

SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



RM 523.08

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CHAPTER I INTRODUCTION

Historically, the City of Sacramento had problems dealing with property owners that were either unable, or unwilling to take charge of their properties and abate the nuisance conditions or the nuisance-creating behavior of the occupants. The only remedies to solve neighborhood nuisance problems were to use law enforcement tactics as a means of arresting away problems, or by having the City Attorney's Office file nuisance lawsuits against the property owner. Arresting individuals is a temporary and ineffective approach to problem solving and it does not address the long standing nuisance conditions or prevent repeated instances of nuisance creating behaviors. Civil suits are often time consuming and involve convoluted and expensive proceedings which often take up to 2 years to resolve. The Sacramento City Social Nuisance Code (SNC) (Sacramento City Code "SCC" Chapter 8.08) was developed to address the problems associated with such public nuisances. SPD uses the administrative penalty process (SCC Chapter 1.28) to compel property owners to abate nuisance conditions that are being permitted to exist on their properties. Just as the physical conditions of properties within the city can constitute public and private nuisances, the behavior of persons on properties within the city can also constitute public and private nuisances. Examples of behavior which can constitute nuisances include large and noisy gatherings, noisy activities during late-night hours, use or sale of controlled substances on the premises, and the coming and going of persons with the intent to purchase controlled substances. SPD officers are empowered to impose administrative penalties on property owners who permit nuisance creating behaviors to exist on their properties in violation of the Social Nuisance Code.

The Sacramento Police Department has formed a partnership with the City Attorney's Office and City Code Enforcement to form the Justice for Neighbors Team (JFN). The Justice for Neighbors (JFN) team consists of several entities: The JFN attorneys, JFN Police Sergeant, JFN Code Compliance Director, JFN Code Specialist, JFN Building Inspector, SPD Management, and the Community Development Department. This nuisance abatement team focuses on fighting the most corrosive social and criminal nuisances that degrade the quality of life in the City's neighborhoods. Operating under the "broken windows" theory, JFN's aim is to identify, prioritize, and address these nuisance conditions before they grow into more serious criminal offenses that can lead to urban decay in our communities. By denying criminal offenders the use of real property as a base of operations, and by securing the property owner's cooperation in the removal of criminal offenders, neighborhood revitalization can become a reality. The goal of JFN is to establish partnerships between the City Attorney's Office and City enforcement officers to efficiently and promptly eliminate or reduce threats to the public safety in the City's neighborhoods. As a collaborative unit, the JFN Team responds to problem locations in the field to conduct evaluations to determine if a nuisance complaint will be assigned to the JFN list (nuisance litigation), or be handled by SPD as a social nuisance case (administrative penalties), or Code/Dangerous Buildings/Housing as a physical nuisance case (notice and order). The JFN Police Sergeant functions as both a resource for SPD officers and JFN attorneys in the identification and preparation of both JFN and administrative penalties cases.

The JFN program requires the unification and cooperation of police department personnel, City personnel, Public Safety Division Attorneys, and JFN Attorneys. The Public Safety Division Attorney, works with the City Enforcement Officers and Department personnel to prosecute physical and social nuisance actions, including but not limited to, drug and red light abatements, and gang injunctions. The JFN attorney works with City Enforcement Officer and SPD department personnel to educate them about the applicable law and remedies and to identify problem locations in the district that present nuisance problems. Additionally, the JFN attorneys compile necessary evidence to develop strategies and litigation plans. Working directly with the enforcement officers and department personnel allows the JFN attorney to not only familiarize themselves with the public safety issues in the area, but assume ownership over the public safety initiatives as well. The JFN team also functions as a resource for officers using the administrative penalties procedures to abate neighborhood nuisance conditions. Although traditional law enforcement is a necessary function of the department, SPD officers who implement nuisance abatement strategies as a means of problem solving can effectively change long standing problem locations while reducing calls for service and improving public safety in neighborhoods.



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CHAPTER II THE SOCIAL NUISANCE CODE

What is a qualifying social nuisance?

A nuisance is anything which is injurious to health, or offensive to the senses, or obstructs in the free use and enjoyment of property, or conditions that are threatening the health, safety, convenience, or welfare of the community generally. A public nuisance is a nuisance that affects an entire community or neighborhood at the same time. Activity that doesn't affect the quality of life of residents living nearby or impact the community at large is usually considered to be a private nuisance.

Social nuisances, in particular, are nuisances caused by the behavior of individuals on property that create a public nuisance. Typically, social nuisance conditions arise from the nuisance creating behaviors of individuals who engage in narcotics and prostitution activity, gang activity, unreasonable noise, or repeated incidents of criminal conduct. Lastly, physical nuisances are those nuisances caused by the physical condition of property, such as vacant properties and dilapidated buildings. Properties that are physical nuisances often become magnets for crime and disorder and provide a venue for squatters, drug users, prostitution, and a variety of other crimes.

The Justice for Neighbors nuisance abatement team has been created to abate public nuisances in order to bring relief to aggrieved persons and to remove the nuisance conditions that often attract higher degrees of crime and disorder into neighborhoods or business zones. For private nuisances (private wrongs between neighbors) citizens should seek their own legal assistance. Local governments are empowered to use the legal remedies or administrative procedures to compel property owners to abate nuisances that exist on their properties. City attorneys may initiate legal action to abate public nuisances, which may take the form of a public nuisance lawsuit, criminal prosecution, or administrative action. Police officers and code officers are authorized under SCC Chapter 1.28. to use the administrative penalties process in order to compel property owners to abate nuisance conditions on their properties.

