

Nuisance Regulation

for Washington Cities and Counties



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of Washington**

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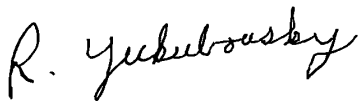
Foreword

The control and abatement of public nuisances is an ongoing problem for local governments. Nuisances may develop from a wide variety of causes, but most often relate to unreasonable or unlawful use of property, disturbing the peace, and threats to public safety. MRSC receives many requests for advice on how to abate various nuisances. The principal purpose of this publication is to provide local officials with a basic text that focuses on the primary nuisance issues. This publication defines nuisances, discusses the statutory powers available to abate nuisances, and provides information on methods of enforcement, including sample ordinance provisions.

The text of this publication is supplemented by sample ordinance provisions and program information on MRSC's Web site at www.mrsc.org. Chapter sections on specific nuisances, such as junk vehicles, are keyed to the information on MRSC's Web site. Typing the Web address given in the Go to  reference will take you directly to the examples noted in the publication's text. This "electronic appendix" provides supplemental material with greater breadth and depth than is possible in a publication. It also enables MRSC to frequently add to and update the Web-based information.

We hope that this publication and the MRSC Web site satisfies your basic need for information concerning the regulation of nuisances. If you need advice or information on matters not discussed in the publication, please give MRSC a call. Also, please keep MRSC informed of enforcement programs or procedures that you feel are effective. MRSC will be pleased to fax or mail copies of the items cited on request to Washington city or county officials and staff who do not have access to the Internet.

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Richard Yukubousky, Executive Director
Municipal Research & Services Center of Washington

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Chapter 1: Why Control Nuisances?

There are few conditions of urban living that so adversely affect the quality of life in our communities as do nuisances. Neighbors go to war, neighborhoods go to the dogs (literally), districts become slums, citizens flee to suburbia only to find more of the same. One dandelion-infested yard makes a neighborhood look bad. One junk filled backyard leads to a neighborhood that does not care what it looks like, because individual effort and pride are wasted.¹

When people talk about the “quality of life” in communities they may envision peaceful and quiet neighborhoods, a safe and clean environment, an attractive downtown, and other similar qualities. These qualities are often embodied in community vision statements as important community goals.

A well-crafted nuisance ordinance is one of the most effective tools that communities have to protect their quality of life and ensure basic property maintenance, health, and safety standards. Conditions such as dilapidated buildings, overgrown weeds, accumulations of trash, litter, and junk cause visual blight, and can have a negative effect on neighborhood character and property values. A proactive nuisance control program not only helps to keep a community clean and attractive, it can also contribute to a reduction in crime rates. Nuisance control can also play an important role in economic development efforts. As summarized in the Port Angeles Municipal Code, nuisances are regulated...

[T]o prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public and contribute to the degradation of the character of neighborhoods and depreciation of property values. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions that may constitute disorderly, disturbing, unsafe, unsanitary, fly-producing, rat-harboring, and/or disease-causing places, conditions, or objects. It is also necessary for the public social and economic welfare to regulate, prevent, and prohibit conditions that degrade the City's scenic attractiveness and livability and its economic development. (Ord. 2469 §1, 1/22/88)

Finding ways to encourage owners to cooperate in repairing and maintaining their properties plays a key role in controlling nuisances. Through a combination of programs like neighborhood revitalization, targeted clean-ups and on-going beautification programs, communities can move beyond a complaint driven code enforcement approach to a more proactive enhancement and development approach.

¹“Nuisance Abatement,” by William L. Cameron, City Attorney of Kennewick, *Legal Notes*, MRSC Information Bulletin No. 497, April 1997

Chapter 2:

What is a Nuisance?

A nuisance involves an unreasonable or unlawful use of property that results in material annoyance, inconvenience, discomfort, or damage to another person or to the public. The unlawful use may involve doing something, such as allowing garbage to accumulate on residential property – or failing to do something, such as not cutting or removing noxious weeds.

Common nuisances include situations involving animals, accumulation of junk, noise, dangerous buildings, unsanitary conditions, and encroachments on public rights-of-way that interfere with pedestrian passage.

Nuisances are sometimes called nuisances because they are remedied by abatement. Abatement is the removal of a nuisance, generally with court approval or by court order. Frequently the individual causing the nuisance is ordered to pay the costs of abatement. Though abatement orders are generally issued by a court at the request of a local government, the law² also provides for orders of abatement in civil nuisance actions initiated by private individuals. Abatement by a local government without court involvement or the property owner's permission should only be done in an emergency.

In its deliberations over *Riblet v. Spokane-Portland Cement Company*, 41 Wn.2d 249 (1952) the court asked and responded to the question, “What is a nuisance? The court said...

Our basic point of inquiry relates to the general theory of the law of nuisance. This appears primarily to be based upon generally accepted ideas of right, equity, and justice. The thought is inherent that not even a fee simple owner has a totality of rights in and with respect to his real property. In so far as the law of nuisance is concerned, rights as to the usage of land are relative. The general legal principle to be inferred from court action in nuisance cases is that one landowner will not be permitted to use his land so unreasonably as to interfere unreasonably with another landowner's use and enjoyment of his land.

The crux of the matter appears to be reasonableness. Admittedly, the term is a flexible one. It has many shades and varieties of meaning. In a nuisance case, the fundamental inquiry always appears to be whether the use of certain land can be considered as reasonable in relation to all the facts and surrounding circumstances. Application of the doctrine of nuisance requires a balancing of rights, interests, and convenience.

²RCW 7.48.260.

Statutes Defining Nuisances

If a jurisdiction is going to regulate nuisances, it first has to identify what constitutes a nuisance. The definition has to be specific enough to be legally enforceable. The basic definitions contained in the state nuisance statutes can provide a starting point. Though many local governments adopt these definitions, they often supplement them with their own wording. Local ordinances also usually contain a list of specific activities or conditions that constitute a nuisance. Basic statutory definitions can be found in Chapters 7.48 RCW Nuisances (civil), 7.48A RCW Moral Nuisances, and 9.66 RCW Nuisance (criminal).

RCW 7.48.120³ pertains to civil procedures for prohibiting and abating nuisances and defines a nuisance as:

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.

RCW 7.48.130 defines a *public* nuisance as

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

RCW 7.48.140 provides a list of specific types of public nuisances.

RCW 7.48.150 defines, in a somewhat circular fashion, *private* nuisances as any nuisance not included within the definition of a public nuisance.

Chapter 7.48A RCW defines and provides procedures for dealing with *moral* nuisances, which include houses of prostitution, businesses selling or exhibiting lewd films or materials, and buildings or housing units where illegal drugs are manufactured, delivered, or possessed. There are some similar statutes in Chapter 7.48 RCW, but care should be taken not to confuse the two chapters. Some of the moral nuisance statutes in Chapter 7.48 RCW, enacted by the passage of Initiative 335 in 1977, have been declared unconstitutional by a state appellate court. The statutes in Chapter 7.48A were subsequently enacted as a substitute for the unconstitutional provisions. See *Chapter 11, Moral Nuisances* in this publication.

RCW 9.66.010 pertains to criminal procedures for prosecuting and abating nuisances, and defines the misdemeanor crime of maintaining or permitting a *public* nuisance:

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

³Note that RCW 7.48.120 has not been amended since 1881.

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.

RCW Titles 35 and 35A provide specific authority for cities and towns to define what constitutes a nuisance, and to abate nuisances. Local government regulations cannot be in conflict with the state nuisance statutes, but they can be more detailed to deal with specific local problems. More information on the statutory authority of local governments to enact nuisance regulations appears in *Chapter 3, Authority to Regulate and Abate Nuisances*.

Ordinances Defining Nuisances

Some local governments have broadly worded nuisance regulations. Others, perhaps in an attempt to clarify their priorities and avoid accusations of vagueness, include a list of specific nuisances followed by a comprehensive phrase that broadens the scope to almost anything that doesn't fit community standards. Counties often specify zones in which certain nuisance provisions apply. An illustration from Lynnwood appears below. Other examples from Grandview, Ellensburg, Port Angeles, and Vancouver appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-what.htm#Definitions>

Lynnwood Municipal Code, Sec. 16.08.210 Definitions....

(6)"Nuisance" includes: a. a nuisance defined by statute or ordinance; b. a nuisance at common law either public or private; c. an attractive nuisance, whether in or on a building, a building premises or an unoccupied lot and whether realty, fixture or chattel, which might reasonably be expected to attract children of tender years and constitute a danger to them; including, but not limited to, abandoned wells, ice boxes or refrigerators with doors and latches, shafts, basements or other excavations, abandoned or inoperative vehicles or other equipment, structurally unsound fences or other fixtures, lumber, fencing, vegetation or other debris; d. uncleanliness or whatever is dangerous to human life or detrimental to health; or e. abandonment or vacancy....(Ord 2012 §1 1994)

Organization of Nuisance Provisions

Local governments organize their nuisance provisions in differing ways – there isn't one correct way to do it. Model nuisance codes have been published by the International Municipal Lawyers Association and others, but caution should be exercised when using models to ensure that they correspond to state law and local situations. Some local governments include all nuisance provisions within a single ordinance or code chapter. Others include nuisance provisions in specific topics such as animal control, noise control, streets and sidewalks. Abatement procedures and penalties are sometimes included in the chapter where the nuisances are described, but sometimes they are placed within a chapter dealing with civil enforcement procedures.

If you are contemplating reorganizing your existing code provisions, you will need to take the time to see what organization makes sense for your jurisdiction. When examining another jurisdiction's nuisance provisions, note that there may be additional provisions spread throughout various chapters of their code.

Chapter 3:

Authority to Regulate and Abate Nuisances

English common law has always provided a cause of action for unreasonable interference with the use and enjoyment of property. Nuisance law developed as the legal process for balancing the competing interests of adjoining land owners' use of their property. This chapter summarizes the state statutes that provide authority for local governments to address nuisances.

Statutes Authorizing Cities and Towns to Abate Nuisances

The following statutes authorizing the regulation of nuisances are listed by city classification:

- First Class Cities - RCW 35.22.280(30)
- Second Class Cities - RCW 35.23.440(10)
- Code Cities - RCW 35A.21.160 (this is the omnibus grant of authority to code cities)
- Towns - RCW 35.27.410

These statutes provide the broad authority to each class of municipality to define nuisances and provide for their abatement. Local government regulations cannot be in conflict with the state nuisance statutes, but they can be more detailed in order to adequately address specific local problems.

RCW 35.21.310 authorizes cities and towns to follow an abbreviated procedure for abatement of certain nuisances. All cities and towns are authorized to enact an ordinance requiring property owners to remove or destroy: vegetation overhanging or obstructing a street or sidewalk; all dead vegetation; and all debris on their property which is a fire or public health and safety hazard.

If the property owner fails to remove the nuisance condition, the city or town can remove or destroy it and make the cost to the city or town a charge against the owner and a lien on the property. This is discussed further in *Chapter 8, Unsightly Areas – Property Maintenance and Vegetation*.

General Statutes for Counties, Cities and Towns

Chapter 35.80 RCW gives counties, cities, and towns authority to regulate *unfit dwellings* and *buildings*. The statute authorizes the establishment of an improvement board and/or the appointment of an enforcement officer. If an owner of property refuses to comply with an order to clean up the property, the board can authorize the work to be done and the amount entered onto the tax rolls against the property. The county, city, or town needs to appoint an administrative appeals

commission, and the owner can appeal any final decision of the appeals commission to superior court. *See Chapter 7, Dangerous or Unfit Buildings, Dwellings, and Structures.*

RCW 46.55.240 provides for the removal of *junk vehicles* as a public nuisance from private property within the county, city, or town. It provides specific authority for a county, city, or town to adopt an ordinance establishing procedures for the abatement and removal as a public nuisance of junk motor vehicles or parts from private property. *See Chapter 6, Vehicle Nuisances.*

RCW 7.48.120 through 7.48.310 outline the standard nuisance *abatement authority* and *court jurisdiction* over nuisances. Note that RCW 7.48.250 and 7.48.260 provide both district and superior courts with the authority to impose fines for violation of nuisance ordinances, but only superior courts have the authority to issue warrants of abatement. The procedure for recovering the costs of the abatement is set out in RCW 7.48.280.

Chapter 7.48A RCW defines and provides *procedures* for dealing with *moral nuisances*, which include houses of prostitution, businesses selling or exhibiting lewd films or materials, and buildings or housing units where illegal drugs are manufactured, delivered, or possessed. There are some similar statutes in Chapter 7.48 RCW. Don't confuse the two chapters. Some of the moral nuisance statutes in Chapter 7.48 RCW, which were enacted by the passage of Initiative 335 in 1977, have been declared unconstitutional by a state appellate court. The statutes in Chapter 7.48A were subsequently enacted as a substitute for the unconstitutional provisions. This is discussed further in *Chapter 11, Moral Nuisances.*

Statutes Specific to Counties and Special Districts

County authority to deal with nuisances is based on the broad delegation of police power to counties found in Article 11, §11 of the Washington State Constitution. Counties can use the provisions in Chapters 7.48, 7.48A, and 9.66 RCW, and they can augment those nuisance definitions with their own definitions and administrative procedures, so long as the county regulations do not conflict with state law. For instance, a county ordinance cannot grant authority to a county district court to issue a warrant of abatement because that would be in conflict with Article 11, §11 of the state constitution (superior courts have exclusive jurisdiction to issue warrants of abatement). RCW 70.05.070 authorizes county health officers to “prevent, control or abate nuisances which are detrimental to the public health.”

