

THE PUBLIC LAW CENTER

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MEMORANDUM

Introduction

The Public Law Center has been asked by the Uptown Triangle Neighborhood Association to draft a summary of legal actions that neighborhood organizations may take in response to criminal activity occurring around alcoholic beverage outlets. Neighborhood groups have complained that many of these businesses are centers of criminal activity, loitering, noise violations, and littering in their neighborhoods, and they would like to know what legal actions and remedies are available to them.

Four legal issues will be addressed in this memo: (1) Whether neighborhood organizations have a cause of action for public nuisance under Louisiana state law; (2) Whether neighborhood organizations have a cause of action for public nuisance under New Orleans' Noise Control law; (3) Whether neighborhood organizations have a cause of action under Louisiana state Alcoholic Beverage Control law; and (4) Whether neighborhood organizations have a cause of action under New Orleans' Code for Alcoholic Beverages.

Burden of Proof

If a neighborhood organization files a case against a business, the organization carries the burden of proving by a preponderance of the evidence how the named business created a public nuisance or permitted a disturbance of the peace. In order to avoid a dismissal for no cause of action, the neighborhood organization, through its petition, needs to prove how the facility contributed, conspired, attempted, or abetted anyone to engage in acts adversely affecting the public health, safety, or morals. One way to prove the facility contributed to the criminal activity is to show that the owners, agents, or employees of the facility were involved in the criminal activity or had sufficient knowledge of the activity to conclude they were permitting the prohibited activity to occur on the premises. The petitioner must also prove that persons involved in criminal activity outside the location were patrons of that location. In order to avoid dismissal for vagueness, the petition should include specific details of specific incidents with police reports and signed affidavits by all witnesses.

Summary of the Law

I. Louisiana Public Nuisance Law:

LA Revised Statutes: [13:4711](#); [13:4712](#); [13: 4713](#); [13:4714](#); [13: 4715](#) See website of the Louisiana Legislature, "Louisiana Laws" link: www.legis.state.la.us.

1. Who may file a petition?

The attorney general, the district attorney, the sheriff, or any 10 residents of the election precinct where the nuisance occurs may petition for an injunction or order of abatement. La. R.S. 13:4712.

2. What is the court procedure once a petition is filed?

- a. Once a petition for an injunction has been filed, the owner is given notice of the alleged violation and of a preliminary hearing to be held within 24 hours. La. R.S. 13:4713(B).
- b. An *irrebuttable* pattern of prohibited activity is established if the petition provides details and evidence of two or more instances of criminal activity on or around the premises within a *three-year* period. La. R.S. 13:4711(A)(5).
- c. A *rebuttable* presumption of prohibited activity is established if a petition provides details and evidence of two or more instances of drug-related criminal activity or criminal activity involving violence or weapons on or around the premises within the preceding *five-year* period. L.R.S. §4713(A).
- d. If the petition provides evidence that the owner *received a notice of violation* from the attorney general, the district attorney, the sheriff, or the city attorney, that establishes a *rebuttable* presumption that the owner of the business *knowingly* permitted the maintenance of a nuisance at the location. La. R.S. 13:4713(A).
- e. If the maintenance of a nuisance is found and the owner knew of its existence, an order of abatement may be entered, ordering the closing of the premises for a period of five years unless sooner released. La. R.S. 13:4715.

Neighborhood Nuisance Action Plan

- (1) Neighbors report to their neighborhood association instances of prohibited activity on the premises.
- (2) Neighborhood association gets police to the scene to investigate allegations of prohibited activity and make arrests or issue citations, as appropriate.
- (3) Municipal authorities prosecute alleged violations and secure convictions.
- (4) City Attorney sends notice of a violation to bar owners and operators regarding any confirmed instance of prohibited activity, which notice creates a presumption of "knowingly and willfully" maintaining a nuisance.
- (5) Further conviction of prohibited activity on the premises establishes a knowing and willful pattern of prohibited activity, which may be enjoined by suit brought against the bar owners and operators--either by City Attorney, D.A., or 10 citizens.

Filing a Complaint with the City Attorney's Office or the District Attorney's Office

To file a complaint with the City Attorney's Office, call, write, or visit:

City Attorney's Office: phone: 658-9800; address: 1300 Perdido Street, Room 5E03, NO, LA 70112

To file a complaint with the District Attorney's Office, call, write, or visit:

Orleans Parish District Attorney: Eddie J. Jordan, Jr.*, Investigation Unit Attorney: C. McCoy*, phone: (504) 822-2414 or 827-7253 address: 619 S. White Street, NO, LA 70119

II. New Orleans Noise Control Program & Littering Ordinance:

[City Code §66-136 to §66-208; §66-282; §66-285; §66-287](#) See MuniCode.com website for link: <http://www.municode.com/resources/gateway.asp?pid=10040&sid=18>.

1. Who has the power to prosecute violations of the noise ordinance?

The Director of the Department of Health and the Superintendent of Police administer the noise control program. They have the power to prosecute or enjoin violators of the noise control ordinance. City Code §66-137.