The owners and occupiers of properties in the City of Sacramento are held responsible to monitor their properties and to take appropriate action if nuisance creating behaviors (Social Nuisances) or deteriorating physical conditions (Physical Nuisances) exist on their property. Chapter 8.08 of the Sacramento City Code (the Social Nuisance Code) provides an effective remedy for abating social nuisance conditions that have been allowed to exist on properties in the City.

The Social Nuisance Code can be enforced through a civil lawsuit and injunctive relief, or by the imposition of administrative penalties to compel property owners to abate nuisance conditions. This administrative process does not involve the judiciary and is an expedient approach to nuisance abatement. For cases in which administrative action does not succeed, the City Attorney's Office may seek injunctive relief from the superior court to force compliance through the use of court orders.

Sacramento City Social Nuisance Code SCC 8.08.010

The owners of properties within the city are responsible to monitor their properties and to take appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance-creating behaviors. Such nuisances can be avoided with adequate property management. If a property owner does not fulfill his or her responsibilities, it is necessary for the safety, health and welfare of neighborhoods and the city as a whole that interested persons or the city be able to undertake abatement action.

Property owners can be held accountable for these nuisance conditions occurring on their properties, as described in SCC 8.08.08

- A. The illegal sale of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Sections 3479 and 3480.
- B. The illegal use of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Sections 3479 and 3480.
- C. The frequent gathering, or coming and going, of people who have an intent to purchase or use controlled substances on the premises.
- D. The occurrence of prostitution or unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).
- E. The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- F. The firing of gunshots or brandishing of weapons as defined by Penal Code Section 12020 by a resident, or by a guest of a resident. **Exception exists when the occupant is a victim of a crime, i.e. robbery, home**



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invasion, burglary, etc.

- G. The occurrence of criminal activity which threatens the life, health, safety or welfare of the residents, neighbors or the public.

Often the most effective way of permanently resolving a public nuisance issue is through the voluntary compliance of the property owner(s) responsible for the problem. Although diplomatic efforts may have been attempted in the past, a nuisance warning letter from a police officer or a demand letter from the City Attorneys Office will often provide the appropriate motivation to compel the property owner to abate the nuisance.

SPD nuisance abatement warning letters are designed to inform the individual responsible for the problem what legal consequences they may face if they fail to comply. In some instances, the owner of the property may be unaware of the nuisance conditions being caused by tenants or unauthorized squatters. In these situations, an owner is likely to appreciate the notification and quickly take measures to protect their property. If voluntary compliance is not achievable, the imposition of administrative penalties or civil action from the CAO may be implemented to force compliance.

Property owners and landlords often understand that an eviction process may be required to remove the problem tenants who are responsible for nuisance conditions. **Police officers have no authority to order the eviction of a tenant**, but nuisance investigations, offense reports, citizen declarations, and nuisance warning letters often provide property owners with the legal cause they require for eviction purposes. Neighborhood health and safety must be protected in a way which does not promote housing discrimination. In light of such competing nuisance abatement objectives, officers should direct landlords and tenants to the California Fair Housing Handbook when faced with a difficult landlord-tenant dispute. The free handbook created by the Regional Human Rights/Fair Housing Commission will provide opportunity for involved parties to become educated about their legal rights and responsibilities as it pertains to landlord/tenant issues and the unlawful detainer eviction procedures. The current version of the handbook is located in the "reference section" of the AMS.

Legal Reference

Civil Code 3480: "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, 3480) "Every nuisance not included in the definition of ['public nuisance'] is private." (Civ. Code, 3481.)

Health and Safety Code 11570 HS: DRUG ABATEMENT "Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance."

Penal Code 186.22 (a): GANG ABATEMENT "Every building or place used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (e) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance."

Penal Code 11225 (a) PC RED LIGHT ABATEMENT "Every building or place used for the purpose of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, and every building or place in or upon which acts of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance."



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CHAPTER III ADMINISTRATIVE PENALTIES 1.28.080 SCC

The purpose of the administrative penalty process is to penalize violators for failure to comply with city codes and ordinances, and it can be applied to property owners who are violating the Social Nuisance Code by allowing nuisance conditions to exist on their properties. Any department in the city responsible for the enforcement of codes or ordinances may initiate administrative penalty proceedings. The imposition of administrative penalties, as supplement and an alternative to other legal remedies, brings swift resolution to nuisance conditions that negatively impact neighborhoods. The administrative penalties process is a powerful compliance tool created to motivate reluctant property owners to work with the city to resolve neighborhood problems. It is also designed to minimize the expense and delay involved in pursuing the responsible parties in civil court or the criminal justice system.

Administrative penalties are warranted when property owners allow nuisance creating behaviors or nuisance conditions, including repeated incidences of criminal conduct, to exist on their properties. As a matter of sound nuisance abatement practice, the property owner is first provided with a notification of the nuisance violation and second provided with an opportunity for voluntary abatement. In order for administrative penalties to be imposed, **there must be repeated social nuisance activity**, which means the social nuisance activity has occurred on more than one occasion. Such "repeated social nuisance activity" must be recurring incidences of the same conduct prohibited by the Social Nuisance Code, i.e., multiple loud parties, multiple arrests for drug sales, multiple arrests for prostitution, or excessive calls for service involving crimes of violence.

