

ORDINANCE NO. 93-053

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF SEP 21 1993

**AN ORDINANCE ADDING CHAPTER 16 TO TITLE 61 OF
THE SACRAMENTO CITY CODE, RELATING TO
ABATEMENT OF NEIGHBORHOOD NUISANCES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 16 is hereby added to Title 61 of the Sacramento City Code, to read as follows:

Chapter 16. Neighborhood Nuisance Code

61.16.1601 Title.

This chapter shall be known as the "Neighborhood Nuisance Code," may be cited as such, and will be referred to herein as "this code."

61.16.1602 Findings.

The City Council finds as follows:

- (a) Just as the physical conditions of properties within the City of Sacramento can constitute public and private nuisances, so too the behavior of persons on properties within the City can 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.

- 1 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (b) It is as important for the public health, safety and welfare for interested residents or the City to be able to abate nuisance-creating behaviors as it is to abate nuisance-creating physical conditions.
- (c) 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. Nuisance-creating physical conditions can be abated pursuant to Titles 9, 15, 49, 50, and 61, among others, of the Sacramento City Code. A comparable abatement remedy for nuisance-creating behaviors is needed.
- (d) Neighborhood health and safety must be protected in a way which does not promote housing discrimination or promote evictions based on prejudice, unfounded fears, or personal animosities.
- (e) Nothing in this ordinance exempts property owners from strict compliance with state housing law on evictions, retaliatory conduct or discriminatory conduct, or privacy.

61.16.1603 Purpose.

- (a) The purpose of this chapter is:
 1. to set forth and enforce minimum standards relating to the management of residential properties to protect the public health, safety, and welfare, and
 2. to put in place a remedy which will permit aggrieved persons or the City to take effective, efficient judicial or administrative action against property owners who permit nuisance-creating behaviors to occur on their properties on a continuing basis, in order to compel such owners to abate the nuisance-creating behaviors.
- (b) Provisions of this chapter are intended to be supplementary and complementary to all of the other provisions of the City Code and state law and all remedies set forth herein shall be cumulative to other remedies which may be available under the City Code or state law.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
 DATE ADOPTED: SEP 21 1993

61.16.1604 Application.

The provisions of this chapter shall apply generally to all property throughout the City of Sacramento wherein any of the nuisances hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this chapter, but which is duly authorized under any city, state or federal law, shall not be deemed to violate this chapter.

The provisions of this chapter shall not apply to activities which constitute a bona fide exercise of constitutional rights.

61.16.1605 Responsibility for Proper Property Management.

- (a) Every owner of real property within the city is required to manage the property in a manner so as not to violate the provisions of this code and the owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding the property.
- (b) Every occupant, lessee or holder of any possessory interest in real property is required to behave on the property, and supervise any guests on the property, in a manner so as not to violate the provisions of this code.

61.16.1606 Authority.

The Director of the Neighborhood Services Department, or the Director's designee (hereafter "Director"), shall administer the provisions of this chapter.

Hearings or appeals of the Director's orders shall be heard by a hearing officer appointed by the City Council.

61.16.1607 Penalty for Violations; Enforcement.

- (a) The administrative enforcement described in Sections 61.16.1609 *et seq.* notwithstanding, the City Attorney may bring a civil action for injunctive relief and civil penalties in an amount not to exceed \$20,000.00 against any owner who violates this code.
- (b) Any person affected by a public nuisance described in this code may bring a civil action for injunctive relief and damages against any owner who violates this code.
- (c) In any civil action brought pursuant to this code, the court may award reasonable attorneys fees and costs to the prevailing party.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

61.16.1608 Generally.

It is hereby declared a public nuisance and a violation of this code for any person, firm or corporation, whether owner, lessee, sublessor, sublessee or occupant of any premises in this city to permit those premises to be used in such a manner that any one or more of the activities described in the following subsections are found to occur repeatedly thereon:

- (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, 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. The standards set forth in City Code Section 66.03.301 shall be considered in determining whether a violation of this subsection exists.
- (f) The firing of gunshots or brandishing of weapons by a resident of the premises, or by a guest of a resident.

61.16.1609 Citation and Order; Issued.

- (a) Whenever the Director has inspected or caused to be inspected any premises and has found and determined that the premises are in violation of this code, the Director may issue a citation and order to abate the nuisance as provided herein. Before a citation and order is issued, the Director shall communicate with the owner to request that the owner voluntarily cooperate with the City to abate the nuisance, and encourage the owner to participate in a mediation program designed to foster cooperation between property owners, interested persons, and the City.