Specific statutes address weed control: Chapter 17.04 RCW authorizes counties to create weed control districts, Chapter 17.06 RCW authorizes the creation of intercounty weed districts to carry out the purposes set forth in RCW 17.04.010, and Chapter 17.10 RCW authorizes the creation of noxious weed control boards by counties. *See Chapter 8, Unsightly Areas – Property Maintenance and Vegetation.*

4

Chapter 4: Nuisance Code Enforcement⁴

Most nuisance code enforcement programs are complaint driven. Complaints typically result in an inspection and a warning letter to the violator, followed by a notice of citation if action to correct the violation has not been taken by the property owner. If the violator still has not taken care of the problem within the period of time specified in the complaint, an official abatement proceeding is usually begun. As an alternative to traditional abatement proceedings, voluntary agreements have been included in some nuisance abatement provisions. A few cities and counties are using mediation programs to provide citizens an opportunity to settle their differences without resorting to more formal legal remedies.

Except for nuisances that may present an imminent danger, the level of nuisance code enforcement is a policy issue usually dependent on funding, staffing, and the level of community concern. Some communities actively monitor and enforce their nuisance codes. Others only deal with nuisances when they become a serious health or safety threat. Many local governments simply do not have sufficient funds to make code enforcement a priority. In those instances, complaints may have to be prioritized due to a lack of personnel. The top priority is public safety, followed by public health and environmental protection, with lesser nuisance violations further down the list. The courts have recognized that governments generally do not have sufficient resources to hire staff to seek out violations of all regulations.⁵

Enforcement Responsibility – Code Enforcement Officers

Having a single person or department responsible for the enforcement of nuisance regulations can be beneficial. It allows a jurisdiction to address nuisance problems comprehensively, promotes accountability, and helps end confusion by directing public contact to a single location instead of being fragmented over several departments. Enforcement responsibility should be assigned to a diligent, motivated employee with good people skills. Code enforcement officers should have the support and resources necessary to do the job right.

⁴This chapter is based in part on a paper presented to the Washington Association of Municipal Attorneys, by William L. Cameron while he was City Attorney of Kennewick, entitled “Nuisance Abatement,” MRSC Information Bulletin No. 497 (1997), *Legal Notes*. This paper was also updated and presented at the WSAMA 1999 spring meeting as the “Big Book of Nuisance Abatement,” MRSC Information Bulletin No. 503 (1999).

⁵See *Frame Factory v. Ecology*, 21 Wn. App. 50, 57 (1978).

Ideally, the code enforcement officer should be a building inspector or fire marshal and preferably someone that carries a badge and can issue citations. In some jurisdictions assigning a police officer to deal with nuisance complaints may be appropriate. In practice, the responsibility for handling nuisance complaints varies. It may rest with the building department, the public works department, the department of community development, or the police department.

Sample Job Descriptions

An example of a code enforcement officer job description from the City of Walla Walla⁶ follows. Other examples, including those from Burien, Ellensburg, and Puyallup, appear on MRSC's Web site

Go to  <http://www.mrsc.org/legal/nuisances/nu-enforce.htm#Job>

CITY OF WALLA WALLA

CLASS TITLE: CODE ENFORCEMENT OFFICER

BASIC FUNCTION:

Under the direction of the Development Services Manager, perform activities related to the administration and implementation of the City's Code Enforcement Program. Manage field investigations involving violations of the Municipal Code. Collaborate with residents of a diverse bilingual population to achieve voluntary compliance with Municipal Codes. When necessary, work with the City Attorney to issue uniform infraction citations and serve as the City's representative in District Court regarding code enforcement issues.

REPRESENTATIVE DUTIES:

Assist in the development of goals for Enforcement Program that reflect an awareness of private property rights and evaluate effectiveness of work program to accomplish these goals.

Receive complaints and prioritize magnitude of issues; log in and track complaints on computer; research and make determination of appropriate codes to address complaint; prepare appropriate compliance letters; work closely with a diverse and bilingual citizen population to achieve voluntary compliance, following due process procedures; and perform follow up inspections.

Promote, organize and assist neighborhood groups to form cooperative self-help clean-up projects and programs.

Assist in the construction and operate a multiple step compliance program including verbal interaction, written notices and infraction citations.

Communicate regularly and work closely with related departments including Fire, Parks, Police and Public Works to determine appropriate responsibility for complaints.

Maintain computerized records and establish sufficient background information to proceed with legal action if necessary.

⁶Reformatted for space conservation.

Issue infraction citation and complaints, prepare documentation and evidence to support charge in District Court. Act as City's representative in code enforcement cases in which citations are not issued. Assist City Attorney in preparing cases where defendants are represented by an attorney.

Attend seminars and meetings and maintain current knowledge of code requirements and related City ordinances.

Perform related duties as assigned.

KNOWLEDGE AND ABILITIES:

KNOWLEDGE OF:

Principles and practices of land use regulation, nuisance codes and health and safety standards, particularly in the area of enforcement. Inspection, enforcement and research methods, procedures and techniques. Report preparation and records maintenance procedures. Industry standard computerized enforcement tracking programs/software. Oral and written communication skills, including correct English usage, grammar, spelling, punctuation and vocabulary. Interpersonal skills using tact, patience and courtesy. Health and safety regulations.

ABILITY TO:

Plan, organize, coordinate and perform field inspections. Ensure compliance with Municipal Code and City ordinances. Work and communicate effectively with citizens, public officials and co-workers. Resolve conflicts in a positive manner. Read, interpret, apply and explain rules, regulations, policies, procedures and codes. Work independently with little direction. Organize and maintain accurate computerized and hardcopy records. Operate computerized tracking system. Photograph enforcement sites. Prepare clear and concise correspondence and written materials. Prioritize and schedule work to meet schedules and timelines. Speak conversational Spanish (desirable). Communicate effectively both verbally and in writing. Analyze situations accurately and adopt an effective course of action. Observe legal and defensive driving practices. Work courteously and tactfully with customers and employees.

EDUCATION AND EXPERIENCE:

Any combination equivalent to: Associate of Arts degree with emphasis in planning, enforcement, communications, public administration, or community development coursework, and three years increasingly responsible experience in related field. Bilingual communication skills in Spanish/English and prior public contact/public relations experience desirable.

LICENSES AND OTHER REQUIREMENTS:

Valid State driver's license and proof of good driving record; obtain certification as Certified Code Enforcement Officer within one year of appointment.

WORKING CONDITIONS:

ENVIRONMENT:

Indoor and outdoor work environment; seasonal heat and cold or adverse weather conditions; driving a vehicle to conduct work.


PHYSICAL ABILITIES: Walking at site inspections; seeing to perform inspections; hearing and speaking to exchange information; walk for extended periods; lift, stoop and carry objects.

HAZARDS: Exposure to various chemicals at inspection sites; fumes, odors, or gases; working on ladders.

Voluntary Abatement

The most desirable course of action is to obtain the voluntary cooperation of the public to abate nuisances. With few exceptions, convincing a person to take care of their problem is the most cost-effective way of dealing with any nuisance. If someone is charged with the responsibility of seeing that a community is kept clean, they will quickly find that it saves time and energy to *talk* property owners into bringing their property up to a socially acceptable standard. Dilapidated buildings, weed infested lots, and all those other things that make urban life just a little less pleasant will begin to look better.

The judicious application of a few citations and bills for clean up work is a necessary adjunct to polite conversation. Some people do not keep their premises clean simply because no one ever told them that their neighborliness was in question. A number of jurisdictions have included voluntary agreements in their nuisance provisions. An example from Burien appears below. Other examples including those from Bellevue and Vancouver appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-abate.htm#Voluntary>

Burien Municipal Code, Ch. 8.45 Nuisances

8.45.030 Voluntary correction.

(1) Applicability. This section applies whenever the applicable department director determines that a nuisance has occurred or is occurring.

(2) General. The applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.

(3) Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.

(a) Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

(i) The name and address of the person responsible for the violation; and

(ii) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(iii) A description of the violation and a reference to the regulation which has been violated;

and

(iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and

(v) An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and

(vi) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and

(vii) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

(b) Right to a Hearing Waived. Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

(c) Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.

(d) Abatement by the City. The city may abate the violation in accordance with BMC 8.45.060 if the terms of the voluntary correction agreement are not met.

(e) Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with BMC 8.45.040(5), plus all costs and expenses of abatement, as set forth in BMC 8.45.060(4). (Ord. 146 § 1, 1995)

Neighborhood Dispute and Mediation Centers

Chapter 7.75 RCW authorizes cities and counties to create dispute resolution centers. Several jurisdictions have established centers to resolve conflicts including nuisance problems. Brief descriptions of Bellevue, Mercer Island, and the Vancouver-Clark County programs are included here. Additional program descriptions are on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/mediate.htm>

Examples of Neighborhood Dispute and Mediation Programs

Bellevue's Neighborhood Mediation Program began as a pilot project in the code compliance division as an alternative to traditional enforcement of neighborhood issues. The program is designed to enable citizens to resolve neighborhood problems, at the earliest possible stage, without government intervention. Complaints referred to mediation fall into three categories: Those where no codes cover the issue; those covered by code, but do not present life safety concerns and are referred to mediation prior to investigation; and those which have been investigated and no violation or partial violation has been found.

Mercer Island Neighborhood Mediation (MINMP) is a program administered by the office of the city attorney to help Mercer Island residents resolve disputes quickly, cooperatively, and cost-efficiently. Referrals to the program come from city departments, the police, community agencies, and citizens who request program services.

Vancouver Community Mediation Services (CMS) handles negotiable disputes arising between neighbors throughout the county. Some of the nuisance situations CMS helps resolve are untrimmed hedges, loud stereos, challenged boundaries, abusive language, disputed parking spaces, trespassing in a flower garden, property damage, junk-strewn yards, vandalism, barking dogs, and harassment. The majority of cases involve noise, interpersonal conflicts, animal complaints, and property maintenance concerns. The program's goals are to enable neighbors to approach conflict with a positive attitude, and to develop the skills necessary to find a mutually acceptable resolution to the concerns challenging them.

Administrative Enforcement

Administrative enforcement refers to the establishment of a non-judicial hearing and decision-making process for nuisance abatement. An administrative hearing provides the opportunity for property owners to present their side of the issue. These proceedings are much less time-consuming and expensive than a full court adjudication. However, because nuisance enforcement and abatement deal with property rights, the process must include a right to appeal any final administrative decision to court. The hope is that an administrative decision will satisfactorily resolve the issue without an appeal to court. If it is clear from the outset that a property owner wants to vigorously contest an administrative nuisance action, regardless of cost, it might be wise to initiate the enforcement action through court proceedings.

Sometimes an administrative process will consist of a hearing before an individual or board, followed by an administrative appeal to another board or hearing examiner, and then an appeal to district or superior court. If the problem can be resolved through an administrative process (without a judicial appeal) it is generally simpler, faster, and less costly than initiating the enforcement action in court. For an example of a full administrative enforcement process, including a level of administrative appeal prior to superior court appeal, see Chapter 35.80 RCW which establishes a process for dealing with unfit dwellings, buildings, and structures. This is also discussed in *Chapter 7, Dangerous or Unfit Buildings, Dwelling, and Structures*.

The key to any administrative nuisance abatement ordinance is a clear and detailed definition of what constitutes a nuisance. Clear and unambiguous administrative procedures must give all those affected an opportunity to have decisions reviewed before any abatement action is taken.⁷ Finally there must be an effective follow-through by physically abating the nuisance if the property owner or occupant fails or refuses to comply.

District or Municipal Court Proceedings – Citations

If voluntary compliance is not forthcoming, the next step may be to issue a citation. Issuing a citation for an infraction (civil offense) or misdemeanor (criminal offense) will often rectify even the worst problem. Citations are most effective when there are clear violations of particular ordinances or where the conduct of the violator is patently outrageous.

Writing a ticket has disadvantages. The enforcement official must be able to prepare and present a case with what can be seen from the right-of-way unless there is both probable cause and the time, money, and energy to obtain a warrant. A municipal or district court can order an individual to abate a nuisance, but it does not have jurisdiction to issue an order authorizing abatement by a city, town, or county. A warrant of abatement can only be issued by a superior court.

A municipal or district court can issue a judgment providing for a daily fine of a prescribed amount for each day that a person allows a nuisance to continue after the court has ordered the property owner to abate the nuisance. The City of Kent has found that subsequent actions to collect on such

⁷See *Memphis Light Gas & Water v. Craft*, 436 U.S. 1 (1978).

finances have been a very effective way to obtain the cooperation of those who ignore a court order to abate a nuisance. After talk, a ticket or criminal complaint is sometimes the cheapest remedy.