The procedure also provides for a fair process to appeal the imposition of administrative penalties and to be heard by a fair and impartial hearing examiner appointed by the city council.

NUISANCE ABATEMENT PROCEDURES

A. Identifying and Investigating Social Nuisance Complaints

Nuisance complaints can be generated by patrol officers who are repeatedly responding to calls for service at the same location where the nature of the calls indicate that there is a social nuisance code violation and the community is being harmed by the conditions. Officers should also consider conducting preliminary investigations into nuisance complaints when identified from a variety of other sources:

1. Top calls for service locations published weekly by the Crime Analysis Unit
2. Assignments from Lieutenants with geographical policing responsibilities
3. Council complaints via chain of command
4. Beat Sheet information
5. Locations where violent crime has recently occurred (shootings, weapons calls, gang activity)
6. Reports from community meetings and PBID meetings
7. Daily Reports from patrol teams and specialty teams
8. Next Door postings from citizens
9. Citizen e-mails or voice mails to your station office
10. Intelligence reports from Gang officers, NCU officers, CIU and Detectives
11. Parole and Probation Officers
12. Neighborhood canvassing
13. Property management companies and property owners
14. JFN Status Reports and City Attorney Requests for Action

B. JFN and Administrative Penalties Cases

Any department in the city responsible for the enforcement of codes or ordinances may initiate administrative penalty proceedings SCC 1.28.010 (D)(1). Police officers are authorized to use the administrative penalty process as a means of compelling property or business owners to abate existing nuisance conditions on their properties. The city attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provision of social nuisance code or any other ordinance of the city, or to enforce administrative penalties imposed.

Nuisance cases that are being litigated by the JFN attorneys are posted on the monthly JFN Status Report. Nuisance conditions requiring civil action to find resolution are referred to as JFN cases. These are cases that are being handled at a higher level due to the need for legal action, i.e. nuisance lawsuits, drug and red light abatements, injunctions, recovery of fees, gang or drug eviction proceedings, and other litigation requiring the use of the courts to ensure public safety. All other nuisance abatement actions are referred to administrative penalties cases. As a collaborative unit, the JFN Team will respond to locations for a site visit and evaluation to determine if the complaint will be assigned to the JFN list (nuisance litigation), or be handled by SPD as a social nuisance case (administrative penalties), or Code/Dangerous Buildings/Housing as a physical nuisance case (notice and order).



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C. Notifying Property Owners of Nuisance Activity

After a qualifying nuisance property is identified, officers should first give notice to the property owner of the social nuisance conditions existing on the property. This notification can be accomplished through personal service or via certified mail. Tenants or occupants of rental units should also be provided with a tenant notice of public nuisance activity. When property owners receive notice, they will often voluntarily comply with SPD demands to abate the nuisance conditions on the property. Officers shall only use the warning letters included in this manual.

1. NOTICE OF PUBLIC NUISANCE ACTIVITY (property owner) – **EXHIBIT A**. Spanish Language available.
2. NOTICE OF PUBLIC NUISANCE ACTIVITY (tenant) – **EXHIBIT B**

Nuisance warning letters were created in PDF format using language from the Social Nuisance Code and are designed to advise the property owner of existing nuisance conditions and to initiate communication between the property owner and the abatement officer. This notification and communication provides the property owner an opportunity to work with the city to abate the nuisance conditions. Nuisance warning letter templates are located on the AMS under Forms-Administrative Penalty or the X-drive under Administrative Penalty.

1. Nuisance warning letters should be completed by including a) address of property owner b) address of nuisance location c) date of mailing d) appropriate check box completed e) short narrative/description of nuisance f) name/contact phone/email of abatement officer.
2. E-MAIL your completed nuisance warning letter to the CAO Post Office at CityAttorney@cityofsacramento.org. Include in the subject line **“SPD Certified AP Letter.”** The PDF letter will be placed in an SPD Police Envelope and mailed certified by CAO personnel. This expedient postal service is paid for by JFN funds. Route a copy of the nuisance letter to the JFN Sergeant for safekeeping.
3. Submit a hard copy of the letter to the “approved reports” tray for Records to scan into your AP incident report. (this can also be completed by e-mail to records)
4. Patrol officers should advise their supervisor of the initiation of an administrative penalties case.

D. Administrative Penalty Incident Reports

Initiating a social nuisance abatement case requires the completion of an Administrative Penalties Incident Report (Versadex code 7000/22). This incident report remains open for the duration of the nuisance investigation and will have many supplements added to document a chronological history of the nuisance activity that has occurred, is recurring, or is being allowed to exist on the property. Officers should consider including the following information into the report:

1. How the nuisance was reported to SPD (citizen complaint, officer initiated, major incident);
2. Why the location is a qualified social nuisance case. (narcotics, gangs, noise, excessive calls, repeated incidents of nuisance creating behaviors);
3. History and nature of calls for service to the location;
4. How was property owner located and served notice;
5. Neighbor statements or complaints about the nuisance conditions;
6. Tenant/occupant information/parole probation status/criminal activity/arrests;
7. Officer observations.