- 4 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (b) No citation and order shall be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to City communications and requests, active professional property management, and taking steps to repair physical conditions which contribute to the nuisance.
- (c)
 - (1) Whenever the Director notifies an owner or manager of rental residential property orally or in writing of a nuisance alleged to be caused by a specific tenant or the tenants of a specific unit, the Director shall concurrently give written notice thereof to the specific tenant(s) or unit. Notice to the tenant or unit need not be given when the Director determines that doing so would endanger persons or compromise an ongoing police investigation.
 - (2) Whenever the Director notifies an owner or manager of rental residential property orally or in writing that a nuisance exists at their property, the Director shall concurrently issue a written notice to the tenants of the property. The notice shall generally describe the nuisance and the City's remedies under this code. The notice shall also state that tenants may contact the Director to provide or receive information about their building.
 - (3) Whenever the Director issues a citation and order to abate a nuisance at a rental residential property, the Director shall concurrently issue a written notice to the tenants of the cited property.
 - (4) The Director shall establish procedures for providing all tenants with notice of subsequent proceedings and actions pursuant to this chapter.
- (d) The City Attorney shall review and approve each citation and order before it is issued.

61.16.1610 Citation and Order - Content; Service; Fee.

- (a) The citation and order shall contain:
 - (1) The street address and such other description as is required to identify the premises.
 - (2) A statement specifying with particularity the behaviors which constitute the nuisance, including, when applicable, addresses and unit numbers of the person or person allegedly causing the nuisance, and the actions which the Director orders the record owner to take to abate the nuisance.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (3) A statement advising the owner to abate the nuisance within sixty (60) calendar days of mailing of the citation and order, or such longer time as the Director may order. An extension of time to abate the nuisance shall be granted if the owner is making good faith efforts to abate the nuisance and those efforts are delayed due to judicial proceedings relating to the property.
 - (4) A statement advising the owner that he or she has the right to request a hearing to contest the citation and order.
 - (5) A statement advising the owner that an administrative penalty in an amount not to exceed \$5,000.00 shall be imposed upon the owner and made a lien on the property involved if the nuisance is not abated as required by the citation and order and no written request for hearing is filed within thirty (30) days of receipt of the citation notice.
 - (6) A statement advising the owner that an owner may not retaliate against any tenant because the City has instituted proceedings under this ordinance.
 - (7) A statement that in responding to the citation and order, the owner should comply with all applicable federal, state, and local regulations relating to evictions and prohibitions against discrimination.
 - (8) If the Director determines that mediation might facilitate abatement of the nuisance, a statement that the owner may participate in a mediation program designed to foster cooperation between property owners, interested persons, and the City.
- (b) The citation and order shall be served in the manner prescribed by Section 61.16.1615(b) and (c).
 - (c) A fee shall be imposed on the owner of any property for which a citation and order is issued pursuant to this chapter. The fee shall be calculated to recover the total City cost of inspections and enforcement, and shall be set by resolution of the City Council. Any fee not paid shall be collected pursuant to the procedure set forth in Chapter 50.09 of the Sacramento City Code.
 - (d) The citation and order shall state that a written abatement plan executed by the owner and Director, with or without mediation, shall be deemed to be a final order of the hearing officer.

- 6 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (e) If an owner elects to participate in mediation, the time within which a request for hearing may be filed shall be extended by sixty (60) days. The owner shall appear personally at the mediation as set forth in the mediation procedures adopted by the Director.

61.16.1611 Director's Review; Notice of Administrative Penalty.

- (a) After the time for abatement set forth in the citation and order has expired, the Director shall determine whether the owner has taken the action ordered by the Director and whether the nuisance has been abated. If the Director determines that the nuisance has been abated, the owner and any occupants other than the owner shall be notified in writing of such determination and the citation shall be dissolved.
- (b) If the Director determines that the nuisance has not been abated, the Director may impose an administrative penalty of not more than \$5,000.00 upon the owner. In addition, the Director may issue another citation and order to the owner pursuant to Section 61.16.1609.
- (c) If the Director imposes an administrative penalty upon the owner, the Director shall issue a notice of such penalty to the record owner of the premises, and to any occupants of the premises who are not the owner. The notice shall specify the amount of the administrative penalty, advise the owner of his or her right to request a hearing to contest the administrative penalty, and state that if no hearing request is received within thirty (30) calendar days, the administrative penalty will become final and be made a lien upon the property involved.
- (d) The notice of administrative penalty shall be served in the manner prescribed by Section 61.16.1615(b) and (c).