Many jurisdictions have decriminalized nuisance provisions and are using a civil infraction system. A sample procedure for a notice of a civil violation from the City of Bellevue is illustrated here. Others from Everett, Kitsap County, and Vancouver along with sample forms, including a letter to owner/resident, correction notice, voluntary correction agreement, notice of civil violation and summons, violation citation, violations hearing examiner, and limited right of entry, may be viewed on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-abate.htm#CivilProceedings>

Bellevue Municipal Code, Ch. 1.18 Civil Violations

1.18.040 Notice of civil violation.

A. Issuance.

1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to BCC 1.18.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in BCC 1.18.030 under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs;
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. When the person knows or reasonably should have known that the action is in violation of a city regulation.

B. Content. The notice of civil violation shall include the following:

1. The name and address of the person responsible for that violation; and
2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
3. A description of the violation and a reference to the provision(s) of the city regulation which has been violated; and
4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with BCC 1.18.060 and the hearing examiner's order; and
5. The date, time and location of an appeal hearing before the hearing examiner which will be at least 10 days from the date the notice of civil violation is issued; and
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least 48 hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and
7. A statement that the costs and expenses of abatement incurred by the city pursuant to BCC 1.18.060(D) and a monetary penalty in an amount per day for each violation as specified in BCC 1.18.040(E) may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

C. Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner

by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

E. Monetary Penalty. The monetary penalty for each violation per day or portion thereof shall be as follows:

1. First day of each violation, \$100.00;
2. Second day of each violation, \$200.00;
3. Third day of each violation, \$300.00;
4. Fourth day of each violation, \$400.00;
5. Each additional day of each violation beyond four days, \$500.00 per day.

F. Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of monetary penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within 10 calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.

2. The city attorney or his/her signee is authorized to take appropriate action to collect the monetary penalty. (Ord. 4743 § 1, 1995; Ord. 4212 § 2, 1991)

Civil Proceedings – Warrants of Abatement

When voluntary compliance and administrative proceedings still do not solve the problem, it may be necessary to go to superior court and obtain a warrant of abatement. The warrant authorizes the jurisdiction to enter onto private property, abate the nuisance, and hold the property owner responsible for all of the abatement costs. If there have been earlier administrative proceedings and there is a clear record that due process has been followed, a petition for a warrant of abatement may be handled expeditiously, particularly where the property owner chooses not to respond to the superior court filing.

In unusual circumstances, where it is obvious that voluntary or administrative proceedings will not bring about compliance, enforcement can be initiated in superior court. A contested nuisance suit in superior court is generally not a speedy way to resolve a nuisance problem, except in a rare case where a court order or injunction can be obtained to stop a nuisance while the matter is being adjudicated.

A civil nuisance abatement case brought in superior court often involves (1) complex factual or legal issues, (2) a large parcel of property (or several properties), (3) or a violator whose attitudes or, in some cases, mental fitness, make it unlikely that the nuisance situation can be resolved without a warrant of abatement. One advantage of court action is that the court discovery rules will allow access to the offender's premises.

Summary Abatement

Summary abatement involves the actual removal of a nuisance by administrative officials without resorting to judicial proceedings. Summary abatement may or may not be specifically authorized

by a jurisdiction's ordinance. Sometimes a situation is so dangerous that it should be repaired or eliminated immediately. Open wells, discharges of sewage, abandoned refrigerators, and similar types of nuisances are extreme hazards especially in populated areas. If the owner will not fix them upon request or cannot be found, the local government should take it upon itself to make the correction and decide later who should pay.

There is some potential liability exposure for cities and towns that initiate summary abatement procedures. As a practical matter, the city should protect itself by assembling evidence, such as photographs, to support its findings that an emergency exists. If an action were brought against the city, and the court determined that the condition abated did not in fact constitute a fire or health hazard or a nuisance, the city would probably be liable for damages sustained by the property owner. A sample summary abatement provision from the Port Angeles nuisance code appears below.

8.04.070 Immediate Danger - Summary Abatement

Whenever any condition or use of the premises causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, and the responsible person(s) cannot be contacted or refuse(s) to immediately abate the condition, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement may become a civil debt against the owner or the responsible person and shall be collectible in the same manner as any other civil debt owing to the City or as otherwise provided in this Chapter. (Ord. 2469 §1, 1/22/88)

Right of Entry to Inspect Private Property

Consensual searches are not unreasonable and do not require a warrant. However, it is advisable to get a warrant for entering property under any circumstances where permission cannot be obtained. In a Ninth Circuit Court case involving the City of Santa Ana, California, *Connor v. Santa Ana*, 897 F.2d 1487 (9th Circuit 1990), the court held that a warrant was required prior to entering property to inspect for a nuisance violation. This was based on the fourth amendment of the U.S. Constitution due process clause.

A warrant may not be needed for a nuisance that is located in plain view, such as in an open front yard. This is the holding in Ninth Circuit Court of Appeals case, *Schneider v. County of San Diego*, 28 F.3d 89 (9th Circuit 1994). The court addressed the legality of the county abating a nuisance on private property after all the proper notices had been given to the property owner. The court recognized an exception for searches on private property where the activity takes place in *open fields* and where there is no recognized expectation of privacy.

For more information concerning the severe limitations on administrative searches in Washington, see "Administrative Warrants After McCready," by Miriam Reed in *Legal Notes*, MRSC Information Bulletin No. 488, October 1994.

Sample right-of-entry ordinances, including those from Kennewick and Lewis County, are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-enforce.htm#Right>

Record Keeping

Complete and accurate records are essential to an effective abatement program. This includes all correspondence, notices, and phone calls relating to the property. It is also essential that the records be cross-referenced not only by address but by owners and tenants as well. Keeping a tickler file that tracks all enforcement steps that have been taken and any that still remain is also important.

Equipment

No discussion of nuisance abatement is complete without a list of the equipment that is necessary to do the job. To some officials, the most important pieces of equipment are a bucket loader and a dump truck, or access to a contractor who has them. Add to this a mowing machine, and most any problem can be addressed.

As nuisances are encountered and processed, it is important to record what is there and what is going on. Photographs are crucial for documenting the visual impacts of a particular nuisance problem. A digital or Polaroid-type camera is often invaluable for taking a picture or two just before a court hearing. “You will be surprised at what tales do not get told when you have a ten minute old photograph in your hand.”⁸

Enforcement Program Examples

Enforcement program descriptions from Bremerton, Lakewood, and Pasco, submitted as AWC's Municipal Achievement Award entries, are summarized on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-enforce.htm#Program>

Sample Comprehensive Nuisance Ordinances

The remaining chapters of this publication address particular types or classes of nuisance which, in some cases, may be regulated under a separate ordinance or code provision. Many jurisdictions have also adopted comprehensive ordinances that address a range of public nuisance issues. Comprehensive nuisance ordinances, including samples from Burien, Kennewick, Lakewood, Spokane, and Vancouver, are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-comp.htm>

⁸“Nuisance Abatement,” by William L. Cameron, City Attorney of Kennewick, *Legal Notes*, MRSC Information Bulletin No. 497, 1997, pp. 17-5

Chapter 5: Animal Nuisances

Among the most difficult and recurring problems faced by local officials is the regulation and control of animals. In most communities animal nuisance problems are addressed through a combination of zoning, licensing, and special animal control regulations. Zoning provides the standards for the kinds, numbers, and conditions for the keeping of animals in various zones. Animal control and nuisance regulations address a variety of potential problems, including animals running at large, noise problems, and dangerous animals. Community standards vary as does the level of enforcement. The approach taken will depend on factors such as population density, lot sizes, and community attitudes. Where appropriate, animal nuisance regulations should be supplemented by non-regulatory tools that focus on educating and helping people to be responsible animal owners. Another animal-related problem, wildlife, is addressed in *Chapter 13, Miscellaneous Nuisances*. MRSC has a number of sample comprehensive animal control ordinances on its Web site.

Go to ☛ <http://www.mrsc.org/pubsafe/animalctrl.htm>

Animal Noise

Howling animals, barking dogs, and other noisy pet problems are probably the most common source of animal-related nuisance complaints. In most cases the parties involved are able to take care of the problem without intervention. However, in cases where there is a recurring problem, a nuisance ordinance on the books that allows officers to warn and, if necessary, cite the offending pet's owner is useful.

Animal noise ordinances should be based upon reasonable standards that give citizens fair notice of what level of noise will constitute a violation. In *Spokane v. Fischer*, 110 Wn.2d 541 (1988), the Washington Supreme Court held a Spokane ordinance that prohibited frequent and habitual dog barking that disturbs or annoys “any other person” to be unconstitutionally vague. The court held that the ordinance's reliance on a subjective determination by “any person” who hears the barking, made it prone to arbitrary enforcement. This case suggests that animal noise ordinances that require multiple complaints to trigger enforcement may be less vulnerable to challenge.

For more information on noise ordinance enforcement, see *Chapter 12, Noise Nuisances*. An example of provisions addressing barking dogs from Fircrest appears below, other examples of animal noise control provisions can be found on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-animal.htm#Noise>

Fircrest Municipal Code 7.04.050 Barking Declared Nuisance

It shall be unlawful for an owner to keep or harbor any dog or other animal, which, by frequent or habitual howling, yelping, barking or the making of other noises, shall annoy or disturb a neighborhood of three or more persons who are residents of separate households. Any such dog or animal shall be deemed a nuisance and may be seized and impounded. (Ord. 737 § 1, 1980; Ord. 448 § 5, 1963)

Farm Animals and Livestock

The keeping of farm animals is usually controlled through zoning regulations that specify the types of animals allowed, maximum numbers, minimum lot sizes, setbacks, and other similar controls. These regulations are intended to minimize and mitigate any negative impacts on neighboring properties. Nuisance controls include keeping animals off public property, limiting noise and odors, ensuring humane living conditions, and protecting the environment. The latter includes the protection of sensitive areas and water quality.

Sample ordinances regulating the keeping of pets and livestock, including provisions from Bellingham relating to conditions for keeping animals in the city, Fircrest's livestock provisions, and Thurston County's regulations for livestock running-at-large, are available on MRSC's Web site.

Go to  <http://www.mrsc.org/pubsafe/animal/livestock.htm>

Horses

Nuisance provisions dealing with horses are typically concerned with riding on city streets and/or being at large as in the following examples:

Bellingham Municipal Code 10.28.020 Nuisances Declared

Each of the following, unless otherwise permitted by law, is declared to be a nuisance.... (T.) Riding or leading horses upon the sidewalks or parking strips anywhere in the city.... (Ord. 1998-06-035 §; Ord. 8573 §7(B), 1977)

Normandy Park Municipal Code 6.04.080 Control of Animals

(1) It shall be an infraction for the owner of an animal to intentionally or unintentionally:

(a) Allow his or her horse to be at large or in public parks;.... (Ord. 583 § 1, 1994; Ord. 498 §6, 1988; Ord. 417 § 5, 1983; Ord. 290 §3, 1974; Ord. 263 §6, 1973; Ord. 138 §1, 1963; Ord. 62 §3, 1956)

Living Conditions of Animals

Nuisance provisions regulating animal living conditions are designed to ensure that yards, stables, barns, kennels, and other similar premises are maintained in a clean and sanitary condition as provided for in the following example:

Marysville Municipal Code 7.04.010 Offensive and Unsanitary Premises for Animals

All pens, stables, barns, kennels, yards and other premises where animals are confined or kept for private or commercial purposes shall be maintained in a clean condition so as to avoid unhealthy conditions for

the animals or accumulation of animal waste; provided, however, said requirements shall not pertain to customary farm or agricultural practices. Any person who owns, occupies or has charge of premises which violate this section shall be deemed guilty of maintaining a nuisance and shall be punished by a fine not to exceed \$300.00 or by imprisonment not to exceed three months, or by both such fine and imprisonment. (Ord. 1828, 1991; Ord. 65 § 1, 1894)

Disposal of Animal Wastes

Most nuisance and animal control ordinances have provisions that require pet owners to properly dispose of animal wastes. Failing to do so interferes with the public's use of sidewalks, parks, and other public areas and can create unsanitary conditions on public and private property. This problem is most often addressed through adoption of “pooper scooper” provisions, which make the pet owner or other person having charge of an animal responsible for removing wastes deposited by the animal on public or private property, other than the premises of the owner. Some communities make it a violation for pet owners to fail to have in their possession the equipment necessary to remove animal wastes while accompanying the animal on public property. An example of a “pooper scooper” ordinance is included here from Edmonds.

Other animal waste provisions can be found in general nuisance provisions. Problems related to the potential adverse environmental impacts of farm animal wastes are addressed in local, state, and federal water pollution regulations. Additional examples of animal waste provisions from Seattle, Algona, and Moxee are available on MRSC’s Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-animal.htm#Waste>

Edmonds Municipal Code 5.05.070 Animal Waste

A. It shall be unlawful for the owner or person having charge of any dog or animal to permit, either willfully or by failure to exercise due care, such animal to commit a public nuisance by defecating in any area of the city other than the premises of the owner or person having charge or control of the animal, unless said owner or person having charge takes immediate steps to remove and properly dispose of said feces.