E. Administrative Penalty Premise History

Sergeants should contact the on-duty Communications Supervisor and request an Administrative Penalties Hazard be placed upon the nuisance property. Communications has SPD Administrative Penalties Hazard language on file:

*****ADMIN PENALTY PROPERTY** Do Not Cancel Calls. Advise District Sgt. if call being held. Write a supplement to (insert case #) and email Officer (insert name & badge).***

F. Administrative Penalties Log

Initiating officer or Sergeant shall enter the administrative penalties case into the tracking log located in the HUB under Beat Projects. The heading should include the location and AP case number (e.g. 1234 Main St (15-12345)). The entry should also include a short description of the problem. The tracking logs are separated by district and beat. Closed cases are archived into a separate log also located in the HUB. AP cases should only be removed from the OPEN CASES log and moved to the CLOSED CASES log by the JFN Sergeant, assigned JFN Station Representative, or Area Lieutenant.

G. Monitor Location for Repeated Nuisance Activity

Administrative penalties may be imposed after a property owner has been given notice of the nuisance conditions existing on the property and declines or is reluctant to initiate action to prevent repeated incidents of nuisance activity. Property owner's efforts to abate nuisance conditions or to eradicate the nuisance creating behaviors of tenants may take time. Officers should refrain from imposing administrative penalties when a property owner is



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clearly making good faith efforts to abate the nuisance conditions. Officers should prepare to articulate that nuisance conditions are continuing and nuisance behaviors are being repeated with reluctance on the part of the owner to abate the nuisance conditions. Officers should document how these conditions are harming the community and negatively impacting the quality of life for citizens. The administrative penalty process requires repeated nuisance conduct at a location, meaning more than one time. A reasonable time frame for monitoring the nuisance conditions is considered to be 30 days.

H. Administrative Penalties Citation

In the event that a property owner does not work with the City to resolve the repeated nuisance conditions existing on a property, an administrative citation can be issued by the officer.

1. Officers shall complete the Administrative Penalty Citation SPD 593 - **EXHIBIT C**
2. Each patrol station should stock a sufficient supply of SPD 593 forms.
3. Service can be completed by personal service, certified mail, or process server.
4. Provide the pink copy of the administrative penalties citation to the violator.
5. Confirmation of service shall be documented in the open administrative penalties incident report.
6. The appropriate penalty shall be implemented in accordance with 1.28.010 SCC. Decisions to cite a property owner and the appropriate amount of the penalty should be determined in conference with patrol Sergeant/Area Lieutenant/JFN Sergeant or at the monthly JFN status report meeting.
7. Citations should be reasonable and appropriate for the violation. Citations should be issued with a sense of impartiality in regard to who is the violator and their history with SPD.
8. White and Yellow copy is submitted to Records for processing then forwarded to the Code Compliance Office.

Imposing Administrative Penalties

(1) Level A violations (\$5,000 – \$25,000) are violations that present a *substantial probability* that death or serious physical harm to the public at large or person(s) would result there from. *Examples: AWDW, Attempted 187, drug labs.*

(2) Level B violations (\$2,500 - \$4,999) are violations that either: (1) present *the threat, but not substantial probability*, that serious physical harm to the public at large or person(s) would result there from; or (2) present circumstances that are *likely to cause and/or do cause* serious harm to public or private property; or (3) present a conscious and willful disregard of a hearing examiner's order or orders, or orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. *Examples: Drug sales, felon in possession, destruction of private or public property, possession of prohibited weapons, belligerent property owners who have had previous admin penalties.*

(3) Level C violations (\$2,499 – \$1,000) are violations that present circumstances that either: (1) *are likely to cause and/or do cause* harm to public or private property; or (2) show repeated or continuous noncompliance with (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. *Examples: Drug possession on property not their own, vandalism, repeated Social Nuisance penalties no matter the knowledge/attitude of the violator, illegal dumping*

Level D violations (\$100 - \$999.99) are violations other than Level A, B, or C violations. *This level is appropriate for first time violations for social media parties, excessive noise, and general nuisances.*

I. Administrative Penalty Appeal and Hearing

A violator has a legal right to appeal the administrative penalty citation by filing with the office of the city clerk a written notice of appeal within twenty (20) calendar days of service of the administrative penalty order. If an appeal is filed, officers will be notified via e-mail by the Code Compliance Office. The JFN attorneys or the JFN Sergeant are available to assist officers in preparing for the administrative penalties hearing.

The City Attorney's Office requires the officer to prepare an administrative penalties packet **EXHIBIT D**

1. Obtain a copy of the Admin Penalties Packet Template located on the X-drive under Admin Penalties
2. Officer shall include a synopsis of arrests and incidents occurring on the property
3. Include a summary of why the nuisance behavior and conditions are harmful to the community
4. Summarize citizen statements or declarations and include in the packet
5. For violations based on the catch-all of SCC 8.08.080(G), officers must include an explanatory paragraph as to why such criminal conduct harms the public health, safety, and welfare.
6. Make 4 copies of the packet prior to the hearing

The administrative penalty hearing is a civil process whereas hearsay and opinion are admissible testimony. Convictions of drug offenders or other arrested criminals are not required as proof of the existence of nuisance creating behaviors, although use of redacted Observations from the relevant police reports is highly encouraged, and should be included as exhibits to the hearing packet.

Administrative Penalties hearings are held on the 2nd and 4th Wednesday each month at 915 I St Room 1214.

