



# Municipal Code Enforcement

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CITY OF SEATTLE

# Topics

- City's authority to enforce
- Sources of enforcement
- Investigation
- Administrative Process
- Court Process
- Settlement - compliance

*Disclaimer: Views expressed are mine and not those of the Seattle City Attorney*

# Authority to enforce

- Each city and county in Washington State is authorized to “make and enforce within its limits all such local police, sanitary and other regulations as are *not in conflict with general laws.*”

-*Washington State Constitution*  
Article XI, Section 11

# PREEMPTION

“NOT IN CONFLICT WITH GENERAL LAWS.” (ARTICLE XI, SEC. 11).

- Express field preemption: State legislature intends to fully occupy a field. “The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act.” RCW 69.50.608. No room for concurrent jurisdiction.
- Implied field preemption: If silent on intent to occupy a field, courts will look to the purpose of the statute and the facts and circumstances upon which the statute was intended to operate.
- Conflict preemption occurs when an ordinance permits what state law forbids or forbids what state law permits. Even if there is a conflict, if the two can be harmonized, there is no conflict.

# Sources of Authority

- Local ordinance
- Sometimes authorized by state statute
  - Unfit Buildings, RCW 35.80
  - Weeds & Vegetation, RCW 35.21.310
  - Rental Property Registration, RCW 59.18.125
- Adopted technical codes by reference
  - Building Code, Residential Code, Fire Code
- Director's Rules or Regulations
- Enumerated powers in RCW
  - First Class Cities – RCW 35.22.280
  - Second Class Cities – RCW 35.23.440
  - Towns – RCW 35.27.370

# Enumerated Powers RCW 35.22.280

- (7) Regulate and control the use of streets, alleys, sidewalks, ...parks, and other public grounds;
- (23) Regulate for erection and maintenance of buildings ...as the safety of persons or property may require ...and make dangerous buildings/structures safe;
- (30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;
- (35) Provide for criminal punishment – maximum \$5,000 fine and 364 days in jail. “Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation.”

# Nuisance - Authority

- City Authority to declare a nuisance and abate, impose fines or special assessment
  - First Class – RCW 35.22.280(30)
  - Second Class – RCW 35.23.440(10)
  - Town – RCW 35.27.410
- Define nuisance in city code

# Nuisance – RCW 7.48

- **Nuisance defined 7.48.120:**

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

- **Public Nuisance RCW 7.48.130:**

A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.



# Nuisance – Abatement & Costs

- **7.48.250 Penalty – Abatement:** “shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance be abated, and issue a warrant...”
- **7.48.260 Warrant of Abatement:** “in addition to the fine imposed, ...[the court may] order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating...issue a warrant...”
- **7.48.280 Costs of Abatement:** “The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected...”

# Public Nuisance – RCW 9.66

- 9.66.010: A public nuisance is a crime against the order and economy of the state. Every place

- (1) Wherein any fighting between people or animals or birds shall be conducted; or,
- (2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,
- (3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