B. It shall be unlawful for the owner or person having charge of any dog or other animal, to take said dog or animal, off of the private property of said person without having in the possession of the owner or person having charge of the dog or animal, a proper means of disposal for the feces of the dog or other animal.

C. Disposal is defined, for the purposes of this section, as the removal of feces by means of a bag, scoop or other device and an eventual disposal in a trash receptacle, by burying or by other means of lawful disposal. (Ord. 2711, 1989)

Chapter 6:

Vehicle Nuisances

This chapter addresses three of the most common types of vehicle-related nuisances: (1) junk vehicles; (2) automobile repair on streets and in yards; and (3) parking vehicles in front and/or side yards in residential areas. For information on how cities and counties deal with vehicle noise problems, see *Chapter 12, Noise Nuisances*.

Junk Vehicles

The presence of an excessive number of junk vehicles can threaten the character and safety of neighborhoods. They can cause visual blight, affect property values, and create an attractive nuisance for children. Junk vehicles can also provide harborage for rodents and other pests. These problems have led many communities to adopt nuisance ordinances aimed specifically at mitigating or removing accumulations of junk vehicles or parts from private property.

RCW 46.55.240 grants specific authority for cities, towns, and counties to adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of junk vehicles or vehicle parts from private property. Such ordinances must, however, contain the applicable provisions of Chapter 46.55 RCW, including certain notice and hearing requirements.

“Junk vehicle” is defined in RCW 46.55.010(4) as meeting at least three of the following four requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable;
- (d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

After notice has been given and a hearing, if requested, has been held, the municipality may remove and dispose of a junk vehicle. Costs of the removal may be assessed against the last registered owner of the vehicle, or the costs may be assessed against the owner of the property on which the vehicle is being stored.

The state law does contain an exemption for vehicles that are “completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property” or

vehicles that are “stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer.”⁹

A number of junk vehicle ordinances, including those from Tacoma and King County, are available on MRSC’s Web site.

Go to  <http://www.mrsc.org/legal/nuisances/junkvehicle.htm>

Vehicle Repair on Private Property

Many of the nuisance problems associated with vehicle repair can be addressed through zoning and nuisance regulations. Zoning regulations are typically used to limit vehicle repair activities in residential areas and to keep such activities from turning into commercial enterprises. The classic example is that of an individual's auto repair “hobby” that starts to take on the characteristics of a commercial automobile repair shop. Typical zoning controls include requirements that repair work be limited to vehicles owned by the property owner; be done only in an enclosed structure; and/or involve no more than one vehicle at a time. An example of vehicle repair on private property from the City of Everett is provided here. Vehicle repair on public streets is covered in *Chapter 13, Nuisances on Public Property and Public Ways*. Additional examples are on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-autos.htm#Repair>

Everett Municipal Code 39.160 Vehicle and Equipment Repair on Residential Premises

Servicing, repairing, assembling, wrecking, modifying, restoring, or otherwise working on any vehicle on any residential premises in any zone district shall be subject to the following:

A. Work shall be limited to the repair and maintenance of vehicles, equipment, or other conveyance currently registered as specified in the Washington Vehicle Code to the occupant or a member of the occupant's family, which shall be limited to parents, grandparents, spouse, or children related by blood, marriage or adoption. This limitation precludes auto repair on residential premises by any commercial entity.

B. Such work shall be conducted on no more than one vehicle at any one time.

C. Such work shall only be done within an enclosed structure (such as a garage) or in an area which is screened from public view.

D. Such work shall be done only between the hours of eight a.m. and ten p.m.

E. Such work shall not be done in a public right-of-way.

F. Storage of parts, equipment, or other supplies needed for the repair of the vehicle on the premises must be kept within an enclosed structure or in an area, which is screened, from public view.

G. No such work which creates a nuisance as defined in Ordinance No. 1554-89 shall be permitted.

H. Upon completion of any work allowed by this section, the property shall be cleaned of all debris, oil, grease, gasoline, cloths, rags, and equipment or material used in the work, and shall be left in such a condition that no hazard to persons or property shall remain.

I. Disposal of all waste products shall be done in accordance with RCW 19.114. (Ord. 1849-92 § 59, 1992)

⁹RCW 46.55.240(3)(c).

Automobile Storage – Too Many Parked Cars

Prohibiting the parking of vehicles outside of “driveways” or within required front and/or side yard areas, as in the illustration from Bellingham included here, is a way to regulate parking in yards. The key to enforcement of these types of regulations appears to be the use of clear definitions for terms such as “driveway” or “parking area,” and specification of the required minimum front, side, and rear yards. Restrictive parking regulations can be accompanied by provisions that allow parking or storage of vehicles where there is appropriate fencing or other screening.

The adoption of special regulations to restrict the parking and storage of certain types of recreational vehicles such as motor homes, trailers, boats, and campers in residential neighborhoods is common. These regulations generally restrict recreational vehicles from parking on city streets, particularly in residential areas, and/or require that such vehicles be stored in an enclosed area, site-screened, or located in a side or rear yard. See *Chapter 13, Public Property and Public Ways* for parking on the right-of-way. Additional examples of provisions regulating the parking of automobiles and recreational vehicles in residential areas are available on MRSC’s Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-autos.htm#Storage>

Bellingham Municipal Code 11.33.185 Parking Within Residential Yards Prohibited

No person shall stop, stand, or park a vehicle within the area designated as a Minimum Front Yard, or Side Yard on a flanking street, as defined in Bellingham Municipal Code Section 20.30.040(F), within a residentially zoned area, when the required minimum front or side yard abuts any sidewalk or curb. Parking shall be permitted in and upon designated driveways as provided in this section. The designated driveway is defined as the surfaced roadway leading from the street to the garage, covered parking area, or other permitted off street parking area. [Ord. 1999-04-020]

Chapter 7:

Dangerous or Unfit Buildings, Dwellings and Structures

There are several options for regulating abandoned, unfit, and/or dangerous buildings, dwellings and structures. These include the adoption of specialized building or housing codes published by the International Conference of Building Officials and/or the adoption of local nuisance provisions under various state laws.

In addition to regulations pertaining to structural deficiencies or other hazardous conditions of buildings, ordinances have been enacted to deal with property maintenance issues such as accumulation of debris and trash, overgrown weeds and shrubs on private property. For more information on these types of regulations, see *Chapter 9, Unsightly Areas and Property Maintenance*.

Some jurisdictions have combined property maintenance and dangerous building codes to take a more comprehensive approach to the problem of dangerous and/or unfit buildings and structures as well as unkempt lots and premises. Some of the sample ordinances referenced in this chapter reflect this approach.

Uniform Building Codes

The *Uniform Building Code*, adopted as part of the State Building Code, provides general authority for counties, cities, and towns to regulate and abate dangerous buildings as public nuisances.¹⁰ To implement this authority, many jurisdictions have adopted the *Uniform Code for the Abatement of Dangerous Buildings*, published by the International Conference of Building Officials (ICBO). This code is compatible with the *Uniform Building Code* and applies to all types of buildings and structures. It provides legal steps to abate dilapidated, defective buildings, which endanger life, health, property, and public safety. Some jurisdictions have also adopted ICBO's *Uniform Housing Code*, which is comparable to the *Uniform Code for the Abatement of Dangerous Buildings*, but is applicable only to dwellings. It contains minimum health and safety standards by regulating the use and occupancy, location, and maintenance of all residential buildings within the jurisdiction. These uniform codes may be adopted together through passage of one ordinance, or adopted individually by separate ordinances. See the examples from Grandview and Edmonds on MRSC's Web site.

Go to <http://www.mrsc.org/legal/nuisances/nu-build.htm#Uniform>

¹⁰Sec. 102, *Uniform Building Code*, 1997 Edition, published by the International Conference of Building Officials

Chapter 35.80 RCW – Unfit Dwellings, Buildings and Structures

Chapter 35.80 RCW authorizes counties, cities, and towns to adopt ordinances to regulate and abate unfit dwellings, buildings, and structures. Under this statute, cities, towns and counties can establish an improvement board or officer with powers to investigate potentially dangerous or unfit buildings. If a building is found to be unfit for human habitation or other use after investigation, notice and a public hearing, the board or officer may order the owner to repair, vacate, or demolish the building, subject to certain appeal rights. Examples from Clark County, Kennewick, Tacoma, and Yakima appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-build.htm#Dangerous>

Chapter 35.80A RCW – Condemnation of Blighted Property

Another option is provided by RCW 35.80A.010 relating to procedures for the condemnation of certain “blighted property.” Under this statute, counties, cities and towns may acquire by condemnation buildings that meet any two of the following three conditions: (1) If a dwelling has not been occupied for a period of one year; (2) If the property constitutes a threat to the public health, safety or welfare as determined by the executive authority of the city or his designee; and (3) If the dwelling has been associated with illegal drug activity in the last year.

General Authority to Regulate Dangerous Buildings as Nuisances

Counties, cities, and towns may also regulate dangerous or unfit buildings and dwellings under their general authority to define nuisances and provide for their abatement.¹¹ The following ordinances regulating buildings and structures are available on MRSC's Web site.

● Damaged Buildings or the Existence of Partial Buildings

Examples from Cheney, Deer Park, Moxee, and Port Angeles appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-build.htm#Damaged>

¹¹First class cities - RCW 35.22.280(30); Second class cities - RCW 35.23.440(10); Code cities - RCW 35A.21.160; Towns - RCW 35.27.410; and Counties - Article 11, § 11, Washington State Constitution

● **Unsightly Buildings**

Examples from Lynnwood, Richland (empty buildings), and Spokane (boarded-up buildings) appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-build.htm#Unsightly>

In many communities, enforcement of dangerous building codes is just one part of a more comprehensive effort to encourage and facilitate the maintenance and upkeep of buildings, residences, and neighborhoods. These efforts may include federally funded home repair programs; neighborhood improvement programs administered through neighborhood associations or councils; and neighborhood clean-up or other self-help programs.

Chapter 8:

Unsightly Areas – Property Maintenance and Vegetation

Failure of property owners to maintain, at least minimally, their properties may lead to nuisance conditions. Excessive growth of grass and weeds, growth of vegetation over sidewalks, streets or alleys, and excessive amounts of rubbish, junk, and litter create conditions that tend to reduce the value of property, blight neighborhoods, and create fire or other safety hazards.

Washington counties, cities, and towns regulate unsightly areas under their general authority to define nuisances and provide for their abatement. Statutory authority includes:

- First class cities - RCW 35.22.280(30);
- Second class cities - RCW 35.23.440(10);
- Code cities - RCW 35A.21.160; towns - RCW 35.27.410; and
- Counties - Article 11, § 11, Washington State Constitution and RCW 36.32.120.

Counties, cities, and towns also have authority to address vegetation issues through general nuisance statutes as well as specific statutes. Counties have specific statutes authorizing weed control districts. The statutes are discussed under the Weed Control and Vegetation section in this chapter.

In addition to regulations pertaining to structural deficiencies or other hazardous conditions of buildings, many jurisdictions have ordinance provisions that address property maintenance issues such as the accumulation of junk, debris, and trash. Some have combined these provisions under the heading “property maintenance” in their codes. There is a limit on how far a city or county may go in regard to regulating “unsightly areas.”

Limits on Regulating Aesthetics

While local governments have clear authority to regulate and abate nuisances for public health, safety, and welfare reasons, there are limits on how far such regulations can go. This is a concern particularly for property maintenance regulations (sometimes called property appearance codes) that may be based more on aesthetic than public safety and health grounds.

It is an open question in this state whether our courts would uphold an ordinance that is based solely on aesthetic grounds. Two Washington cases, *Lenci v. City of Seattle*, 63 Wn.2d 664 (1964) and *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19 (1978) do provide support for municipal regulations that are based in part on aesthetic considerations. However, these cases seem to imply that there must also be public health, safety, or welfare issues present in order to justify a municipal regulation under the police power. Therefore, nuisance ordinances regulating property maintenance and

appearance issues should be carefully drafted to ensure that they are sufficiently based on public health and safety as well as aesthetic grounds.

Unsightly Buildings and Areas

In addition to the example from Kennewick shown here, other examples from Lynnwood, Richland, and Tacoma are provided on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-build.htm#Unsightly>

Kennewick Municipal Code Ch. 9.44 Environmental Conservation Code

9.44.010: Purpose And Findings: The City Council of the City of Kennewick finds that unkempt, unsafe, unsanitary and otherwise improperly maintained premises and structures, sidewalks and easements within the City of Kennewick, in addition to the obvious hazards which these conditions pose to the public health, safety and welfare, adversely affect the value, utility and habitability of property within the City as a whole and specifically cause substantial damage to adjoining and nearby property. A property which is merely unkempt, may reduce the value of adjoining property by more than 30%, and there are sufficient properties which are unkempt, unsightly and dangerous, that the habitability and economic well-being of the City are materially and adversely affected. This Chapter conveys to the City administration, in accord with the procedures set out below, all necessary and proper powers to abate nuisances as they are described or found to exist and to charge the costs of their abatement to those responsible, the owners and occupants of the property upon which nuisances exist, and those properties themselves. This Chapter is an exercise of the City's police power, and it shall be liberally construed to effect this purpose. (Ord. 3062 Sec. 1 (part), 1987)

● **Vacant Buildings**

In addition to Richland's provision on empty buildings shown here, other examples from Lynnwood and Spokane appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-build.htm#Vacant>

Richland Municipal Code, Ch. 21.17 Empty Buildings

21.17.030 General Requirements. (Industrial and Commercial Buildings)

It is the specific intent of this chapter that empty buildings be maintained by the owner in a state of repair and orderliness so as to remain acceptable to the city of Richland and in conformance with the building codes and the nuisance code of the city of Richland.