Officers shall maintain a professional appearance at administrative penalties hearings in accordance with G.O 240.01.



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CHAPTER IV - ABATING LOUD PARTY NUISANCES WITH ADMINISTRATIVE PENALTIES

Responding to Loud Parties (applies to all administrative penalties procedures):

8.08.010 (E) SCC :The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

A. LOUD PARTY AT OWNER OCCUPIED PARTY HOUSE (property owner or representative (may include children of property owner on scene):

1. Officer to give verbal or written notice of violation of the social nuisance code to the property owner or any representative on scene (use preprinted **NOTICE OF PUBLIC NUISANCE ACTIVITY** property owner warning letter). Officers should carry blank copies of nuisance warning letters and hand write the owners name on the letter in order to provide immediate notice on scene.
 - a. Disperse the party and restore the peace.
 - b. Initiate an administrative penalties incident report documenting the incident and notification.
 - c. Patrol sergeant may place a hazard on the location so that return calls are not cancelled.
2. A return call for service for a loud party on the same shift, or any subsequent shift, will be grounds for issuing an Administrative Penalties Citation to the property owner (SPD 593). The citation can be issued to the property owner on site. The "repeated nuisance incidents" and "notification" requirements are met and the officer may proceed.
3. Officers shall supplement their administrative penalties report with the reason for the citation of the administrative penalty and advise their supervisor of the citation.

B. LOUD PARTY ON RENTAL PROPERTY (property owner not on scene).

1. The responding officer should provide tenants with a warning letter for violation of the social nuisance code. Officers should carry and use preprinted copies of the **TENANTS NOTICE OF PUBLIC NUISANCE ACTIVITY** to give to tenant at the time of the first response. The officer may hand write in the contact person's name.
 - a. Disperse the party and restore the peace.
 - b. Initiate an administrative penalties incident report documenting the violation.
 - c. Patrol Sergeant may place a hazard on the location so that return calls are not cancelled.
2. Prepare and mail or personally deliver a **NOTICE OF PUBLIC NUISANCE ACTIVITY** warning letter to the property owner. (E-mail your letter to the Admin Penalties Post Office: CityAttorney@cityofsacramento.org.)
3. The responding officer shall supplement the incident report that property owner was notified of the nuisance.
4. A repeat of the same social nuisance activity may be grounds for imposing an administrative penalty citation against the property owner (SPD 593 form).



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CHAPTER V NUISANCE LITIGATION

When the threat of imposition of civil penalties does not influence a property owner to initiate abatement action, a nuisance lawsuit may become a necessary remedy. Most of the evidence needed to support the initiation of a nuisance abatement proceeding is contained in police records. The evidence must be fully documented because it may be used in a court of law and discovered by the defendant. The most important evidence is that which shows that the property is a place to which persons habitually go for the purpose of engaging in illegal activities (narcotics use and or sales, prostitution, gang activity, or other criminal activity). This evidence can be obtained from arrest reports, citations, search warrants, incident reports, intelligence reports, community complaints and calls for police service at the property. Any documentation that can be compiled indicating illegal activity on the property for a two- to three-year time period may be used as evidence. If the investigation shows that an inordinate number of calls for police service have been made and several arrests for the same type of illegal activity have occurred within a specific time frame, this may be sufficient cause for a nuisance lawsuit. The JFN attorneys look at each case for its merit and may request the officer to initiate additional enforcement action or obtain additional information to support legal action.

The JFN attorneys may request the initiating officer participate in a site visit to the nuisance property. Site visits and/or surveillance of the property should be conducted to evaluate the physical appearance of the property and to observe the nature of the illegal activities occurring on the property. The site visits will also serve to corroborate (or refute) complaints concerning the property. The JFN building inspectors and code officers will often accompany the team on a site visit because a physical nuisances and substandard structural conditions may also be present.

If sufficient evidence for a nuisance lawsuit exists, the JFN attorney may request a meeting with the property owner in an effort to obtain voluntary compliance prior to the filing of a nuisance lawsuit. The initiating officer may be requested to appear at the meeting with the JFN attorney and assist in presenting the case.

In preparation for a court filing, the JFN attorney may ask the officer for a variety of documents to support the case:

1. History of Calls for Service (both citizen and officer initiated)
2. Summary and Chronology of Investigation (administrative penalties; incident report)
3. Property owner/tenant/occupant information
4. Criminal rap sheets of offenders
5. Citizen and community complaint information
6. Written correspondence/e-mails to property owner
7. Offense Reports
8. Search and Arrest Warrants
9. Officer and Citizen Declarations

Officer Declarations. Officer declarations may be obtained from every officer currently patrolling the neighborhood where the property is located and from those who have previously patrolled the neighborhood. Officer declarations should also be obtained from every officer who has made an arrest, assisted on calls for police service, or conducted investigations on the property. The declaration should state any observations of illegal activity, the officer's involvement with the property, the property's reputation and the officer's professional opinion of the property and general knowledge of the history and reputation of the property.

Citizen Declarations. Citizens living in the vicinity of the property or persons associated with the property can provide helpful information regarding the illegal activities occurring on the property. Written statements in the form of letters, e-mails, affidavits or declarations from citizens can be persuasive evidence. If a citizen is threatened by anyone, or if an act of violence has been committed against him or her, a request can be made for the court to order that any personal information obtained remain confidential.

