



Kriss Worthington

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ACTION CALENDAR

October 29, 2013

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington

Subject: City Manager Referral: Add Procedural Due Process to Appeal a Warning for the Second Response Ordinance

RECOMMENDATION

Refer to the City Manager that the Second Response Ordinance (BMC Chapter 13.48) be amended to include procedural due process to appeal a warning consistent with the Fifth and the Fourteenth Amendment.

BACKGROUND

Community members have raised concerns that there should be an appeal possible when a warning is issued by the City via 'Posting of Premises.' The 'Posting of Premises' is the City's first response to a public nuisance noise complaint and currently does not allow for an appeal. If the City intervenes, the City posts a notice, (BMC Chapter 13.48 Exhibit "A") entitled "Important Notice Regarding Public Nuisance."

"Important Notice Regarding Public Nuisance" states that a public nuisance was caused by a gathering at the premises, the date and time of the police intervention, and that any subsequent or second police intervention of a nuisance under this chapter at said premises, within one hundred twenty (120) days of the first intervention, shall result in the liability of the responsible parties (Sections 13.48.040 through 13.48.060).

Those responsible for an alleged public nuisance should be given the option to appeal the first "Important Notice Regarding Public Nuisance" form, based upon the concepts of Fifth and Fourteenth Amendment rights to Due Process. The presumption of innocence is the principle that one is considered innocent until proven guilty, and if the City of Berkeley does not have an appeal process, then a person or group is automatically assumed to be guilty of their first warning.

FINANCIAL IMPLICATIONS

Minimal.

CONTACT

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