

# Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

## **Civil Enforcement Unit | criminal activity driven nuisance.**

The Civil Enforcement Unit is a partnership between the Spokane Police Department and the City Attorney's Office. One of our primary goals is to help community organizations and government agencies replace the worst neighborhood liabilities with assets; to go beyond the symptoms of crime (drugs, violence, refuse, dilapidated conditions) and address the underlying problems (poverty, education, disenfranchised community).

If poverty is one of the root causes of crime, and we cannot arrest our way out of poverty, then we will never arrest our way out of crime. However, if we actively engage with the community we can drive sustainable physical improvements. By replacing problem properties with assets we can build up neighborhood capacity. This literally builds away crime-generating conditions and replaces them with lasting productive use. Healthier neighborhoods mean more opportunities for employment with fewer epicenters of criminal activity. This innovative community oriented policing is the CEU's mission.

## **Defining Nuisance & Authority to Abate.**

Washington State Constitution, Article IV, Section 6 gives original jurisdiction over "actions to prevent or abate a nuisance" to the Superior Courts. Chapter 36.32.120 of the Revised Code of Washington authorizes Municipalities to declare and "abate a nuisance at the expense of the parties creating, causing or committing the nuisance...." Chapter 10.08A of the Spokane Municipal Code declares and defines "chronic nuisance properties."<sup>1</sup>

A chronic nuisance property is "a property on which three or more nuisance activities occur or exist during any sixty-day period." SMC 10.08A.020.B.

Nuisance activity includes: stalking; harassment; failure to disperse; disorderly conduct; assault; reckless endangerment; prostitution; patronizing a prostitute; disorderly house; indecent exposure; lewd conduct; firearms violation; noise; loitering for the purpose of engaging in drug-related activity; drug-related activity; gang-related activity; or any attempt to commit the above activities. SMC 10.08A.020.F.2.

Our chronic nuisance lawsuits are often filed in conjunction with a complaint for drug nuisance. Chapter 7.43 of the Revised Code of Washington defines drug nuisance as:

Every building or unit within a building used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance as defined in chapter 69.50 RCW, legend drug as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, and every building or unit within a building wherein or upon which such acts take place, is a nuisance which shall be enjoined, abated, and prevented, whether it is a public or private nuisance.

Evidence of a drug nuisance property may include:

[s]earch warrants served on the property where controlled substances were seized; investigative purchases of controlled substances on or near the property by law enforcement or their agents; arrests of persons who frequent the property for violation of controlled substances laws; increased volume of traffic associated with the property;

---

<sup>1</sup> Many other cities have adopted similar criminal nuisance ordinances. See Seattle at Seattle Municipal Code 10.09; Bremerton at Bremerton Municipal Code 9.92; and Tacoma at Tacoma Municipal Code 8.30A.

# Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

and the number of complaints made to law enforcement of illegal activity associated with the property.

## Scope of the criminal nuisance problem in Spokane.

From 2014 to May 2016 there have been approximately 23,100 calls relating to nuisance activity at just 3,802 problem properties. These problem properties have generated an average of six calls for service since 2014. These numbers do not include calls for service generated away from these properties but that are linked by criminal associates, owners or tenants to these problem properties. It also does not include all the nuisance activities defined under SMC 10.08A.020.F.2. This is a very conservative estimate.

On average, a SPD Officer will spend 36 minutes responding to a criminal nuisance call. Taking the senior officer – plus-overhead –rate of \$68.53 and multiplying it by the estimated 13,860 hours spent on these calls, we can see the City of Spokane has spent \$1 million responding to problem properties since 2014. Again, this is a conservative estimate as multiple officers often respond to these criminal nuisance calls.

## Engaging the Community.

The CEU employs a myriad of techniques to nudge property owners and managers into responsible crime free property maintenance.