Citizen Declarations and Nuisance Abatement Questionnaire

The CAO has prepared a Neighborhood Nuisance Abatement Questionnaire (**EXHIBIT- E**) which is designed to assist officers in interviewing citizens who are aggrieved by a neighborhood nuisance. Citizens may complete the document and mail to the CAO so that a legal declaration can be prepared. This form can also be used a guide in preparation for an administrative penalties case.



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Gun and Drug Evictions

Existing law provides that a tenant is guilty of unlawful detainer when he/she commits a nuisance upon the property or uses the property for an unlawful purpose. (CCP §1161). Civil Code Section 3485 and 3486 expands the definition of “nuisance” to include illegal conduct related to **“weapons or ammunition”** offenses, as well as **“illegal conduct involving a controlled substance purpose on real property,”** and further creates a pilot program where eviction proceedings may be commenced by a designated city attorney in the name of the People.

In any unlawful detainer action brought by the city attorney the owner and the offending tenant must be given 30 calendar days of written notice documenting the alleged nuisance or illegal activity. This notice is designed to give the owner the first opportunity to file an unlawful detainer action against the offending tenant. The owner may then either file the action or assign the right to bring the unlawful detainer action to the city attorney. If the owner fails to file an unlawful detainer action, or fails to pursue a filed action diligently and in good faith, the city attorney may file the eviction action and may join the owner and the offending tenant as co-defendants. If a defendant tenant is found guilty of unlawful detainer, an eviction order is entered and the tenant’s right to possession is declared forfeited. If the city attorney joins the defendant owner in the action and prevails, the city may be awarded its costs and attorney’s fees incurred in the action. However, other tenants who were not violating the law may be allowed to remain as tenants pursuant to a “partial eviction” order against the drug or firearms offender. Persons thus evicted from the property may be permanently barred from returning to or reentering any portion of the entire premises. A violation of a court order is punishable as contempt. This safeguard allows the court to assure itself that the drug or firearms offender does not return to his or her former habitat and resume business-as-usual.

Criteria to Determine If the Activity Is a Qualifying Offense

1. Offender must be a tenant or occupant of real property that is not owned by the offender. In most cases the property will be a rental property. However, it is not necessary that there exist a formal landlord/tenant relationship;
2. Tenant or occupant of rental property must commit an illegal **“weapons or ammunition”** or **“controlled substance”** offense on the property or allowed the premises to be used to further an illegal “weapons or ammunition” or “controlled substances” purpose.
3. Illegal **“weapons or ammunition”** is defined to mean the illegal manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of any firearm, any ammunition for a firearm, any assault weapon, any .50 BMG rifle, or any tear gas weapon. [Civil Code § 3485 (c)].
4. Illegal **“controlled substance purpose”** is defined to mean the illegal manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance.” [Civil Code § 3486 (c)].

Recommendations for Report Writing

1. State sufficient facts to establish that the offender is a tenant and/or occupant of the property and that an “illegal weapons or ammunition” offense or “illegal conduct involving a controlled substances purpose on real property” was committed.
2. Identify the firearm, weapon and/or ammunition and include identifying features such as serial number, make and mode or identify the controlled substance and amount.
3. State how the illegal weapon or ammunition offense or the controlled substance offense was or is connected to the tenant and/or occupant.
4. Identify the location of the property where the illegal weapon and/or ammunition or controlled substance was found, including the address and specific location on the property (e.g., closet, drawer, master bedroom etc.).
5. Obtain the name, address and phone number of the owner or property management firm of the property where the “illegal weapons or ammunition” offense or controlled substance offense was committed.
6. Identify (a) who possesses or claims ownership over the firearm, weapon and/or ammunition and (b) the legal and/or registered owner of the firearm, weapon and/or ammunition (if not the same). Identify who possesses or claims ownership over the controlled substance.
7. Identify all tenants or adult occupants of the rental property.
8. Identify the legal and/or registered owner of the firearm, weapon and/or ammunition.
9. Identify all witnesses and obtain their statement of facts.



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



Documents to Be Submitted To CAO

If SPD decides to pursue an eviction procedure against the offending tenant(s) it should submit, whenever possible, the following:

1. Copy of police report, including witness statements and any supplements
2. Booking sheet (SPD 779/780), including Property number
3. Printout of legal owner of firearm(s) seized (e.g., CLETS)
4. Name and contact number of each involved Officer;
5. Rap sheets for all offenders
6. Photos of confiscated firearm(s), weapon(s) and/or ammunition, if available
7. Calls for Service to the location for the last 18 month



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



EXHIBIT A - ADMINISTRATIVE PENALTIES WARNING LETTER- OWNER



SAMUEL D. SOMERS JR.
Chief of Police

5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

October 20, 2014

John Q. Landlord
49491 Throckmorton Lane
Mill Valley, CA 95991

SUBJECT: NOTICE OF PUBLIC NUISANCE ACTIVITY

Dear Property Owner,

This is to advise you that activities checked below are occurring at the property you own located at:

3499 Elm Street, Sacramento, CA 95838

- 1. The illegal sale of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Section 3479 and 3480.
- 2. The illegal use of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Section 3479 and 3480.
- 3. The frequent gathering, or coming and going, of people who have intent to purchase or use controlled substances on the premises.
- 4. The occurrence of prostitution or unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).
- 5. The making or continuing, or causing to be made and continued, of any loud, unnecessary, or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- 6. The firing of gunshots or brandishing of weapons as defined by Penal Code Section 12020 by a resident or by a guest of a resident.
- 7. The occurrence of criminal activity which threatens the life, health, safety, or welfare of the residents, neighbors, or the public.