(a) Any empty building unoccupied for a period of thirty (30) days shall be secured in a manner to thwart unauthorized entry thereby avoiding becoming an attractive nuisance.

(b) Owners of empty buildings which have broken glass in windows or doors shall cause such damage to be repaired within five (5) working days of being notified by the building inspector. Such repair may be by replacement of the broken glass or by covering such glassed openings with wood or other suitable material.

(c) Any empty building which is boarded up with wood or other suitable material shall be painted or otherwise treated in a manner that matches or complements the building exterior and maintained so as to avoid an unkempt and unsightly appearance. (Ord. 5-89)

● Accumulation of Trash

Provisions relating to the accumulation of trash and litter from Port Angeles and Clark County are illustrated here. Examples from Mercer Island and Tacoma appear on MRSC's Web site. Also see the discussion of illegal dumping and littering in *Chapter 10, Environmental Nuisances*.

Go to  <http://www.mrsc.org/legal/nuisances/nu-unsight.htm#Trash>

Port Angeles Municipal Code Ch. 8.04 Nuisances

8.04.030 Types of Nuisances....

B. The existence of any junk, litter, or refuse within the City when written complaint from one or more City residents who are impacted by the present or potential effect of the condition on them or their property, has been received by the City unless such materials are kept or stored in an orderly and sightly manner and so as not to create a fire, safety, health or sanitary hazard.

C. The depositing, leaving or throwing away of any junk, litter or refuse within the City for an unreasonable length of time beyond what is necessary for proper disposal, which length of time shall be not less than thirty (30) days, except at the City Landfill or in covered containers or receptacles acceptable to the enforcement officer of the City....(Ord.3014 §1 (part), 3/26/99; Ord. 2469 §1, 1/22/88)

Clark County Code Ch. 9.24 Nuisances

9.24.010 Nuisances enumerated.

Each of the following conditions, unless otherwise expressly permitted by law, is declared to constitute a public nuisance:...

(a) The outside accumulation within the front and side yard of two (2) or more cubic yards of waste, rubbish and trash, including but not limited to bottles, cans, glass, wire, broken crockery, broken plaster and other similar abandoned, discarded or unused material, which is visible from an adjacent property or roadway, unless kept in covered bins or receptacles; PROVIDED, that nothing herein shall prohibit the maintenance of a compost pile outside the front and side yard as long as the usage of the same is intended for the household's use;... (Ord. 1988-08-26; amended Sec. 2 of Ord. 1991-11-09; amended Sec. 7 of Ord. 1998-07-19; amended by Sec. 3 of Ord. 1998-11-02)

● Storage of Miscellaneous Items

Regulations governing outdoor storage vary in terms of length of storage, purpose, and whether items stored are in public view. Similar provisions appear in both highly urban and more rural settings. In addition to the examples from Skamania County and Ferndale on outdoor storage shown here, other examples from Toppenish, Lynnwood, Enumclaw, and Ferndale appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-unsight.htm#Storage>

Skamania County Code Ch. 8.30 Outdoor Storage or Accumulation of Material

8.30.010 Nuisances enumerated.

Each of the following conditions, unless otherwise expressly permitted by law, is declared to constitute a public nuisance on all unincorporated lands of Skamania County:

A. The outside accumulation of more than two cubic yards of waste, rubbish and trash, including but not limited to bottles, cans, glass, wire, broken crockery, broken plaster, and any other similar abandoned, discarded or unused material, which is visible from an adjacent property or road, unless kept in covered bins or covered receptacles.

B. The outside storage of abandoned, discarded or unused objects or equipment, including but not limited to tires, household furniture, stoves, refrigerators and freezers, which are visible from an adjacent property or road.

C. The outside storage for more than sixty consecutive days of more than five yards of any used or unused building materials which are visible from an adjacent property or road; provided, that nothing herein shall:

1. Prohibit such storage when done in conjunction with a construction project for which a building permit has been issued and which, in the opinion of the county, is being pursued diligently to completion or, when the proposed construction does not require a building permit subject to Title 15 of this code, the construction, in the opinion of the county, is being diligently pursued to completion;

2. Prohibit storage upon the premises of a bona fide lumber yard, dealer in building materials, or other commercial enterprise when the same is permitted under the zoning ordinance and other applicable law;

3. Make lawful any storage when it is prohibited by other ordinances or laws.

D. The presence for more than thirty consecutive days of junk motor vehicles, as defined in RCW 46.55.010 (4), or unattached motor vehicle parts that are visible from an adjacent road or other public or private property. (Ord. 1989-04 § 1; Ord. 1989-02 § 1)

Ferndale Municipal Code Ch. 8.08 Nuisances

8.08.010 Nuisances Declared....

G. Unhealthy or Unsightly Conditions in Public View. The keeping or maintenance in any area on private property which is clearly visible from a public street, sidewalk, park or other public area of any accumulation, collection or untidy storage of any of the following: old appliances or parts thereof; old iron, steel, aluminum or other metal; inoperable junk vehicles, vehicle parts, machinery or equipment; mattresses, bedding, clothing, rags, or cloth; straw, packing material, cardboard or paper; tin cans, wire, bottles, glass, cement; wood or timber not neatly stacked or piled; or, in addition to the above articles, any condition judicially determined to be unhealthy after written complaint from a local health officials, a fire hazard after written complaint from a local fire official or an unsightly condition after written complaint from two or more residents within the neighborhood or general vicinity of the condition. This type of public nuisance shall not apply to conditions completely enclosed within a building or fencing so as not to be visible from public property or to construction sites where the progress of construction is proceeding with reasonable diligence. (Ordinance No. 778 §1 1986)

Graffiti

Graffiti is a blighting factor which depreciates the value of the vandalized property and affects the value of surrounding properties. When graffiti is allowed to remain, it tends to invite more graffiti. Rapid removal is considered the most effective way to control and eradicate graffiti. This approach, illustrated by SeaTac's provision below, treats graffiti as a public nuisance and requires its removal by the property owner. Another approach is aimed at the "graffiti artists," making it a crime to damage or deface public or private property. In 1996 the state legislature increased the penalties for placing graffiti on another person's property. RCW 9A.48.090 classifies placing graffiti on private property as the crime of malicious mischief in the third degree. The 1996 legislation also imposed, in some circumstances, financial responsibility on the parents of minors involved in acts of graffiti.¹² Graffiti ordinance provisions from Bellevue, Burlington, and Seattle are on MRSC's Web site.

Go to  <http://www.mrsc.org/pubsafe/graffiti/graffiti.htm>

¹²RCW 4.24.190.

SeaTac Municipal Code, Ch. 7.35 Graffiti Removal**7.35.010 Graffiti deemed nuisance.**

A. Graffiti and other defacement of public and private property, including walls, rocks, bridges, buildings, fences, gates and other structures, trees, and other real and personal property within the City constitutes a nuisance.

B. Although it is appropriate, where possible, to request that the courts require people who are convicted of acts of defacement and vandalism involving application of graffiti to public or private property to restore the property so defaced, damaged or destroyed, obtaining convictions for such acts is difficult because the offenses involving can be committed so very quickly and secretly that witnesses to the acts are frequently nonexistent.

C. Although the public should be encouraged to cooperate in the elimination of graffiti by reporting the same to the proper authorities, it is also important to eliminate the presence of graffiti from the community so that the product of the illegal acts of those involved in application of graffiti is not visible and the property on which the graffiti is located and surrounding properties do not suffer diminution of value. (Ord. 92-1025 §1)

Vegetation and Weed Control

RCW 35.21.310 authorizes any city or town to enact an ordinance requiring property owners to remove or destroy vegetation that is overhanging or obstructing a street or sidewalk. Property owners may also be required to remove or destroy all weeds, grass, trees, and vegetation growing, or that has grown and died, and to remove or destroy all debris that is a fire hazard or a menace to the public health, safety, or welfare. The method for enforcement is outlined in the statute. It provides that if, after notice to the property owner, the city or town has to abate the nuisance, “the cost to the city or town shall become a charge against the owner of the property and a lien against the property.” The lien is filed, enforced, and foreclosed in the same manner as a lien for labor and materials.

Chapter 36.43 RCW authorizes boards of county commissioners to adopt fire regulations, which can include provisions regarding the cutting and removal of overgrown weeds in certain areas or at certain times of year.

Chapter 17.04 RCW authorizes counties to create weed control districts for the purpose of destroying, preventing, and exterminating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants which are classed by the agricultural experiment station of Washington State University as noxious weeds or plants.

Chapter 17.06 RCW authorizes the creation of intercounty weed districts to carry out the purposes set forth in RCW 17.04.010.

Chapter 17.10 RCW authorizes the creation of noxious weed control boards by counties. Noxious weeds are defined as plants that, when established, are highly destructive, competitive, or difficult to control by cultural or chemical practices. A state noxious weed list appears in Chapter 16-750 WAC.

● Comprehensive Vegetation Ordinances

An example citing fire hazards from Spokane is shown below. Several comprehensive provisions relating to weeds and other vegetation, including those from Pasco, Chelan, and Port Orchard, provisions from Richland and Ellensburg illustrating the inclusion of specific height measures for vegetation, and a provision from Hoquiam addressing overgrown lots, appear on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/Nu-vegi.htm#Comprehensive>

Spokane Municipal Code Ch. 10.08 Offenses Against Public Health

10.08.040 Fire Hazard from Vegetation and Debris.

A. Owners and occupants of property within the city must remove or destroy all grass, weeds, shrubs, bushes, trees and vegetation growing or which has grown and died and all debris which are a fire hazard or a menace to the public health, safety, or welfare.

B. In considering whether such condition is to be declared a nuisance, the fire official, code enforcement officer, or other authorized officer considers if

1. the situation is present during the dry season, May 1 through September 30,
2. lack of rain for ten continuous days has negatively affected soil moisture content,
3. the average air temperature has been above seventy degrees Fahrenheit for ten continuous days,
4. the length of the grass or other vegetative material, whether standing or matted, is ten inches or more, and
5. the vegetation is within ten feet of a combustible fence or other structure.

C. The City may cause the removal or destruction of such vegetation and debris in accordance with the procedures of Section 10.20.020 by notice of violation and, as appropriate in each case,

1. a criminal citation and warrant of abatement as provided in subsection 10.20.020.A, or
2. direct action by City forces or contract, the cost of which will be billed to the owners of the property or as a utility service to the property.

D. For large parcels of land, exceeding ten thousand square feet, abatement may be by a fuel break of at least ten feet adjacent to any abutting property. (ORD C32236) Passed On: 1998/08/03 Effective: 1998/08/03.

● Interference with Public Right-of-Way

In addition to the ordinance from Moxee shown here relating to vegetation on the right-of-way, ordinances from La Conner, Kelso, and Sequim are on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/Nu-vegi.htm#Right>

Moxee Municipal Code Section 8.05.020 Nuisances Designated....

(2) The existence of any tree, shrub or overhanging foliage which is apt to impair, interfere with, destroy or restrict:

- (a) Travel over any streets, sidewalks or alleys;
- (b) Access to any fire hydrants, sprinklers or any other appliance or facility provided for fire protection;
- (c) Access to any city utilities such as water meters;(Ord. 503 § 3, 1993)

● Trees and Shrubs as Nuisances

An example from Redmond is shown here. Provisions from Puyallup relating to obstructions preventing traffic view; Mercer Island relating to dead, dying, or infested trees; and Burlington which restricts certain trees from the parking strip are on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/Nu-vegi.htm#Trees>

Redmond Municipal Code Ch. 6.12 Noxious Weed Control and Tree Regulations

6.12.070 Trees pruned - Notice.

A. Owners of property bordering on any city street, alley or right-of-way shall prune trees and shrubs growing on their property in such manner that the trees and shrubs will not block or shade the light from street lights, interfere with passage of vehicles or pedestrians, obstruct the vision of traffic signs or obstruct the view of any intersection.

B. Should any owner fail or refuse to prune his trees and shrubs in the manner specified above, the Director of Public Works shall send the owner a written notice in the manner specified in Section 6.12.040.

C. Should the owner fail or refuse to prune the trees and shrubs within the time limits of the notice, the Mayor may authorize city forces to perform the work as set forth in Section 6.12.060. (Ord. 969 § 8, 1981)

● Weeds and Noxious Weeds

The growth and spread of noxious weeds are detrimental to public health. Uncontrolled weeds, in addition to creating hazards, tend to overgrow and choke out more desirable plants such as crops, flowers, gardens and lawn cover. They may cause degradation of a neighborhood's character. An example from La Conner appears below. Other examples from SeaTac, Chelan, Deer Park, and Redmond appear on MRSC Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/Nu-vegi.htm#Weeds>

La Conner Municipal Code 7.10.020 Types of Nuisances....