Notice of Arrest. RCW 59.18.075 requires law enforcement agencies to notify landlords of the arrest of a tenant for seizure of a legend drug or controlled substance, unlawful use of a firearm, use of deadly weapons, and/or for physically assaulting another person on a rental premises. The CEU sends out an average of two notices of arrest per day (920 notices since the start of 2015) and approximately one out of ten recipients respond (78 responses).

Drug Seizure Letter. This *Notification to Property Owner of Drug Activity* is a significant step up from the Notice of Arrest letter and puts the property owner on notice that their “property will be subject to seizure and forfeiture by the City of Spokane if the illegal drug activity continues beyond the date of this notification.” We have served thirty eight (38) drug activity notices since September, 2014. There is nearly a 100% response and compliance to this approach.

Chronic Nuisance Notice. A *chronic nuisance notice* is the first step in the chronic nuisance abatement process and puts homeowners on notice of the criminal activity occurring at their property. Each Neighborhood Conditions Officer independently uses this tool. The SPD issues around 40 – 80 chronic nuisance notices per year. Property owners then respond to the notice and enter an *Abatement Agreement* with the NCO. There is over a 90% compliance rate with this highly effective tool.

City Legal Warning Letter. Similar to the drug seizure letter, this goes out on City Legal letterhead and is a final attempt to engage a property owner before the nuisance lawsuit is filed. We have served nine (9) nuisance warning letters since September, 2014. This letter has failed to clean up the property only once.

Crime Free Housing Training. Crime Free Housing is a crime prevention program run by C.O.P.S. This is an invaluable tool for property managers and multi-housing landlords. Training material covers crime free lease training, tenant screening, CPTED, and active

# Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

management that increases demand, lowers costs and improves safety. We often refer and encourage owners and managers to attend.

Crime Prevention Through Environmental Design. CPTED is designed to deter criminal activity through environmental design. We often make CPTED based recommendations to owners and managers to help them prevent crime before it happens.

**Biggest Challenges** – Drug addiction and mental illness.

**Overlap – abandoned properties.**

Abandoned properties increase crime through deterioration, opportunity, and disinvestment.<sup>2</sup> One of the most reliable predictors of a high crime rate is the number of abandoned properties in the area: a one percentage point increase in the foreclosure rate is expected to increase violent crime by 6.68 percent; the rate of violent crime within 250 feet of an abandoned property increases 15 percent; and a block with an abandoned property can expect 3.2 times the drug calls, 1.8 times the theft calls, and double the calls for violent behavior.<sup>3</sup>

Abandoned properties cost the City of Spokane an estimated \$5 million per year in direct municipal costs (inspections, court actions, police and fire response, demolition, unpaid water and sewer, and trash removal), depressed property values, and lost property tax revenue. *See Abandoned Opportunity White Paper.*

**Why ‘abandoned’ and not ‘foreclosures’?**

Not all abandoned properties are in foreclosure, and not all foreclosures result in abandoned properties. ‘Abandoned’ properties encompass chronic nuisance properties, substandard buildings, properties in foreclosure, probate properties, and every property where the owner of record has abandoned the property but the lien-holder has not yet taken title. With our proposed amendment to the chronic nuisance ordinance every abandoned property where nuisance activity exists is a chronic nuisance property.

---

<sup>2</sup> Christina McFarland & William McHahan, *Housing Finance and Foreclosures Crises: Local Impacts and Responses*, National League of Cities, 2008; United States Government Accountability Office, *Report to the Chairman, Subcommittee on Economic Policy, Committee on Banking, Housing, and Urban Affairs, U.S. Senate: Mortgage Foreclosures*, (November 2010) citing Christina McFarland, Casey Dawkins, and C. Theodore (Ted) Koebel, *Local Housing Conditions and Contexts: A Framework for Policy Making*, (Washington: National League of Cities, 2007)