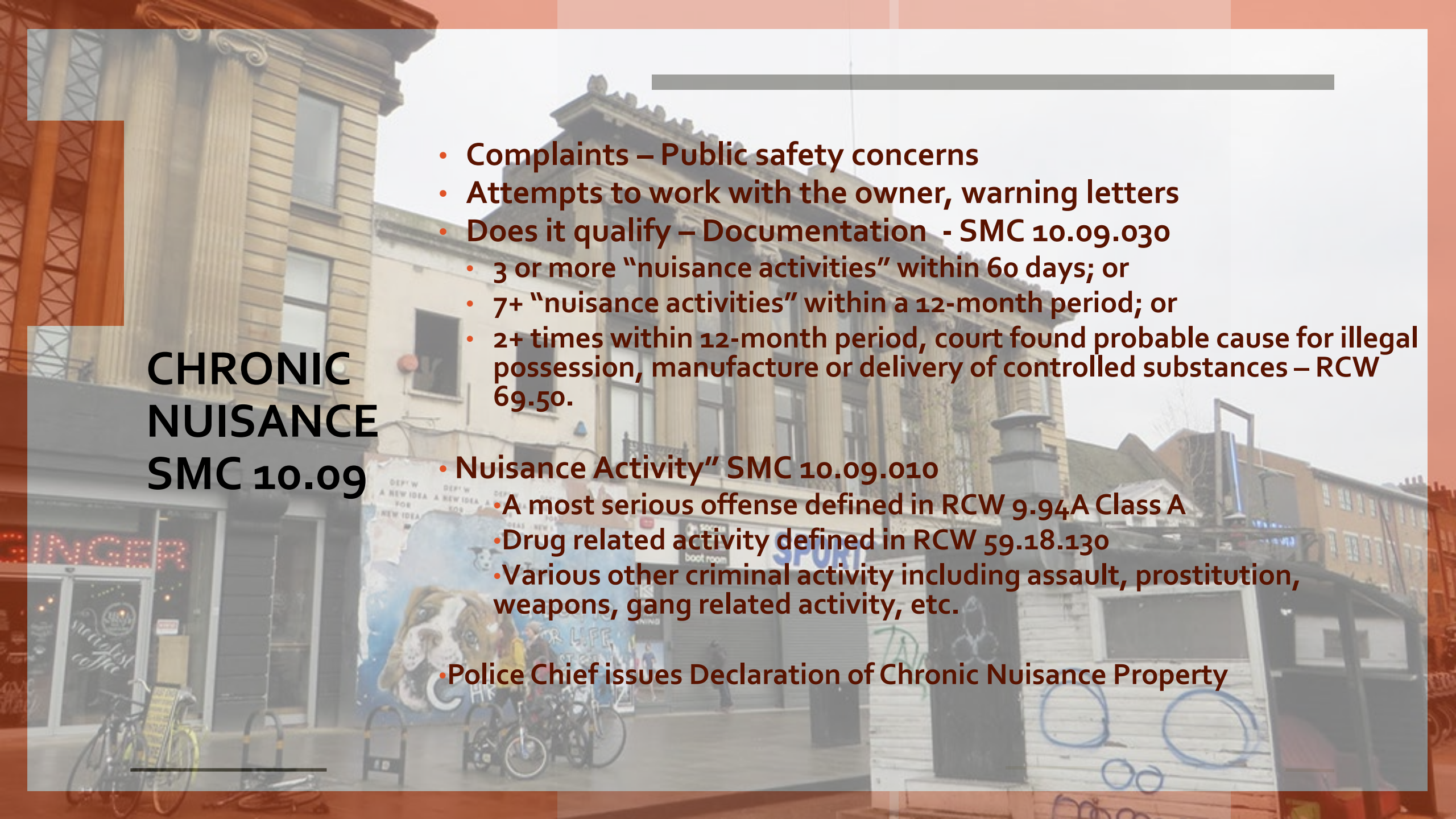
- (1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,
- (2) Shall offend public decency; or,
- (3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley, highway, or municipal transit vehicle or station; or,
- (4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance.

- 9.66.030 - Misdemeanor

# Samples of Declared Nuisances

- ❖ Junk Vehicles & Vehicle Parts; Abandoned, wrecked, inoperable vehicles on private property
- ❖ Littered, trash-covered property or public ROW
- ❖ Overgrown Vegetation
- ❖ Obstruction of a watercourse or public drainage system as to increase risk of flooding or erosion
- ❖ Grading which creates a present or imminent danger
- ❖ A side sewer that is dysfunctional and creating a threat to public health, safety or welfare
- ❖ Discharge of sewage or other wastes
- ❖ Unreasonable sound which annoys, injures, interferes with or endangers the comfort, repose of community
- ❖ A structure, excavation, or material placed in or on a public place without a permit
- ❖ Building or structure where construction commenced and then stopped – left unfinished, or done w/o permits
- ❖ Unsafe buildings
- ❖ Street or private trees that impede a sign/signal, has a disease, impacts transportation
- ❖ Unauthorized signage
- ❖ Graffiti



# CHRONIC NUISANCE SMC 10.09

- Complaints – Public safety concerns
- Attempts to work with the owner, warning letters
- Does it qualify – Documentation - SMC 10.09.030
  - 3 or more “nuisance activities” within 60 days; or
  - 7+ “nuisance activities” within a 12-month period; or
  - 2+ times within 12-month period, court found probable cause for illegal possession, manufacture or delivery of controlled substances – RCW 69.50.
- Nuisance Activity” SMC 10.09.010
  - A most serious offense defined in RCW 9.94A Class A
  - Drug related activity defined in RCW 59.18.130
  - Various other criminal activity including assault, prostitution, weapons, gang related activity, etc.
- Police Chief issues Declaration of Chronic Nuisance Property

# CHRONIC NUISANCE - SMC 10.09

Provides Written notice to owner, penalties of up to \$500/ day begin  
Demands response within 7 days of service to discuss correction

If cooperation and nuisance abated within 30 days per Chief, no penalties – SMC 10.09.050.B.