(11)(f) Any poison oak or poison ivy, Russian Thistle, Bull and Canadian Thistle, Evergreen and Himalayan blackberries, Tansy Ragwort and other noxious weeds, whether growing or otherwise, including, but not limited to any noxious weeds identified by the Skagit County Noxious Weed Control Board; but nothing herein shall prevent the temporary retention of such weeds in approved covered receptacles;... (Ord. 672 §§ 1, 2, 1995; Ord. 567 § 2, 1989; Ord. 536 § 2, 1986)

Encouraging Property Maintenance

Options for encouraging property owners to maintain property are discussed in Bellevue's *Neighborhood Preservation Action Item on Property Maintenance* reproduced below. The city council drafted a discussion list of specific action items that would help to preserve neighborhood quality and character as the community grows and matures. Narrative was added on potential costs and other impacts of implementing the Action Items by city departments. The list of Bellevue's neighborhood preservation action items appears on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/govdocs/a-f/B44npAction.pdf>

City of Bellevue Neighborhood Preservation Action Item
Neighborhood Codes and Standards
Property Maintenance

Action Item:

Explore ways of obtaining owner cooperation to repair and maintain private properties.

Background:

The City Council has asked staff to think about ways to improve private property maintenance in neighborhoods, by working collaboratively with neighborhoods and residents. The following are examples of suggested maintenance issues which might warrant city involvement are: unkempt lawns, peeling paint, moss on roofs, trash in yards, and garbage can in view.

Options for Implementation:

Staff has identified a number of options for approaching property maintenance issues in neighborhoods. These approaches range from an array of educational efforts that could be initiated to a variety of more proactive steps. The Council could choose a combination of options to package into a trial program depending upon the level of effort desired. Potential program components include:

Education:

Partnership with Neighborhood Associations to develop educational materials and coordinate distribution to residents;

Letter from City outlining similar information as is developed for handout – to be sent when property maintenance complaints are received;

Information distributed through Mini City Halls, neighborhood presentations, Home Show, Bellevue's Web site, It's your City, etc. – targeting property maintenance from the standpoint of civic pride and property values, and stressing voluntary clean-up of neighborhoods;

Neighborhood outreach effort beginning in September – to address property maintenance issues and solutions, including neighborhood association involvement.

Proactive Steps:

City temporary labor (summer volunteer or paid jobs) which would be used to clean up properties where residents are disabled, ill, financially challenged, etc.;

Assignment of City staff to note violations as they travel through City and seek cooperative corrections – and move to active enforcement if cooperation is not achieved; (This could raise issues about selective enforcement if there were any perception of the City targeting specific properties or areas for enforcement.)

Assignment of staff to conduct "windshield surveys" through neighborhoods on a rotating basis, to identify violations and seek cooperative corrections – with move to active enforcement if cooperation is not achieved. (Routinely rotating through all neighborhoods in the City should alleviate any concern over selective enforcement.)

Resource Implications:

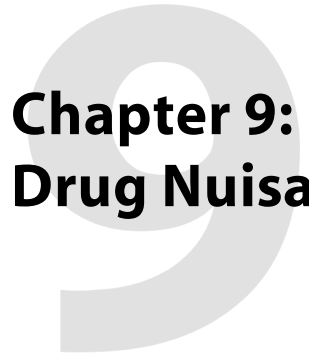
Costs of an educational approach would be limited to development of educational materials and some overtime pay for after-hours presentations. However, the impact on employee time would not be major.

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Clean-Up Programs

Local government clean-up programs and recycling events encourage clean neighborhoods and bolster community pride. Some communities have annual or semi-annual drives. Opportunities are often provided to conveniently dispose of, without charge, items including large, bulky items at neighborhood sites or through curbside pick-up services. Neighborhood clean-up programs help to raise community awareness of the problem and encourage residents to proactively address maintenance issues that contribute to neighborhood deterioration. Pros and cons of a neighborhood clean-up program are listed in *Bellevue's Community Action Item on Property Clean-Up*.

Go to  <http://www.mrsc.org/govdocs/a-f/B44npAction.pdf>



Chapter 9: Drug Nuisances

Drugs, from a criminal law perspective, are frequently more than a nuisance – the abuse of illegal drugs can destroy lives and families. In the neighborhood context, illegal drug use can have many of the same impacts as other nuisances. Housing values can be lessened and the quality of life in the area can go downhill, particularly for those who want to live in a peaceful environment that is safe for children. Relevant statutes to review concerning drug nuisance abatement include Chapter 7.43 RCW - Injunctions - Drug Nuisances; Chapter 69.50 RCW - Uniform Controlled Substances Act; and RCW 7.48A.020(5) - Moral Nuisances. The latter is discussed in *Chapter 11, Moral Nuisances*.

Chapter 7.43 RCW. The state legislature adopted drug nuisance laws, Chapter 7.43 RCW, in 1988. These laws provide cities and counties with powerful tools to combat illegal drug activity by authorizing civil actions in superior court to close buildings, or units in buildings, that are being used in connection with the sale of illegal drugs. The statutes provide that the court must, upon finding that a drug nuisance exists, order that the property be abated (closed) for a period of one year.¹³ A drug nuisance is defined by RCW 7.43.010 as follows:

(1) 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.

(2) As used in this chapter, “building” includes, but is not limited to, any structure or any separate part or portion thereof, whether permanent or not, or the ground itself.

Any property where a drug nuisance exists may be subject to abatement under Chapter 7.43 RCW, including apartment buildings, motels, hotels, taverns, stores, and private residences. If a pervasive drug nuisance problem is demonstrated, the courts do not hesitate to utilize the full force of the statute. However, if the level of drug-related criminal activity is not “overwhelming,” or if the evidence shows that the building owner has been taking reasonable efforts to deal with the problems, the courts can allow a building or apartment to remain occupied. This is especially true in situations involving apartment complexes where innocent tenants may be displaced during a closure, and in situations involving hotels or motels operated by businessmen and women as their sole source of income.

¹³RCW 7.43.080 and .090.

In order to expedite the abatement of drug-related building nuisances, the legislature gave these civil actions priority over most other civil proceedings.¹⁴ The threat of speedy abatement has made it relatively easy for city enforcement officials to get the attention and cooperation of apartment building owners. Because Chapter 7.43 RCW provides full authority to file drug nuisance enforcement actions in superior court, cities and counties do not need to pass any local ordinances before using the state statutory authority to commence an enforcement action.

RCW 69.50.505 provides authorization for forfeiture of real property used (with the knowledge of the owner) for manufacturing, procuring, or delivering controlled substances.

Sample ordinance provisions based on Chapter 7.43 RCW and Chapter 69.50 RCW appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-drug.htm>

¹⁴RCW 7.43.050.

Chapter 10: Environmental Nuisances

This chapter covers environmental nuisances such as air quality (open burning, dust, and offensive odors), littering, and problems caused by outdoor lighting and glare. See Chapter 12 for information on noise-related nuisances.

Air Quality

Chapter 70.94 RCW, the Washington Clean Air Act, establishes a system of regional air pollution control authorities, designated as Local Air Pollution Control Authorities, to implement federal and state air pollution control regulations. Under the act, the rules and regulations adopted by an air pollution control authority preempt local ordinances regulating air quality.¹⁵ Counties, cities, and towns are authorized, however, to enact and enforce local “nuisance” provisions and performance standards incorporated in zoning ordinances, so long as such standards are not less stringent than those of the authority.¹⁶ Many nuisance ordinances contain provisions aimed at air quality issues such as open burning, dust, and offensive odors. A few examples are included in this section. Other illustrations addressing air quality issues are available on MRSC’s Web site, including links to state regulations. Many of the ordinance provisions combine offensive odors, dust, and smoke.

● Dust

An excerpt from Richland's dust provisions is shown below. The full text of the provision and other examples from Enumclaw and Everett appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Dust>

Richland Municipal Code 9.16.046 Public Nuisance of Allowing Blowing Dust and Dirt Prohibited

(1) Excavating, grading, plowing or disturbing the top soil of any land area within the city of Richland, or permitting the same, by any person, firm or corporation, without taking affirmative measures to suppress and minimize the blowing and scattering of dust whereby it substantially effects the health, peace, comfort, or repose of two or more persons separately residing in their usual place of abode, or in work or recreation, is hereby declared to be a nuisance, and within the police power of the city of Richland to regulate. Investigation and documentation of an alleged violation will take place upon complaint of two or more persons separately residing.

¹⁵RCW 70.94.230.

¹⁶RCW 70.94.230.

(2) Any person, firm or corporation who shall disturb, excavate, grade, plow, or remove the top soil of any land area, or permit or direct same, within the city of Richland, as herein prohibited, for any purpose, without taking reasonable, affirmative measures to suppress and minimize the blowing and scattering of dust such as adequate periodic sprinkling of the disturbed soil with water or other fluid, or by the application of a chemical or physical soil binder, or by other means of forming a crust thereon, or by means of a physical cover, or by adequate fencing or by effective corrugation of the surface, or any other means that will effectively suppress the blowing of dust, shall be determined to have committed a class 1 civil infraction the maximum penalty of which is two-hundred and fifty-dollars, not including statutory assessments as set forth in RCW Chapter 7.80. The enforcement officer will be required to have observed the violation which shall consist of not providing the reasonable, affirmative measures as outlined in the permit application established in section 10 below.

The infraction shall be deemed to have been committed and is final unless contested as provided in RCW Chapter 7.80....(Ord. 40-92)

● **Offensive Odors**

In addition to the provision from Burlington below, other examples from Enumclaw, Seattle, and Tacoma appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Odors>

Burlington Municipal Code 8.12.020 Types of Nuisances....

S. The existence of any strong or offensive odor at the property line, including but not limited to rotting or decaying fish or other dead animals, rotting garbage, animal manure, strong chemical smells, and other strong or offensive odors. (Ord. 1352 § 1, 1997; Ord. 1207 § 2, 1992; Ord. 1148 § 3, 1989)

● **Open Burning**

Washington's Clean Air Act (Chapter 70.94 RCW) addresses outdoor burning, among many other sources of air pollution. Outdoor burning is being phased out throughout the state in cities and urban growth areas – see RCW 70.94.743. That statute also contains a definition of “outdoor burning” and some limited exceptions. The state's open burning regulations are linked on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Smoke>

La Conner Municipal Code 7.10.020 Types of Nuisances....

(9) Open burning, including burn barrels, is prohibited with the following exception: only natural vegetation (tree limbs, brush, grass clippings, garden refuse, etc.) will be burned. No plastics, rubber, or any item causing noxious or toxic odors will be burned;....(Ord. 672 §§ 1, 2, 1995; Ord. 567 § 2, 1989; Ord. 536 § 2, 1986)

Illegal Dumping and Littering

Most cities and counties control illegal dumping and littering through garbage and solid waste codes or anti-littering ordinances based on Chapter 70.93 RCW, the state's Model Litter Control Act. These ordinances address situations where a person dumps trash or rubbish on public or private property without the owner's permission. Many jurisdictions require the property owner to remove trash that has been dumped. Failure to do so may constitute a nuisance that may be subject to criminal penalty and abatement. Many ordinances also include special provisions to control

activities like posting handbills, spillage of vehicle contents onto public roads, dumping trash in waterways, and/or requiring business owners to maintain their premises free of litter.

The following are sample provisions regulating the dumping of garbage and littering. Other examples are available on MRSC's Web site.

● **Comprehensive Litter Control Ordinances**

Examples of comprehensive litter control ordinances from Bothell and Lakewood appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Comprehensive>

● **Dumping of Trash or Litter**

Provisions prohibiting the dumping of trash from Tacoma appear below, other provisions from Burien and Mercer Island appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Dumping>

Tacoma Municipal Code 8.12.150 Littering prohibited - Penalties

A. No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the City or upon private property in this City not owned by him or her or in the waters within the City boundaries, whether from a vehicle or otherwise, including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, court, alley, or sidewalk, except:

1. When such property is designated by the City or the State, or by any of the State's agencies or political subdivisions, for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose.

2. Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said private or public property or waters.