61.16.1612 Reserved.

61.16.1613 Right to a Hearing.

The property owner has the right to request a hearing to contest any citation and order issued or any administrative penalty imposed by the Director.

61.16.1614 Requests for Hearing.

- (a) All requests for hearing shall be made to the Director.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (b) A request for hearing to contest a citation and order or an administrative penalty shall be made in writing within thirty (30) calendar days after mailing of the citation and order or notice of administrative penalty.
- (c) If a request for hearing is not filed within the time period set forth in subdivision (b) above, the citation or administrative penalty shall be deemed a final order of the hearing officer.

61.16.1615 Hearing Notice.

- (a) Upon the owner's request for a hearing, the Director shall issue a hearing notice. The notice shall contain:
 - (1) A copy of the citation and order.
 - (2) A copy of the notice of administrative penalty, where applicable;
 - (3) An order to the owner to appear before a hearing officer at a stated time, but in no event less than twenty (20) calendar days after mailing of the hearing notice.
 - (4) A list of the actions which the Director intends to ask the hearing officer to order the owner to take if the matter is not resolved before hearing. Nothing shall prevent the hearing officer from ordering other actions not listed in the hearing notice, but the owner shall have the right to ask for a supplemental hearing on such other actions as set forth in Section 61.16.1624.
 - (5) A statement that all interested persons may attend and testify at the hearing.
- (b) The hearing notice, and any amended or supplemental notice, shall be served either by personal delivery or by mailing a copy by certified mail, postage prepaid, return receipt requested, upon the record owner at the owner's address as it appears on the latest equalized assessment roll of Sacramento County, or as known to the Director. At the discretion of the Director, copies of the notice may also be mailed to the owner by first class mail or mailed to any holder of an interest in the property or a mortgage, deed of trust, or other lien or encumbrance of record.

In lieu of personally serving the owner or service by certified mail, service of the notice and any amended or supplemental notice may be made as follows:

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (1) In the event that the owner refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. In lieu of personal delivery of a copy of the notice, a notice or any amended or supplemental notice may be served by leaving a copy during usual office hours in his/her office with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy of the notice was left. Or, a notice or any amended or supplemental notice may be served by leaving a copy at the owner's dwelling, usual place of abode, or usual place of business in the presence of a competent member of the household or a person apparently in charge of his/her office or place of business, at least 18 years of age, and thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy was left.
 - (2) In the event the owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager, or rental agency overseeing the premises, substituted service may be made as set forth in (1) above upon the property manager or rental agency.
 - (3) If the owner lives out of state and will not accept certified return receipt mail, then service may be made by first-class mail.
 - (4) If the owner of the property cannot be located after a diligent search, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the owner.
- (c) Proof of service of the hearing notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made.
 - (d) Failure to effect service on any person specified herein shall not invalidate proceedings against any person who is properly served.

61.16.1616 Hearings -- Generally.

At the time set for hearing the hearing officer shall proceed to hear the testimony of City staff, the owner, any tenants, and other persons respecting the nuisance-creating behaviors on the premises and the steps necessary to abate the nuisance, or the imposition of an administrative penalty.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

61.16.1617 Record of Oral Evidence at Hearing.

- (a) The proceedings at the hearing shall be recorded by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
- (b) Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.

61.16.1618 Continuances.

The hearing officer may grant continuances from time to time for good cause shown.

61.16.1619 Oaths.

The hearing officer shall administer the oath or affirmation.

61.16.1620 Evidence Rules.

Government Code of the State of California, Section 11513, subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under this chapter.

61.16.1621 Rights of Parties.

- (a) The parties and anyone who participates in a hearing under this chapter may be represented by an attorney or other person of the party's choice.
- (b) If a party does not proficiently speak or understand the English language, the party may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing.

61.16.1622 Official Notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its department.

61.16.1623 Inspection of Premises.

The hearing officer may inspect the exterior of the premises involved in the hearing prior to, during or after the hearing, provided that:

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

- (a) Consent is granted by a person with the lawful right to grant consent or an inspection warrant is obtained;
- (b) Reasonable notice of such inspection shall be given to the owner before the inspection is made;
- (c) The parties are given an opportunity to be present during the inspection;
- (d) The hearing officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom; and
- (e) Each party then shall have a right to rebut or explain the matters so stated by the hearing officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the record.