If cooperation – Written Correction Agreement – SMC 10.09.040

Written contract – describes required corrective action and deadline

Consent to inspections to monitor compliance

Agreement to allow the City to abate at owner's expense

If no cooperation/response – refer to City Attorney's Office – 10.09.060

City could pursue Chapter 7.43 RCW – Drug Nuisance - Injunction

Assuming owner is involved/encouraging drug activity – COS v. McCoy 1001 Wash. App. 815 (2000)

Failing to comply – could result in a civil penalty of up to \$25,000

Order of Abatement – 7.43.080 if nuisance established – lien

No Order if owner had no knowledge or cooperates

Final Order – property closed for 1 year, property removed and subject to forfeiture



## COMPLAINT

## INVESTIGATION

- Inspecting the site - ROW, private property, City property
- Washington Constitution, Article I, Section 7, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."
- Entering property – Consent, open view, administrative warrant.
- Administrative subpoenas

# Complaint & Investigation

# ADMINISTRATIVE WARRANTS - LIMITS

- **McCready I – Administrative warrant issued by Superior Court for inspection pursuant to Seattle Residential Housing Inspection Program. Owners objected based on Art. I, § 7.**
  - **Court found Superior Court warrants were not proper. (1) No statutory basis for the superior court to issue warrants on less than probable cause (considered RCW 10.79.015 and CrR 2.3). (2) language in adopted technical codes was not sufficient. (3) Superior Court did not have common law authority to issue a warrant. 123 Wn.2d 260 (1994)**
- **McCready II – Seattle Municipal Court issued a search warrant based on exterior evidence of building code violations. Even with tenant consent, Landlords appealed.**
  - **Municipal Court did not have authority to issue administrative search warrant supported by probable cause to believe civil violation occurred. Municipal court would have authority to issue warrant for housing code violations that were a crime. 124 Wn.2d 300**
- **City of Renton v. Bosteder - Supreme Court held warrant is invalid under Washington state constitution absent authorizing statute or court rule.**

# ADMINISTRATIVE ENFORCEMENT TOOLS

- Education
- Warning Letter
- Citation
- Infraction (RCW 7.80)
- Notice of Violation
- Emergency Order
- Stop Work Order
- Director's Review
- Civil Case
- Alternative Criminal Penalties



# *Post v. City of Tacoma* – Due Process

- Post owned a number of rental properties in Tacoma which needed repair.
- City issued an initial penalty titled “Civil Infraction Penalty Assessment” and came with a notice of violation letter telling him he had 30 days to appeal. City then issued subsequent fines which did not provide for review or appeal. Those fines reached \$550,000 on 16 different properties.
- Plaintiff had a number of constitutional violation arguments including that the fines amounted to a taking of his property – 5th Amendment; he argued daily fines imposed without an opportunity to appeal violated due process; and that the fines were excessive in violation of the 8th Amendment.
- Supreme Court reversed the COA and found Code violates Post’s procedural due process rights. The sections of the MBSC purporting to authorize the unlimited and unreviewable issuance and enforcement of subsequent civil infractions and penalties without any system of procedural safeguards are unconstitutional on their face and as applied to Post.

# Quasi-Judicial forum – Hearing Examiner

- *Post v. City of Tacoma*, 167 Wn.2d 300 (2009) explained:
  - The authority of local jurisdictions to issue civil infraction notices and impose and enforce related penalties is governed by chapter 7.80 RCW. This statute provides local jurisdictions two options for issuing and enforcing civil infractions. Under the default/judicial track, the entire civil infraction system is administered and supervised by the courts, from issuance of the notice to the collection of penalties. Infraction jurisdiction resides exclusively in the district and municipal courts, i.e., courts of limited jurisdiction. RCW 7.80.010(1)-(4), .050(5) (“A notice of infraction shall be filed with a court having jurisdiction....”). The statute does provide that a local jurisdiction may enforce civil infractions “pursuant to its own system established by ordinance.” RCW 7.80.010(5). But, to the extent cities do not establish a system for hearing and determining infractions, the judicial track is by default the system authorized by law.