B. Any person violating the provisions of this section shall be guilty of a misdemeanor and the fine for such violation shall not be less than \$50.00 for each offense. In addition thereto, except where infirmity or age or other circumstance would create a hardship, such person shall be directed by the court in which conviction is obtained to pick up and remove litter from public property and/or private property, with prior permission of the legal owner, for not less than eight hours nor more than 16 hours for each separate offense. The court shall schedule the time to be spent on such activities in such a manner that it does not interfere with the person's employment and does not interfere substantially with the person's family responsibilities. (Ord. 23860 §_1; passed May 19, 1987)

● **Garbage and Refuse**

A provision from Mercer Island is shown below; other examples from Bellingham, Enumclaw, Okanogan County, Shelton, and Spokane appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Garbage>

Mercer Island Municipal Code Ch. 8.04 Solid Waste

8.04.030 Disposal of garbage, refuse, recyclables and yard and garden waste - Use of garbage cans....

B. It is unlawful to deposit, throw, or place any garbage, refuse, recyclables, or yard and garden waste in any lane, alley, street or other public place, or to deposit, throw or place any garbage, refuse, recyclables, on any private property regardless of ownership, unless said garbage, refuse, recyclables, garden waste

is placed in garbage cans, garbage units or other approved containers, the covers of which shall not be removed except when necessary for the depositing or removing of garbage, refuse, recyclables, or yard and garden waste; provided that yard and garden waste may be deposited on the property from which it originated, or on other private property with the permission of the property owner; and provided further, that boxes, broken-up household furniture and equipment, paper, and rubbish in general, may be broken up or cut up and placed in garbage or recycling units as defined heretofore in this chapter.... (Ord. A-107 §§ 1, 2, 1993; Ord. A-81 § 1, 1990)

● Handbills and Signs

Pullman's provision is shown below. Other examples from Bothell, Mount Vernon, and Seattle appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Handbills>

Pullman Municipal Code ch. 8.20 Handbill Distribution

8.20.010 Handbills on public or private property.

No persons shall tack, stick, paste, or fasten in any manner any handbill or flier containing commercial advertising of a written, printed, or pictorial nature upon any public property within the limits of the city; or, on any motor vehicles, dwelling, or other structure within the city without the consent of the owner or occupant thereof. Commercial advertising shall not include advertising which is of a religious, charitable, fraternal, or political nature; or advertising conducted by any other non-profit organization. (Ord. 87-32 § 1, 1987)

Outdoor Lighting and Glare

Light pollution, which includes unwanted light, misdirected light, stray light, and excessively bright light, can be controversial. Ordinances regulating light and glare emanating from private property are available on MRSC's Web site, including Enumclaw's regulations on industrial and exterior lighting, Kelso's provisions on flood and display lighting, and Pasco's outdoor lighting provisions. Also included is a reference to the Illuminating Engineering Society of North America, which recommends standards for lighting, including sports and recreational lighting, parking lot lighting, and roadway lighting. Problems caused by glare from building reflections are usually regulated through performance standards in building and/or zoning codes. For new developments, light and glare issues are taken up in the checklist required under the State Environmental Policy Act.

Go to  <http://www.mrsc.org/legal/nuisances/nu-environ.htm#Light>

Chapter 11: Moral Nuisances

There is an old adage that you cannot legislate morality, but it hasn't discouraged the state of Washington and most local government jurisdictions from trying. This is frequently a complex area of the law due to the difficulty in applying definitions such as “lewd.” For decades the courts have struggled with obscenity issues, attempting to protect first amendment rights of free expression while also taking into account the moral values of the local population. Applying obscenity standards will always be a challenge – selling “sex” makes money, moral values differ from place to place and are constantly changing.

Chapter 7.48A RCW defines moral nuisances and provides procedures for abating them. Moral nuisances include houses of prostitution, businesses selling or exhibiting lewd films or materials, and buildings or housing units where illegal drugs are manufactured, delivered, or possessed.

RCW 7.48.050 - 7.48.100 define and contain detailed provisions concerning moral nuisances. The provisions were declared unconstitutional by the State Court of Appeals in 1977 due to a problem with the ballot title.¹⁷ The statutes have not been legislatively repealed, but they cannot be used. As a remedy, the state legislature enacted, in 1985, the statutes now codified in Chapter 7.48A RCW. The statutes in Chapter 7.48A appear to have been a serious attempt to walk the narrow legal line between prohibiting lewd conduct and protecting first amendment rights.

Prostitution

Houses of prostitution have always existed and the state of Washington has always taken steps to make such businesses both illegal and financially risky. Since its enactment in 1875, the state law regulating “houses of ill fame” as public nuisances has been amended several times:

RCW 7.48.240 Certain Places of Resort Declared Nuisances

Houses of ill fame, kept for the purpose, where persons are employed for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter. [1973 1st ex.s. c 154 § 18; Code 1881 § 1247; 1875 p 81 § 13; RRS § 9924.]

¹⁷*State v. Charboneau's*, 27 Wn. App. 5 (1980).

Though the language is archaic and the gambling provisions are outdated by the subsequent passage of detailed state regulations permitting gambling in many forms, the basic law prohibiting houses of prostitution still stands.

The most common way of dealing with prostitution has been through strict enforcement of the existing criminal laws which prohibit prostitution, the promoting of prostitution and the permitting of prostitution.¹⁸ The statute criminalizing “permitting prostitution” has been applied to prosecute the owner and manager of a motel who was aware of the illegal conduct, but took no action to stop the activity.¹⁹ The City of Seattle also routinely asks judges to impose SOAP (stay out of areas of prostitution) conditions when prostitutes are convicted.

Sample moral nuisance ordinances are available on MRSC’s Web site, including provisions from Tacoma and Tukwila.

Go to  <http://www.mrsc.org/legal/nuisances/nu-moral.htm#Ordinance>

Adult Entertainment

Adult entertainment ordinances attempt to regulate a variety of sexually-oriented adult businesses and services, including movie theaters, bookstores, video stores, adult-only hotels/motels, massage parlors, peep shows, and erotic dancing establishments. Local regulations imposed on adult entertainment businesses must always be evaluated in light of federal and state constitutional guarantees regarding freedom of expression. It is possible to regulate such businesses through various business licensing provisions and/or through zoning code restrictions. Additional information on adult entertainment regulation and zoning is available from MRSC, including a Web page on the subject.

Go to  <http://mrsc.org/legal/adult/adult-en.htm>

Sale of Lewd Materials – Lewd Live Performances

Those who feel that a business has crossed the line and is engaged in the sale of lewd materials or the exhibition of lewd live performances should review both Chapter 7.48A RCW and their local government’s adult entertainment ordinances. These issues are often legally complex and can involve costly litigation. The issue is not what a morally conservative, outraged resident thinks is lewd or obscene, but what is legally obscene. This distinction is often hard to explain to those not familiar with the issue.

¹⁸See Chapter 9A.88 RCW.

¹⁹See RCW 9A.88.090 and *State v. Johnson*, 119 Wn.2d 167 (1992).

Chapter 12: Noise Nuisances

Disturbances caused by barking dogs, faulty car muffler systems, boom boxes, construction equipment, and leaf blowers, to name a few, are among the most common sources of neighborhood noise complaints received by local enforcement agencies. Two basic approaches to control noise problems have been taken in Washington: (1) adoption of noise control provisions based upon the state Noise Control Act (Chapter 70.107 RCW) which uses a decibel-based standard; or (2) adoption of “public disturbance noise” provisions based on a subjective standard. Many jurisdictions have also adopted ordinances that combine the two approaches.

Chapter 70.107 RCW – Noise Control Act

The state Noise Control Act, Chapter 70.107 RCW, empowers the Department of Ecology (DOE) to establish maximum noise levels, as measured in decibels, in identified areas or environments.²⁰ Local governments may enact similar provisions establishing noise limitations for areas within their jurisdictions. Any difference between the local regulations and those provided for by the state must be approved by the Department of Ecology.²¹ If the state has not acted within 90 days after a local ordinance has been submitted to it, the local provision is automatically approved.

The rules adopted by DOE establishing maximum permissible noise levels are contained in Chapter 173-60 WAC, Maximum Environmental Noise Levels, and Chapter 173-62 WAC, Motor Vehicle Noise Performance Standards. Chapter 173-60 WAC establishes three classes of environmental designations for noise abatement (EDNA) which are the areas or zones within which the maximum permissible noise levels are set. These EDNA zones are defined with respect to land usage and can usually be transferred to previously established classifications in existing zoning ordinances or comprehensive plans. Chapter 173-62 establishes maximum permissible sound levels for motor vehicles on all public highways.

The advantage of a decibel-based ordinance is the ability to use an objective standard to measure noise sources and support enforcement actions. However, not all communities have or can afford the equipment and training that is necessary to enforce this type of ordinance. Additionally, officers responding to complaints often find that by the time they arrive, the noise has either dissipated or quieted to a level that no longer constitutes a violation. In view of these limitations, many

²⁰RCW 70.107.030(1).

²¹RCW 70.107.060(3).

jurisdictions have adopted “public disturbance” type ordinances as an alternative or supplement to a decibel-based ordinance.

Public Disturbance Noise Ordinances

Public disturbance noise ordinances are based on subjective standards that do not require the use of sound measuring devices for their enforcement. Such ordinances generally prohibit persons from causing or allowing to originate from their property any public disturbance noise that “unreasonably disturbs or interferes with the peace, comfort and repose” of others. They usually include a list of specific types of noises that would be considered “public disturbance” noises and therefore violations of the ordinance.

Public disturbance noise provisions, while perhaps easier to enforce, may be more vulnerable to legal challenge. There have been four court cases in recent years reviewing public disturbance noise provisions. In *Holland v. City of Tacoma*, 90 Wn. App. 533 (1998), *Seattle v. Eze*, 111 Wn.2d 22 (1988), and *Everett v. O'Brien*, 31 Wn. App. 319 (1982), public disturbance type noise ordinances have been upheld; however, in *Spokane v. Fischer*, 110 Wn.2d 541 (1988), an ordinance prohibiting frequent and habitual dog barking that disturbs or annoys any person in the neighborhood was found unconstitutionally vague. These cases suggest that public disturbance noises should be defined in ways that require multiple complaints to establish a violation of the ordinance. The ordinance should also be based on a reasonableness standard to adequately define and give fair notice to citizens as to what level of noise will constitute a violation.

● Comprehensive Noise Ordinances

Samples of comprehensive noise ordinances combining both decibel measures and nuisance provisions (Mill Creek and Snohomish), and the public disturbance approach (Tacoma and Thurston County) are on MRSC's Web site.

Go to  <http://www.mrsc.org/environment/noise/noise.htm>

● Audio Devices

Examples from Clyde Hill and Kirkland appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-noise.htm#Audio>

● Heat Pumps and Air Conditioners

Provisions from Kelso, Lynnwood, and Seattle appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-noise.htm#Heat>

● Motor Vehicle Noise

When adopting noise control ordinances relating to the operation of motor vehicles, cities and counties should be aware of state laws regulating commercial and private motor vehicles, and state administrative regulations on these subjects. The DOE has established motor vehicle noise

performance standards and maximum permissible noise levels on public highways in Chapter 173-62 WAC. Chapter 204-56 WAC establishes procedures for measuring motor vehicle noise. Examples including general vehicle noise from Redmond and Puyallup and compression brakes from Bainbridge Island appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-noise.htm#Motor>

● **Leaf Blowers, Lawn Mowers, Etc.**

While power blowers, power mowers, and other power equipment are viewed as labor saving devices, they also may be viewed as nuisances because of the noise, dirt blown into the air, and in the case of gasoline powered devices, contribute to air pollution. At the time of this writing several Washington cities were reviewing provisions from California cities that restrict the use of power blowers.

Go to  <http://www.mrsc.org/legal/nuisances/nu-noise.htm#Power>

● **Rock Crushing and Gravel Operations**

A provision from Thurston County appears on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-noise.htm#Rock>

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Chapter 13: Nuisances on Public Property and Public Ways

This chapter addresses nuisances that occur on the sidewalks and streets. Although these situations are not commonly grouped under a “nuisance” heading, they all deal with interference with public travel and create public safety hazards. Topics include begging, camping on public property, assemblies and crowds, cruising, fences adjacent to the right-of-way, parking of vehicles, obstructions on streets and sidewalks, and snow removal.

Begging, Aggressive Panhandling and Pedestrian Interference

A number of Washington cities have enacted special ordinances prohibiting aggressive panhandling. The stated purpose of the ordinances is to reduce the disruption of pedestrian and vehicle movement on sidewalks and streets. Seattle passed a controversial ordinance directed primarily at aggressive begging and other activities that interfered with pedestrian movement and the enjoyment of the public ways, that was challenged and upheld.²² A key finding of the court in its decision upholding the Seattle ordinance was that the ordinance included an element of specific intent and that “before there can be a charge or conviction under the ordinance a person must act with intent to block another's passage or with intent to cause a person or vehicle to take evasive action.”²³ The court observed that “[T]he ordinance distinguishes between conduct calculated to harm – intentionally interfering with pedestrian or vehicular traffic – and conduct which is essentially innocent – unintentionally interfering with traffic by merely being present upon a public sidewalk.”²⁴ The court held that the inclusion in the ordinance of the element of specific intent saved it from being unconstitutionally overbroad. The number of cities adopting similar ordinances will increase as long as the ordinances are effective at curtailing the perceived problem.

Ordinance provisions regulating aggressive panhandling and pedestrian interference from Seattle, Tacoma, and Tumwater are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Beg>

²²*Seattle v. Webster*, 115 Wn.2d 635 (1990).

²³*Seattle v. Webster*, 115 Wn.2d at 642.

²⁴*Seattle v. Webster*, 115 Wn.2d at 645.