The Del Paso Heights Neighborhood Association has reported that there is suspected drug usage and trafficking on your rental property. The Sacramento Police Department has responded to no less than 85 calls for service on your property for repeated incidents of assaults and narcotics usage. Your tenant was recently arrested per 11377 HS (SPD 14-308459). City animal control is also conducting a concurrent investigation into reported incidents of criminal dog fighting on your property.

These activities constitute a public nuisance pursuant to Section 8.08.080 of the Sacramento City Code (Social Nuisance Code). As the owner of the property, you have a legal duty to abate the nuisance activity occurring on the property. If the nuisance activity continues, the Sacramento Police Department and the City of Sacramento will take further enforcement action against you. In addition to other legal remedies, the Sacramento Police Department may impose administrative penalties against you, in an amount up to \$25,000 per incident. If you have any questions regarding this notice, please do not hesitate to contact

Officer B. Goode at 549-8924 or via email at bgoode@pd.cityofsacramento.org or JFN Sergeant Pease at either (916) 808-2401, 808-6401 or via e-mail at ipease@pd.cityofsacramento.org.

The Mission of the Sacramento Police Department is to work in partnership with the Community to protect life and property, solve neighborhood problems, and enhance the quality of life in our City.



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



EXHIBIT B - ADMINISTRATIVE PENALTIES WARNING LETTER – TENANT



SAMUEL D. SOMERS JR.
Chief of Police

5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

Tenant/Occupant Name: _____ Date: _____

Dear tenant/occupant:

This is to advise you that activities checked below are occurring at the property you rent and or occupy at:

- 1. The illegal sale of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Section 3479 and 3480.
- 2. The illegal use of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Section 3479 and 3480.
- 3. The frequent gathering, or coming and going, of people who have intent to purchase or use controlled substances on the premises.
- 4. The occurrence of prostitution or unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).
- 5. The making or continuing, or causing to be made and continued, of any loud, unnecessary, or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- 6. The firing of gunshots or brandishing of weapons as defined by Penal Code Section 12020 by a resident or by a guest of a resident.
- 7. The occurrence of criminal activity which threatens the life, health, safety, or welfare of the residents, neighbors, or the public.

These activities constitute a public nuisance pursuant to Section 8.08.080 of the Sacramento City Code (Social Nuisance Code). As a tenant/occupant of the property, you are in violation of the Social Nuisance Code if you permit this activity to continue. If the nuisance activity continues, the Sacramento Police Department and the City of Sacramento will take further enforcement action against you. In addition to other legal remedies, the Sacramento Police Department may impose administrative penalties against you, in an amount up to \$25,000 per incident.

If you have any questions regarding this notice, please do not hesitate to contact me at: _____

Sincerely,

Signature

Badge

Print Name

The Mission of the Sacramento Police Department is to work in partnership with the Community to protect life and property, solve neighborhood problems, and enhance the quality of life in our City.



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



EXHIBIT C - ADMINISTRATIVE PENALTIES CITATION – SPD 593

SACRAMENTO POLICE DEPARTMENT ADMINISTRATIVE PENALTY

DATE OF VIOLATION <i>August 21, 2013</i>	TIME <i>2315</i>	DAY OF WEEK <i>Wed.</i>	ADDRESS OF VIOLATION [REDACTED]	DISTRICT <i>3M</i>	SPD REPORT # <i>13-224746</i>
NAME (FIRST, MIDDLE, LAST) [REDACTED]			BUSINESS NAME [REDACTED]		
ADDRESS [REDACTED]			BUSINESS ADDRESS [REDACTED]		
CITY [REDACTED]	STATE <i>CA</i>	ZIP CODE [REDACTED]	CITY <i>Sacramento</i>	STATE <i>CA</i>	ZIP CODE <i>95814</i>
DRIVER LICENSE NO	STATE	BIRTH DATE	PHONE		
PENALTY LEVEL: <input type="checkbox"/> Level A: \$5,000.00 to \$25,000.00 <input type="checkbox"/> Level C: \$1,000.00 to \$2,499.99 <input checked="" type="checkbox"/> Level B: \$2,500.00 to \$4,999.99 <input type="checkbox"/> Level D: \$100.00 to \$999.99					
PERSON SERVED: NAME: _____ DOB: _____ RELATIONSHIP: _____ TYPE OF SERVICE: <input type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> FIRST CLASS MAIL <input type="checkbox"/> CERTIFIED MAIL <input type="checkbox"/> OTHER			ORDER IMPOSING ADMINISTRATIVE PENALTY SACRAMENTO CITY CODE 1.28.010 You are hereby ordered to pay the City of Sacramento an administrative penalty in the amount of \$ <u><i>4,999.99</i></u> (Level A <input checked="" type="radio"/> B <input type="radio"/> C / D) imposed in connection with the violation(s) herein described on this notice. Payment shall be sent or paid to the <i>City of Sacramento</i> at 915 I Street, Room 1214, Sacramento, CA 95814 on or before: _____ The administrative penalty is a personal obligation and failure to pay the penalty may result in the amount being made a lien and/or special assessment against your property as well as other legal action to collect the penalty. If a judicial action is required to collect the penalty, the City will seek to recover its attorney's fees and costs from you. This administrative penalty does not include any other charges that may be applicable to this case. You will receive a separate bill for charges and/or costs incurred by the City when this case is closed.		
NATURE OF VIOLATION: <i>VIOLATION OF SAC CITY CODE 8.08.090(G) REPEATED CRIMINAL VIOLATIONS ENDANGERING THE PUBLIC SAFETY.</i> <i>8/21/13: POSSESS MENTH 11377(A) HS 13-224746 6/12/13: POSSESS NARCOTICS 11350(A) HS 13-154459</i>					
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for that which is based on information and belief, and for that I believe it is true.					
SIGNATURE OF OFFICER <i>Sgt. Young</i>			BADGE NUMBER <i>3063</i>		
RECEIVED BY: (RESPONSIBLE PARTY) <input type="checkbox"/> REFUSED TO SIGN					