# Courts of Limited Jurisdiction



- The Municipal Court is an “inferior court” whose jurisdiction and remedial authority is set by statute. Washington Const. Art. IV, §§ 6, 12
- Municipal court has the authority to hear and determine civil infractions established by municipal ordinance and occur within the city. RCW 7.80.010(2)
- The municipal court is empowered to ...; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. RCW 3.50.020. (1<sup>st</sup> Class cities – RCW35.20.030).

# Superior Court

- RCW 2.08.010 – (Excerpts)
  - Original jurisdiction – cases in equity
  - Title or possession of real property
  - Civil cases over \$300
- Injunctive Relief – Chapter 7.40 RCW - 7.40.010.
- Nuisances – Chapter 7.48 RCW
  - Warrant of Abatement 7.48.260

# Municipal Code Citation



- Issued for a specific amount for certain violations
- Review is available with the Hearing Examiner (quasi-judicial forum).
- H.E. can affirm, modify, or dismiss. Usually the *final* decision.
- Then reduced to judgment in municipal court.
- RALJ

# Notice of Violation



- Issued to responsible party. Notifies of daily penalties. Notifies of review right.
- Describes corrective action. Gives deadline.
- Review is available by the department director or designee.
- Director may sustain, withdraw, modify, affirm, modify, or seek more information.
- Then referred to attorney for civil action to obtain judgment or compliance in municipal court.
- RALJ appeal

# Civil Infraction RCW 7.80

- Issued by “enforcement officer.” Person authorized to enforce the provisions of the title or ordinance in which the civil infraction is established. RCW 7.80.040.
- Filed in court
- IRLJs apply
- Defendant must respond – similar to traffic ticket
- Appeal is RALJ to Superior Court.
- Nothing in this chapter [RCW 7.80] prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance. 7.80.010(5).

# Junk Storage Process



Citations

- After warning, 1<sup>st</sup> Citation \$150
- Right to appeal at Hearing Examiner

2 more citations

- 2<sup>nd</sup> Citation, \$500; 3<sup>rd</sup> Citation \$500
- Right to appeal at Hearing Examiner

Court

- File action for judgment
- File for abatement order





City of Seattle  
 Department of Construction  
 and Inspections  
 206 / 615-0808

**CITATION**

No. 1037236 - 2

FIRST VIOLATION \$ 150 Penalty  SUBSEQUENT VIOLATION \$ 500 Penalty

THE UNDERSIGNED CERTIFIES AND SAYS THAT AT	
PROPERTY ADDRESS: 133RD ST	DATE OF VIOLATION: May 19, 2016
DEFENDANT: LAST FIRST	<input checked="" type="checkbox"/> OWNER <input type="checkbox"/> TENANT <input type="checkbox"/> OTHER ZONE: SINGLE DESIGNATION: FAMILY 7200
MAILING ADDRESS: 133RD ST SEATTLE, WA 98133-7807	
DID THEN AND THERE COMMIT OR IS RESPONSIBLE FOR THE FOLLOWING VIOLATIONS	
<p>CHECK EACH THAT APPLIES:</p> <p><b>Land Use Code Section 23.91.002</b></p> <p><input checked="" type="checkbox"/> 1. Junk Storage in Residential Zones (SMC 23.84A.020; Chapter 23.43, 23.44, 23.45, 23.46, and 23.49 Subchapters IV and VII)</p> <p><input type="checkbox"/> 2. Construction or maintenance of structures in Required Yards or setbacks in Residential Zones (SMC Chapter 23.43, 23.44, 23.45, 23.46, and 23.49 Subchapters IV and VII)</p> <p><input type="checkbox"/> 3. Parking of vehicles in a Single Family Zone (SMC 23.44.016)</p> <p><input type="checkbox"/> 4. Keeping of Animals in Residential Zones (SMC 23.42.052)</p> <p><b>Weeds &amp; Vegetation Code Section 10.52.031</b></p> <p><input type="checkbox"/> 5. Vegetation encroaching on right-of-way or constituting safety, fire, or health hazard (SMC 10.52)</p>	<p>DESCRIPTION OF VIOLATION:          (Include specific facts for each violation.)</p> <p>Junk storage of various items and/or materials including but not limited to electrical power cords, bricks, scrap wood, and tarps on the premises. (SMC 23.44.006, 23.44.040, 23.84A.020)</p> <p>Sent Citation Warning on 04/18/2016.</p>
<p>I certify under penalty of perjury under the laws of the State of Washington that I have reasonable grounds to believe and do believe that the above named person was in violation of the Seattle Municipal Code, and the information contained in this citation is true and correct to the best of my knowledge.</p> <p>Signature: <u>[Signature]</u> at Seattle, WA Date: <u>05/24/16</u></p> <p>EDWIN DURAN INSPECTOR</p>	
<p>I certify that I mailed a copy of the foregoing citation to the above named party and address, postage prepaid, on</p> <p><u>5/25/16</u> [Dated] <u>Kathleen Ahmad</u> [Administrative Specialist]</p>	