Camping on Public Property

In addition to prohibitions of camping overnight on public property, a number of jurisdictions have prohibited camping (sleeping overnight) in cars, vans or recreational vehicles while the vehicles are parked on public roads. Sample provisions from Friday Harbor, North Bend, Pierce County, and Vancouver are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Camping>

Assemblies Obstructing Sidewalks or Roads

A number of cities have designated the gathering of people on public sidewalks and streets as a nuisance when such gatherings are not done pursuant to a city parade or street use permit and when such crowds block the normal flow of pedestrians and vehicles. Any regulation of this type must be worded carefully so as not to infringe on the rights of residents to gather in peaceful, undistruptive ways. Examples of ordinance provisions regulating obstruction of sidewalks and streets from Bellingham and Tacoma are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Crowds>

Cruising

Cruising by young people on city streets raises a number of traffic safety concerns. In response to complaints from neighborhoods and businesses, some cities and at least one county, have adopted ordinances that prohibit individuals from repeatedly driving on certain streets at certain times. Anti-cruising ordinances help to alleviate traffic congestion by dispersing would-be cruisers. The courts have upheld them, and they have been effective in some cities. Care should be taken, however, to avoid passage of an overly broad cruising ordinance which might invite a legal challenge. Not all jurisdictions have conditions justifying such ordinances. Sample ordinance provisions regulating cruising from King County, Kirkland, and Puyallup are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Cruising>

Fences

Dilapidated fences and other structures abutting the public right-of-way that lean or sag can be dangerous and are considered nuisances. Barbed wire and electric fences adjacent to rights-of-way are often regulated and/or prohibited. Nuisance provisions regulating fences from Bellingham and Burlington are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Fences>

Parking of Vehicles

Parking commercial trailers in residential areas, certain overnight parking, parking on sidewalks, and parking vehicles being advertised for sale on public rights-of-way are often considered nuisances. These issues are generally regulated in traffic and parking codes. RCW 46.61.570(1) prohibits parking on the sidewalk or planting strip. WAC 308-330-436, part of the Model Traffic Ordinance, prohibits parking on the sidewalk, using the streets to advertise a vehicle for sale, and repairing vehicles on streets. Jurisdictions that have adopted the MTO can enforce the prohibition without adopting any additional local regulation.

WAC 308-330-436 Parking for Certain Purposes Unlawful

(1) No person shall park any vehicle upon any highway for the principle purpose of: (a) Displaying advertising; (b) Displaying such vehicle for sale; (c) Selling merchandise from such vehicle, except when authorized.

(2) No person shall park any vehicle upon any roadway for the principle purpose of washing, greasing, or repairing such vehicle except repairs necessitated by an emergency. [Statutory Authority: RCW 46.90.010. 97-10-068, § 308-330-436, filed 5/5/97, effective 6/5/97; 94-01-082, § 308-330-436, filed 12/13/93, effective 7/1/94.]

Sample ordinances related to several on-street parking issues, including advertising vehicles for sale, repair of vehicles, and restricting certain types of vehicles from parking on city streets overnight, are available on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Parking>

Street and Sidewalk Obstructions

Permits are often issued for the use of public sidewalks and streets for fairs and parades, sidewalk cafes, and for newspaper stands or information kiosks, while unapproved obstructions are prohibited. Also note the discussion in the previous section relating to the parking of vehicles. Included below is the text of a sidewalk nuisance provision from Mercer Island. Other examples of right-of-way obstruction provisions from La Conner and Lewis County are on MRSC Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Obstructions>

Mercer Island Municipal Code Section 8.24.020 Types of Nuisances....

F. The existence of a sidewalk or a portion of a sidewalk adjacent to any premises which is out of repair, and in a condition to endanger persons or property, or in a condition to interfere with the public convenience in the use of such sidewalk;...

H. The existence of any obstruction to a street, alley, crossing or sidewalk, and any excavation in or under any street, alley, crossing or sidewalk, which is by ordinance prohibited, or which is made without lawful permission, or which, having been made by lawful permission, is kept and maintained after the purpose thereof has been accomplished, and for an unreasonable length of time;... (Ord. 499 § 1, 1980; Ord. 486 § 1, 1979)

Snow Removal

The accumulation of snow and ice on sidewalks creates potentially hazardous conditions, particularly in areas that have heavy pedestrian use, such as business districts. Some cities require adjoining property owners to clear the sidewalks of snow and ice within a reasonable time. Sample ordinances from Everett and Seattle are on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-publicprop.htm#Snow>

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Chapter 14: Miscellaneous Nuisances

This chapter covers nuisances that don't fit the defined subject focus of the previous chapters of this publication – animated signs and lights, attractive nuisances, bee keeping, laser pointers, unguarded excavations, pests, and wildlife. As with other topics covered, some are found within nuisance provisions while others may be regulated under other broad topics. These miscellaneous topics typify the breadth and depth of additional content found on MRSC's nuisance Web pages. To assist users we have prepared an *Index to the Regulation and Abatement of Nuisances*. The Index lists the many nuisance-related topics available on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-index.htm>

Animated Signs and Lights

Signs, including changing image signs, that display graphics that are animated, or portray motion, or display rapidly moving messages may contribute to traffic safety hazards and/or have adverse aesthetic impacts on the visual environment. Several ordinance provisions regulating animated signs, including examples from Auburn and Sumner, are available on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-pubprotec.htm#Signs>

Attractive Nuisances

Attractive nuisance provisions generally attempt to protect children from injury or death by removing situations that attract them. The most familiar attractive nuisance is abandoned refrigerators which state law prohibits from remaining in any place accessible to children without having the door removed or the latch mechanism removed.²⁵ Nuisance ordinances commonly address similar types of attractive nuisances such as vacant property and building sites that are not properly secured, and accumulations of various types of junk or equipment which might pose a danger and be attractive to children. Examples of ordinance provisions regulating abandoned refrigerators and other containers are available from Edmonds, Kirkland, Longview, and Tacoma on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-pubprotec.htm#Attractive>

²⁵Chapter 9.03 RCW, Abandoned Refrigeration Equipment.

Bee Keeping

Nuisance regulations pertaining to bees are typically concerned with improperly maintained apiaries and, or the control of wild beehives in trees or buildings on private property. Chapter 15.60 RCW regulates apiaries in Washington State. RCW 15.60.030 requires each person owning or having bees in his possession to register with the department of agriculture on or before April 1 of each year. This requirement is commonly incorporated into local ordinances as in the example from Kelso below. For additional examples, see MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-pest.htm#Bees>

Kelso Municipal Code Section 8.24.020 Types of Nuisances Designated...

N. The existence of any bees, Africanized honey bees, yellow jackets, hornets, or wasps that harbor in colonies, hives, apiaries or nests which are not authorized by ordinance or statute and are not in full compliance with RCW Chapter 15.60 or WAC Chapter 16-602....(Ord. 3351 § 1, 1997; Ord. 3106 § 1, 1989; Ord. 3039 § 3, 1986)

False Alarms and Faulty Security Systems

The majority of alarm calls received by police departments are false alarms which may be avoided by proper maintenance of alarm systems and a suitable response by the property owner once the alarm has sounded. Many jurisdictions have adopted false alarm ordinances to increase awareness and accountability of alarm owners. The penalties provide an incentive for alarm owners to inspect and maintain their systems and take corrective action to prevent false alarms. To view sample ordinance provisions on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/pubsafe/alarms.htm>

Laser Pointers

Some local governments have adopted restrictions on the use of laser pointers. In the hands of pranksters laser pointers can be a disruptive nuisance. In 1999, the Washington legislature enacted a new law, codified at Chapter 9A.49 RCW, prohibiting certain uses of laser pointers. The offense, called “unlawful use of a laser,” is committed when a person knowingly and maliciously discharges a laser at law enforcement personnel, pilots, fire personnel, or persons operating busses. Additional information is on MRSC's Web site.

Go to ☛ <http://www.mrsc.org/legal/nuisances/nu-pubprotec.htm#Laser>

Pests – Caterpillars

Because of the damage that can be caused to trees and shrubbery from uncontrolled infestations of caterpillars, these conditions are regulated as public nuisances. Nuisance ordinances regulating caterpillar infestations generally require owners of property with caterpillar-infested trees or

shrubbery to take prompt action to remove them to avoid their spread to neighboring properties. Sample provisions on MRSC's Web site include those from Edmonds and Lynnwood.

Go to  <http://www.mrsc.org/legal/nuisances/nu-pest.htm#Caterpillars>


Pests – Control of Rats and Other Rodents

Rodents, including rats and mice, can be carriers of disease and pose a health hazard. They are also capable of causing substantial property damage. Nuisance provisions typically make rodent elimination and control the responsibility of the property owner and prohibit owners from allowing their property to be infested with rodents or to allow conditions that may contribute to an existing or potential infestation. Sample ordinance provisions on MRSC's Web site include Bremerton Health District's rodent control regulations, Fircrest's rodent control and prevention provisions, and Kirkland's ordinance that contains a provision for a rodent control area. The later requires a rat-baiting program before building demolition or land modification.

Go to  <http://www.mrsc.org/legal/nuisances/nu-pest.htm#Rodents>

Unguarded Excavations, Wells, Pits and Mine Shafts

Unguarded or abandoned excavations, wells, pits, mine shafts and other similar openings that are not securely closed or capped pose an obvious hazard. Such conditions are often regulated as public nuisances. Ordinance provisions similar to the one from Kirkland below and an example addressing mine shafts, tunnel, and vaults from Issaquah appear on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-pubprotec.htm#Ungard>

Kirkland Municipal Code 11.24.150 Abandoned Wells and Cisterns

It is unlawful for any person to abandon or discontinue use or to permit or to maintain on his premises any abandoned or unused well, cistern or storage tank without first demolishing or removing from the city such storage tank or securely closing and barring any entrance or trap-door thereto or without filling any well or cistern or capping the same with sufficient security to prevent access thereto by children. Any well, cistern or storage tank maintained in violation of this section is a nuisance. (Ord. 895 § 614, 1962)

Wildlife

This section briefly addresses problems posed by pigeons, geese, and other wildlife. Animals such as coyotes, deer, opossums, and skunks become problems as urbanization encroaches on their natural environments. Habitat conservation ordinances regulate the development and the use of land to mitigate their impacts on wildlife habitats. Publications of Agricultural Extension Services, Wildlife Services, and the Humane Society of the United States suggest tools and tactics for dealing with human-wildlife conflicts. Some wildlife is regulated by the federal and state governments, such as the Canada Geese noted below. Wildlife classified as protected or endangered in Washington is listed in WAC 232-12-011 and WAC 232-12-014.

Local ordinance provisions addressing wildlife focus on the feeding of birds and other animals on public property, such as the example from Lynnwood shown below. The example from Burien, also shown below, applies to public and private property. Additional information and sample ordinance provisions can be found on MRSC's Web site.

Go to  <http://www.mrsc.org/legal/nuisances/nu-animal.htm#Wildlife>

● Geese

The communities around the Seattle area have joined Seattle Metropolitan Waterfowl (Canada Goose) Management Program to alleviate health, safety, and damage problems created by Canada geese, particularly at public recreation areas. Canada geese are a “migratory” species and are therefore federally regulated. Population control measures are undertaken in cooperation with and are carried out by the U.S. Department of Agriculture's Animal Damage Control Agency (ADC) in accordance with the latest practices and correlated with control measures in adjacent areas. Authority is granted under federal law through the Animal Damage Control Act of 1931. Permits are issued by the U.S. Fish and Wildlife Services (USFWS).

● Pigeons and Similar Roosting Birds

Pigeon control can be controversial, especially if the local government chooses an approach, which involves killing. From a health view, pigeons can carry infectious diseases though the incidence is low. While a local government can regulate citizens feeding pigeons, the solution thought to be most effective is pigeon eradication programs, which can be controversial. Some programs involve retrofitting areas in which pigeons like to roost with wires, nets, and other deterrents; others involve using ultrasonic devices that annoy the birds. Descriptions of humane techniques to remove pigeon populations may be found in publications such as *The Pocket Guide to the Humane Control of Wildlife*, and *Wild Neighbors* both published by the Humane Society of the United States.

There are state statutes relating to the Antwerp Messenger or Racing Pigeon, commonly called “carrier” or racing pigeons, see RCW 9.61.190 - 200. A number of cities regulate the number of pigeons a person can maintain.

Burien Municipal Code Chapter 6.40 Feeding of Birds and Wildlife

6.40.100 Outdoor feeding.

It is unlawful for any person to feed or allow any domestic or wild animals or birds to feed outdoors at such times and in such numbers that: (1) Such feeding creates an unreasonable disturbance, or accumulation of droppings on surrounding properties including public property, or (2) Allows such feed or edible waste to remain uneaten for more than four hours. (Ord. 207 § 1, 1997)

Lynnwood Municipal Code 10.04.875 Feeding Animals or Leaving Foodstuffs on Public Property

A. No persons shall deposit, place, distribute, or leave any foodstuffs of any kind or nature on public property, or property subject to City right-of-way, or property subject to easement or other agreement giving the City control or use of the property, save and except in a receptacle provided by the City for that purpose.

B. No persons shall feed any animal, including but not limited to, birds or waterfowl, on public property, or property subject to City right-of-way, or property subject to easement or other agreement giving the City control or use of the property.

C. The provisions of this section shall not apply to any public officer or public employee in the performance of his or her duties. (Ord. 2029 § 1, 1995)

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