<sup>3</sup> Immergluck & Smith, *The Impact* (Neighborhoods with the most abandoned lots saw a 48 percent increase in crime during the same period where Chicago as a whole experienced a 27 percent drop in crime. “A one percentage point (0.01) increase in foreclosure rate...is expected to increase the number of violent crimes in a tract by 2.33 per cent other things being equal. A full standard deviation increase in the foreclosure rate, other things equal, is expected to increase violent crime by 6.68 per cent.”); Lin Cui, *Foreclosure, Vacancy and Crime*, Department of Economics, University of Pittsburgh, 2010 (Concluding that once a property becomes vacant, the rate of violent crime within 250 feet of the property increases 15 percent, and the longer the period of abandonment the higher the crime rates.); Charles C. Branas, David Rubin, and Wensheng Guo, *Vacant Properties and Violence in Neighborhoods*, International Scholarly Network: Public Health, 2012 (This Philadelphia study concluded that the strongest predictor for risk of assault is association with vacant properties.); Schilling, *Community Stabilization*, citing, National Vacant Properties Campaign, *Vacant Properties: The True Cost to Communities* (2005) (“In Austin, Texas, blocks with vacant building had 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of calls for violent behavior as those neighborhoods without vacant properties.”).

# Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

## Proposed Amendment – Chronic Nuisance.

Under the proposed amendment to the chronic nuisance ordinance, the definition of “chronic nuisance property” is expanded to include “any abandoned property where nuisance activity exists.” Abandoned property is defined as “a property over which the person in charge no longer asserts control due to death, incarceration, or any other reason, and which is either unsecured or subject to occupation by unauthorized individuals.” We also updated our definition of “persons in charge” to include financial institutions and lien holders. We specifically included receivership as a remedy.

Receivership is an *in rem* action that allows petitioners to take control of distressed properties, renovate, and clear title of all other claims.<sup>4</sup> Receivership allows the City to rehabilitate abandoned properties, attach a priority lien for costs, foreclose on that lien, and is an effective mechanism for clearing title to properties that cannot be sold free and clear by their owners.”<sup>5</sup>

## Recommended Programs & Policies.

Geographical Real Property Information System (GRIPS). Create a Geographical Real Property Information System that shows every identified abandoned property on a City of Spokane map. Include ownership history, lien assessments and judgements, foreclosure notices and filings, probate, sheriff’s sales, tax delinquency, and utility information under each property. Make this open to the public. Private and community based investors will opportunely rehabilitate a significant percentage of the abandoned properties. A list of voluntarily registered foreclosure properties does not include substandard building properties, properties in probate, chronic nuisance properties or abandoned properties.

Strategic Development Plan. In order to understand the abandoned property problem and make informed decisions we need recent and reliable data (see GRIPS above). A creative and thoughtful evidenced based development plan can strategically build dynamic and thriving neighborhoods.

Administrative Capacity. Responding effectively to abandoned properties requires administrative capacity and resources. Connect everyone that deals with titles, transfers, taxes, lien records, foreclosures, and sheriff’s sales. Redirect resources and mobilize new sources of funding.

Partnerships will multiply our capacity. Bring together police, community developers, government agency and neighborhood leaders to leverage each other’s considerable capacity and forge a strategic and mutually beneficial alliance. One of the greatest threats to community

---

<sup>4</sup> See RCW 7.60 generally (RCW 7.60.025 – “...a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate...”); *Collins v. Gross*, 51 Wash. 516, 99 P. 573 (1909) (“...a receiver may be appointed in all actions, where it is shown that the property...in controversy are in danger of being lost, removed, or materially injured...when it appears that such property is in danger of being lost, removed, or materially injured...it may be necessary to secure ample justice to the parties.”); Kelly, *Refreshing the Heart* (Municipalities lack the resources to rehabilitate all the abandoned properties yet need these properties brought up to minimal housing standards. Private developers will renovate these properties if they can get clear title. **Abandoned property receivership is sound policy to replace blight with productive use.**)

<sup>5</sup> Kelly, *Refreshing the Heart* (“In vacant property receivership deals, resident leaders...define their community inductively in the give-and-take of negotiations with investing developers and vacant property owners.”)

# Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

revitalization is crime. A big generator of crime is community disintegration. Physical rehabilitation can push down crime. By partnering with the neighborhoods and community developers, we can replace the worst neighborhood liabilities with sustainable assets that generate neighborhood well-being. We should not leave whether police and developers work on the same problems at the same time to chance.

## Prospective Action Plan Outline.

- 1) Identify Area & Liabilities – abandoned properties and neighborhood liabilities can be identified through GRIPS, SPD Neighborhood Condition Officers, properties in the building official process, citizen complaints, predictive analytics, crowdsourcing, digital cartography, neighborhood canvassing.
  - a) Which area to focus on needs to be thoughtfully considered in the strategic development plan. **Replacing liabilities with the greatest negative impact in neighborhoods that are close to the tipping point will earn the greatest rate of positive return.**
- 2) Solicit Developers and Needed Assets – rehabilitation and demolition need to be planned. Select needed and community prayed assets; such as, landscaped pedestrian pathways, bike trails, parking lots, community gardens, local businesses, affordable housing, and well maintained greenspace.
  - a) Match approved projects with willing developers.
- 3) Build the Case – confirm the target property is either a chronic nuisance or substandard building.
  - a) Investigation & Inspection.
    - i) Identify the owner and lien holders.
    - ii) Physical Investigation and written report (photographs, neighbor statements, criminal activity report).
      - (1) Chronic Nuisance, substandard building, or no significant problem determination. Do we have probable cause to indict the target property?
    - iii) Property Inspection that includes the physical condition of the property, market data, outstanding liens, estimated rehabilitation cost and estimated value after rehabilitation.
      - (1) Rehabilitation or demolition recommendation.
- 4) Notice & Opportunity to Cure – serve the owner and lien holders with a chronic nuisance notice or substandard building notice and a community liability notice.<sup>6</sup> These letters will put the owner and lien holders on notice that the property is in danger of expensive litigation. Include a brief summary of the evidence supporting this attention and provide options to cure.
  - a) Options to Cure (and avoid expensive litigation).

---

<sup>6</sup> Or whatever clever name the program decides to use for “targeted” properties.

## Chronic Nuisance Properties

Civil Enforcement Unit

May 18, 2016

- i) Demolition: property owner signs a consent judgment to demolish the house in the next 30 days | (permit + contractor = demolition).
- ii) Rehabilitation and Occupancy: property owner signs agreement to rehabilitate the property and submit a certificate of occupancy within 180 days | (permit + contractor = rehabilitation and occupancy).
- iii) Quit Claim Deed the property to the City (or Community Development Corporation).

### 5) Clear Title.

- a) Voluntary Transfer (Quit Claim) & Negotiation – once the City or CDC stands in the position of the owner they can effectively negotiate with the lien holders to either rescind or reduce their liens. If there is a refusal to negotiate, or an impasse, then we proceed to litigation.
  - b) Litigation – bring the property into the substandard building official process or file a chronic nuisance lawsuit.
    - i) We can request a default judgment if there is a failure to respond to our notice, failure to respond to our summons and complaint, failure to respond to notice of default, and failure to respond to notice of entry of default judgement.
    - ii) Receivership – a receiver shall be appointed only if the court determines that the appointment of a receiver is reasonably necessary. If we follow this process and reach this point we can meet this burden and prove:
      - (1) The property is a chronic nuisance property or substandard building (*see investigation report*);
      - (2) Notice & Opportunity to Cure (*see notice and options to cure*);
      - (3) Necessity – appointment of a receiver is necessary to immediately rehabilitate target property and return to productive use. Failure to do so is a threat to public health and safety.
- 6) Rehabilitation – there will be significant upfront costs to fund the receiver and the receiver's rehabilitation. These costs should be recouped in the *return to productive use* (sale) phase. If a property will not recoup these upfront costs then demolition should be strongly considered (*see inspection recommendation*). Again, demolition and the subsequent maintenance require upfront costs.
- 7) Return to Productive Use – sell the rehabilitated property (lien enforcement, public auction, or private sale by CDC/City).