White Copy – Sacramento Police Department

Yellow Copy – Code Enforcement

Pink Copy – Violator

SPD 593 (Rev 01/11)



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



EXHIBIT D - ADMINISTRATIVE PENALTY APPEAL SUMMARY

Public Hearing Case File Outline

ADMINISTRATIVE PENALTY APPEAL

Hearing Examiner's Item Number: 2	SPD Case Number: 13-224746
Public Hearing Date: October 23, 2013	Hearing Examiner – Donald E. Sperling
Officer: Sergeant Matt Young #3063	Location: [REDACTED]
Parcel Number: Unknown	Case opened: September 4, 2013
Property Owner: [REDACTED]	Case closed: N/A

City Code Violations

[xx] Section 8.08.080 (G) The occurrence of criminal activity which threatens the life, safety or welfare of the neighbors and the public.

On August 21, 2013 Uniformed officers contacted three subjects loitering inside the boiler room of the property. Two of the subjects were residents of the property and the third was a female transient. The female was found to be in possession of methamphetamine. Pertinent portions of SPD Report #13-224746 attached hereto as Exhibit 1.

On August 31, 2013 Uniformed officers contacted a known probationer across the street from the property. The subject was transported to his residence, at [REDACTED] and a probation search of his property was conducted. Over 5 grams of methamphetamine were located on the property. Pertinent portions of SPD Report #13-234257 attached hereto as Exhibit 2.

On June 12, 2013 Uniformed officers contacted the subject working as the clerk for the [REDACTED]. The subject was a resident of [REDACTED]. The subject was found to be in possession of narcotics. Pertinent portions of SPD Report #13-154459 attached hereto as Exhibit 3.

This is the second administrative penalty issued for this property this calendar year. In February, an administrative penalty was issued for recurring felony drug violations. That penalty was not appealed and has not been paid to my knowledge. February administrative penalty and letter attached hereto as Exhibit 4.

These aforementioned felony arrests are just a few of the numerous criminal incidents that have occurred on the property over a short period of time. These incidents occurred after I personally met with [REDACTED] on May 16, 2013, at which time we discussed, in detail, the recurring criminal activity on his property. [REDACTED] acknowledged the activity was occurring and that as a property owner he was, "in over his head."

Administrative Penalty Appeal / [REDACTED]



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



EXHIBIT E - NEIGHBORHOOD NUISANCE ABATEMENT QUESTIONNAIRE



NEIGHBORHOOD NUISANCE ABATEMENT QUESTIONNAIRE

SUBJECT PROPERTY:

What is your name, address, and phone number?

Do you live near the subject property? Yes / No

If yes to the above, how far away do you live from it?

Do you own a business near the subject property? Yes / No

Do you own rental property near the subject property? Yes / No

Have you observed any activity you would describe as illegal or a nuisance occurring at the subject property? If so, please describe what type of activity you have observed.

Has anyone ever threatened, intimidated or harassed you while at or near the subject property? If so, in what way and did you report the activity to the police.

Can you describe the condition of the subject property? (Example, would you describe the property as being clean or do you think it has trash, litter or other discarded items.)



SACRAMENTO POLICE DEPARTMENT NUISANCE ABATEMENT MANUAL



QUESTIONNAIRE PG 2

If you have children, do you feel it is safe for your kids to walk by or be around the subject property? If not, why not?

Do you feel the subject property in its present condition has a negative or positive impact on the neighborhood?

Do you think the subject property has negatively affected property values in the area? If yes, why?

Do you think the subject property has a reputation in the community as a place that is unsafe or poses a danger to others? Where does this reputation come from?

Are you willing to sign a written declaration prepared by the City Attorney's Office to be filed with the Superior Court? Yes / No/ Maybe

Do you have any other comments, concerns, observations or experiences you wish to tell us about? Be as brief or specific as you would like.

AFTER FILLING OUT THE ABOVE PLEASE SEND THIS QUESTIONNAIRE TO THE CITY ATTORNEY'S OFFICE BY 1) MAIL 2) EMAIL OR 3) FAX.

SEND TO:

SACRAMENTO CITY ATTORNEY'S OFFICE
ATTN: NORMA FLORENDO
915 I STREET, ROOM 4010
SACRAMENTO CA. 95814

OR

CityAttorney@cityofsacramento.org

OR

FAX: 916.808.7455