61.16.1624 Decision of the Hearing Officer.

If it is shown by a preponderance of the evidence that behaviors occurring on the premises constitute a public nuisance and that the owner of the premises has not taken adequate steps to abate the nuisance as prescribed by the Director, the board shall issue a written decision declaring the premises a public nuisance. The hearing officer may affirm, reject or modify any administrative penalty imposed on the owner by the Director based upon the severity of the nuisance-creating behaviors on the premises and the owner's efforts, or lack thereof, to remedy the problem. The administrative penalty may be adjusted if the hearing officer finds that imposition of the penalty would work a substantial undue economic hardship on the owner or tenants. The hearing officer may order the owner to take such action it deems appropriate to abate the nuisance. The actions ordered shall be reasonable and may include, but shall not be limited to:

- (a) Provision of additional exterior lighting;
- (b) The posting of security personnel on the premises;
- (c) Installation of appropriate fencing;
- (d) Posting of signs on the premises, and provisions in rental applications and agreements, which state that illegal use of controlled substances and other nuisance-creating behaviors on the premises shall be grounds for eviction;
- (e) Hiring a competent property management firm to manage the property;

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
 DATE ADOPTED: SEP 21 1993

- (f) Hiring of a competent resident manager who has experience, education, and training in rental property management;
- (g) Posting a sign on the premises setting forth the name, address and daytime and evening telephone numbers of the owner or of a local property manager who is authorized to make decisions relating to management of the property;
- (h) Obtaining education and training in rental property management;
- (i) Such other reasonable actions as may be deemed appropriate by the hearing officer.

The hearing officer shall not have the authority to order that the owner evict a tenant or any other person from the premises.

If the hearing officer orders the owner to take specified actions to abate the nuisance, the Director shall review the owner's compliance with the hearing officer's order pursuant to Section 61.16.1611.

The decision shall inform the owner that if the nuisance is not abated within the time specified and the owner has not complied with all orders of the hearing officer, an administrative penalty in an amount not to exceed \$5,000.00 may be imposed upon the owner and made a lien on the property involved.

If the decision orders the owner to take any actions which were not listed in the hearing notice, the decision shall specifically designate those actions, and if the owner objects to those actions as unnecessary or infeasible, the owner may request a supplemental hearing before the hearing officer on the subject of the appropriateness of those actions only, by filing a written request with the Director within fifteen (15) calendar days after the decision is mailed to the owner. A request for supplemental hearing shall not stay the hearing officer's order to take actions which were listed in the hearing notice.

The decision of the hearing officer shall be final. The decision shall inform the owner that the time for judicial review of the hearing officer's decision is governed by California Code of Civil Procedure Section 1094.6.

The decision shall be posted on the premises and served upon the owner by personal delivery or by certified mail, return receipt requested, and shall be sent by first class mail to any occupants other than the owner, any holder of any mortgage or deed of trust or other lien or encumbrance of record, the owner or holder of any lease of record, and the holder of any other

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

estate or legal interest of record in the premises. Failure to serve the decision on any person specified herein shall not invalidate proceedings against any person who is properly served.

61.16.1625 Enforcement of Hearing Officer Orders.

After any order of the hearing officer made pursuant to this code shall have become final, no owner to whom any such order is directed shall fail, neglect or refuse to obey any such order. The City Attorney may commence appropriate judicial action against any owner who fails to abate a nuisance pursuant to the order of the hearing officer.

61.16.1626 Procedures for Collection of Administrative Penalty.

The administrative penalty shall be due and payable within thirty (30) days after the decision of the Director becomes final or within thirty (30) days after the hearing officer's decision is issued. If the penalty is not timely paid, the City Council may thereupon order that the penalty be specially assessed against the property involved. If the City Council orders that the penalty be specially assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

The City Council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, the date on which the penalty was imposed by the hearing officer, a description of the real property subject to the lien, and the amount of the penalty.

No owner shall pass on to tenants penalties incurred pursuant to this chapter. Costs of capital improvements and security and safety enhancements may be passed on.

61.16.1627 Use of fees and penalties.

All fees and penalties received by the City pursuant to this chapter shall be used exclusively for administration and enforcement of this chapter and Titles 49 and 50 of the City Code.

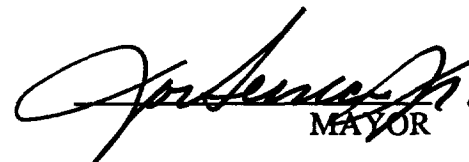
FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053
DATE ADOPTED: SEP 21 1993

DATE PASSED FOR PUBLICATION: 09/14/93

DATE ENACTED: SEP 21 1993

DATE EFFECTIVE: 10/21/93


MAYOR

ATTEST:


Valerie A. Burrows
CITY CLERK

- 14 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 93-053

DATE ADOPTED: SEP 21 1993

17