**SAMPLE  
 CITATION**

# Junk Storage

“The temporary or permanent storage outdoors of junk, waste, discarded, salvaged or used materials or inoperable vehicles or vehicle parts. This definition shall include but not be limited to the storage of used lumber, scrap metal, tires, household garbage, furniture, and inoperable machinery.”

**Before**



**After**



# Junk storage/Unfit for Human Habitation

Structure issues, open to elements, inadequate sanitation, inadequate heat or ventilation, inadequate exits.  
Conditions that create a health, fire, or safety hazard (e.g. junk, combustible materials, toxics)

**Before**



**After**



# Vacant Buildings

“A building that is unoccupied and is not used as a place of residence or business.”

Must be kept secured – to prevent entry and deterioration from weather

**Fire Damage**



**Overgrown vegetation  
structure damage**



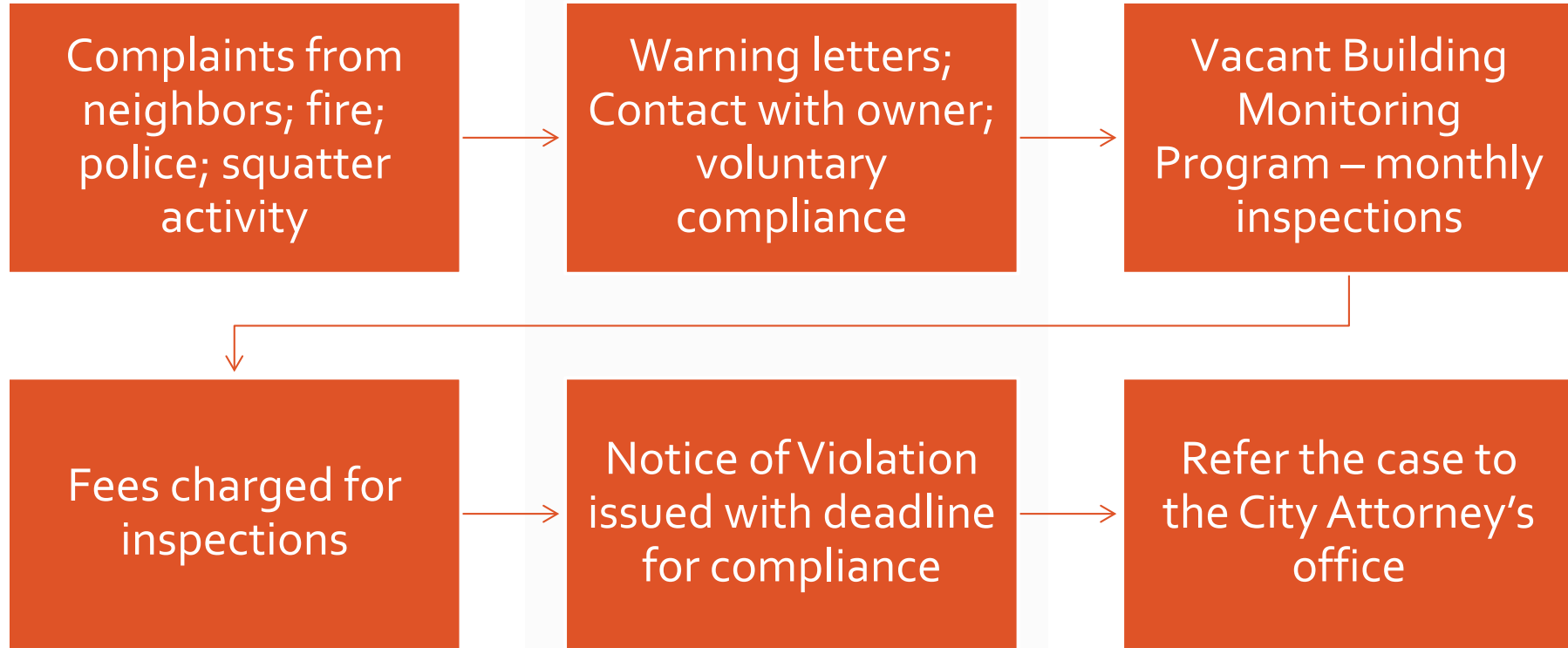
# Vacant Building Workgroup

## Departments involved

- Fire Department – Firefighter safety
- Police Department
- Department of Construction and Inspections
- Seattle Public Utilities – graffiti
- City Attorney's Office
- Mayor's Office

