of evidence to be considered by a hearing officer.

Comment/Concern No. 20

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(4) authorizes a hearing officer, after the hearing officer determines a nuisance exists on a property, to order a property owner to include “provisions in rental applications and agreements, which state that the nuisance-creating behaviors on the premises, including but not limited to the nuisance-creating behaviors identified in this ordinance, shall be grounds for eviction.” RHA has expressed concern that this language is vague and can create liability for property owners.

Response: It is not uncommon for rental agreements to contain terms prohibiting nuisance behavior on premises. For example, the California Association of Realtor provides a model lease form widely used by landlords throughout the state of California. A provision in the existing model lease form prohibits nuisance behaviors on property. The Ordinance authorizes a hearing officer to augment existing language to warn tenants that a violation of the Ordinance is grounds for eviction.

Comment/Concern No. 21

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(5) restricts a hearing officer from ordering a property owner to perform an eviction. RHA comments that [w]hile the hearing officer can't order owner to evict, they should at least offer that as a range of options, because it will help the owner do it. Please include.

Response: Although a hearing officer may not order a property owner to perform an eviction for violations of the Ordinance, a hearing officer is permitted to consider an unlawful detainer action as a sign of a property owner's good faith effort to comply with the Ordinance.

Comment/Concern No. 22

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(h) authorizes “any person aggrieved” by a hearing officer's decision to seek judicial review. RHA question seeking clarification of who may seek judicial review.

Response: Under the Ordinance, any aggrieved person includes the property owner and/or the tenant.

Comment/Concern No. 23

Section 4-15.35 (Notice of Lien): Section 4-15.35 requires the City to provide “all applicable owners” notice prior to placing any liens or special assessments against the property. RHA question – “Who are all ‘applicable’ owners? Please clarify.”

Response: The Ordinance defines the term “owner” as “any person, persons, organizations, or legal entity owning property as shown on the last equalized assessment roll for City taxes.”

Comment/Concern No. 24

Section 4-15.36 (Lien/Special Assessment Hearing): Section 4-15.36 allows a property owner to contest a potential lien/special assessment at a lien/special assessment hearing. RHA requests clarification about whether a lien is placed on a property during the lien/special assessment hearing process.

Response: A lien or special assessment is placed on a property only after a property owner has been provided his or her right to a lien/special assessment hearing and the lien/special assessment is confirmed by the City Council. Only then is a lien/special assessment sent to the County for collection on the property tax roll.

ATTACHMENT III

AMENDED LANGUAGE:

- Strikethrough is a deletion
- Underline is an addition

Section 4-15.14(f) (Public Nuisance): The amended language will read –

Any person ~~affected~~ aggrieved by a public nuisance described in this ordinance may bring a civil action for injunctive relief and damages against any owner who violates this ordinance.

Section 4-15.14(f) (Public Nuisance): The amended language will read –

The frequent gathering, or coming and going, of people who have an intent to engage in the illegal purchase or illegal use of controlled substances on the premises.

Section 4-15.15 (Courtesy Notice): The amended language will read –

- c) The courtesy notice shall contain the following information:
- 1) The street address where the nuisance violation is occurring.
 - 2) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance.
 - 3) A statement that the ~~tenant(s)~~ person(s) allegedly causing the nuisance have the right to contest the allegations of nuisance at an informal meeting with the city manager as described in subsection (d). The request for meeting with the city manager must be made within fifteen (15) calendar days of the initial notification. Notice to the tenant or unit need not be given when the city manager determines that doing so would endanger persons or compromise an ongoing police investigation.
- d) The city manager shall hold an informal meeting pursuant to subsection (c)(3) no later than fifteen (15) calendar days after the ~~tenant's~~ request by a person(s) allegedly causing the nuisance. At the meeting, the ~~tenant~~ person(s) allegedly causing the nuisance shall be given the opportunity to demonstrate that he or she is not causing a nuisance. The city manager shall mail copies of a letter describing the results of the informal meeting to the ~~tenant~~ person(s) allegedly causing the nuisance and the property owner.

Section 4-15.25 (Hearings Generally): The amended language will read –

At the time set, the hearing officer shall proceed to hear the testimony of city staff, the owner,

any tenants, and other persons regarding the nuisance-creating behaviors on the premises and the steps necessary to abate the nuisance, the imposition of an administrative penalty or any fee imposed. The hearing officer shall have the power to examine witnesses and to issue subpoenas to compel the attendance of witnesses and/or the production of documents.