## Addressing issues

- Maintain list of vacant buildings
- Vacant building monitoring
- Prioritize imminent health and safety hazard
  - Fires
  - Drug activity
  - Prostitution
  - Squatters breaking in
  - Rodents
  - Neighbor complaints
  - Overgrown vegetation
  - Open to entry



# Vacant Building Process

# Chapter 35.80 RCW

## Unfit Dwellings, Buildings, and Structures

- **Purpose:** To address dwellings that are unfit for human habitation, and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are inimical to the health and welfare of the residents of such municipalities and counties.
- Cities may adopt ordinances relating to such dwellings, buildings, structure, or premises.

# Seattle - Unfit for Human Habitation Process

## Investigate

- Neighbor/Police/Fire complaints
- Investigate – reach out to owner to get voluntary compliance
- If vacant, vacant building monitoring, close to entry
- Prepare complaint if criteria are met
  - Repair, or demolished & removed – cost of repair > 50% replacement value
  - Demolished & removed – Emergency order, breached 2+ times in last 12 months & Police/fire
  - Repaired and/or vacated & closed if cost of repair < 50% replacement value

## Administrative

- Inspector issues “complaint” to those on litigation guarantee listing problem conditions & identifying remedy. Serve notice, post on property and record.
- Complaint notifies of a hearing between 10 & 30 days later w/opportunity to present evidence.
- Director listens to evidence & if unfit, orders repair/alter/improve; vacate & close; or demo and remove
- Appeal available with Hearing Examiner, then further appeal via LUPA.

## Court

- If there is still no compliance, after the above process, City prepares & files Complaint in Court.
- Obtain an order from the Court allowing the City to proceed with abatement.
- If Director expends funds to repair/restore/demolish, seek reimbursement. If not paid, can certify the amount to the County for assessment upon the tax rolls against the real property.



# Tree Violations

Municipal Code Violations & Torts

## Tree Cutting



## View enhancement





# Tree case

- Investigation
  - Whose property? (public, private)
  - Easements?
  - Pictures?
  - Witnesses?
  - Arborist report – estimate of value of damage
- Causes of Action
  - May begin with a Notice of Violation - optional
  - Timber Trespass RCW 64.12.030
  - Damage to Land RCW 4.24.630
  - Trespass
  - Negligence
  - Environmentally Critical Areas Code violations
  - Unauthorized “use” of public property

# Settlement

- ✓ Compliance is the goal
- ✓ History of violations with the city
- ✓ Status of violation? Resolved?
- ✓ Length of violation
- ✓ Severity of the violation
- ✓ Public safety
- ✓ Case Posture
- ✓ Penalties - See *City of Seattle v. Long*, 196 Wn.2d 1024 (2020)



**RCW  
35.21.955**

**Nuisance  
Abatement  
Special  
Assessment**

A city exercising its authority under RCW 7.48 or RCW 35, or other applicable law to abate a nuisance, must provide

If threatens health or safety – prior notice by mail to owner that abatement pending and special assessment may be levied

Before levying, to reimburse city, notify the property owner and identifiable mortgage holder by mail that special assessment will be levied and provide estimate

Becomes a lien

Supplemental to other remedies

Up to \$2,000 is equal to state, county, or municipal tax lien.

# Excessive Fines Clause

City of Seattle v. Long  
196 Wn.2d 1024 (2020)

- US Constitution amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”)
- WA Constitution, art I, § 14 (“Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.”)
- Purpose of the fine is at least partially punitive (meant to punish). If punitive, then
- Is the fine proportional to the violation or is it excessive? *United States v. Bajakajian*, 527 U.S. 321 (1998).
  1. Nature and extent of the crime (violation)
  2. Whether the violation was related to other illegal activities,
  3. The other penalties that may be imposed for the violation,
  4. The extent of the harm caused.
  5. (Added by *Long*) Ability to pay.

**THANK YOU**

QUESTIONS?