2. What is the court procedure once a business violates the noise ordinance?

- a. The operation or maintenance of any business in violation of the noise ordinance is a misdemeanor and the owner may be fined, imprisoned up to 90 days, subject to abatement by a restraining order or issuance of an injunction. Each day a violation is committed or is permitted to continue, it is considered a separate offense. City Code §66-140; City Code §66-141.
- b. If a business violates the sound level limits, it will be given 6 months to comply with the ordinance if insulation or other modifications are necessary for compliance. City Code §66-203(4)(a).

3. What are the sound level limits for businesses in residential areas?

If a business is within or adjacent to a residential area, the sound level limit may not exceed 75 Lmax (maximum A-weighted sound level allowed) dBA between 7:00 a.m. and 10:00 p.m. From 10:00 p.m. until 7:00 a.m. the sound level limit may not exceed 65 Lmax dBA. The measurement may be taken at a minimum distance of 25 feet from the source being measured within a minimum clearance of 3 feet from any reflecting surface. City Code §66-136; City Code §66-202: Table 1.

4. What type of instrument must be used to measure noise?

Noise measurements must be made with a properly calibrated sound level meter Type 2 or better using the A-weighted network in accordance with the noise measurement standards, based on the reference sound pressure, promulgated by the American National Standards Institute and Testing Procedures. City Code §66-201.

5. What is considered a violation of the litter and dumping ordinance?

- a. The litter ordinance is violated by dumping, leaving, throwing, discarding, or otherwise permitting the intentional or accidental dumping, leaving, throwing, discarding, ejection, emission, or escape of any glass or metallic objects, trash, refuse, garbage or other solid waste on any private property within the city. City Code §66-282(a).
- b. The dumping ordinance is violated by dumping, leaving, throwing, discarding, or otherwise permitting the intentional or accidental dumping, leaving, throwing,

discarding, ejection, emission, or escape of any vehicle parts, construction debris, furniture, used oil, or other hazardous wastes in any yard, lot, space, building, gutter, drain, or canal. City Code §66-282(b); §66-285.

6. How is a citation for a violation of the litter ordinance issued?

- a. A violation may be based upon a sworn affidavit of any citizen over 18 years of age. The affidavit should include a description of the violation, the offender, and any vehicle involved. City Code §66-282(k).
- b. A peace officer or sanitation ranger may issue a summons for littering or dumping requiring that person to appear and answer the charge. City Code §66-282(k).
- c. The city attorney may prosecute the violation as civil or criminal in nature. City Code §66-282(k).

7. What the responsibilities of a business owner in regards to litter on premises and sidewalks?

The owner is responsible for sweeping up garbage, trash, litter, and all other waste material from the premises, sidewalks, and abutting property, including the space between the property line and the curblin in front, extending 1 ½ feet from the curblin into the street or roadway and in the rear and alongside the premises. . City Code §66-287.

Neighborhood Action Plan for Noise Violations

- (1) Citizens report noise problems to their neighborhood association.
- (2) Neighborhood association gets police "quality of life" officer or health department investigator to investigate and take noise readings; police or health issue notice of violation, if warranted.
- (3) City Attorney's Office prosecutes for noise violations and imposes fine, imprisonment, or both; may also apply for injunction against offending business.
- (4) Legislative Opportunity: Should the City Code be amended to provide a right of action for neighborhood associations or a group of 10 aggrieved citizens?
- (5) Legislative Opportunity: Section 66-177 ("Variances") provides at subsection (c) that "Any person seeking a variance shall do so by filing a petition for variance with the director [of Health], who shall investigate the petition and make a determination as to the disposition thereof within ten working days following receipt of the request by the director." This provision is woefully deficient in terms of "transparency," since it allows a presumed violator of noise standards (one who's seeking a variance from compliance) to apply privately to the director of health and get action within 10 days, all without any notice to affected neighbors. The provision should be amended to require that notice of the application for variance be given to the neighborhood association, perhaps to the district Councilmember, and to all property owners within 100 or 200 feet (?) of the business applying for a variance. Those parties should have a reasonable opportunity to file objections to the granting of a variance and to be heard by the director, who should be able to extend the 10-day period (for up to 30 days?) in order to hear and consider comments from all concerned. Perhaps the decision to grant a variance should be made appealable to the Board of Zoning Adjustments or to Civil District Court.
- (6) Neighborhood associations might also consider the option of contracting with a private service to take noise readings.

Neighborhood Action Plan for Litter and Dumping Violations

- (1) Citizens report litter or dumping violations to their neighborhood association.
- (2) Neighborhood association gets police to investigate or file affidavits; police issue a summons, if warranted.
- (3) City Attorney's Office prosecutes for litter or dumping violations and imposes fines.

Filing a Complaint with the NOPD

To file a complaint call, fax, write, or visit your district*:

1st District: Capt. Louis Colin
phone: 658-6010; address: 501 N. Rampart St., NO, LA 70112

2nd District: Capt. Edwin Hosli
phone: 658-6020; address: 4317 Magazine St., NO, LA 70115

3rd District: Capt. Greg Elder
phone: 658-6030; address: 1700 Moss St., NO, LA 70119

4th District: Capt. David Kirsch
phone: 658-6040; address: 1348 Richland Dr., NO, LA 70114

5th District: Capt. Bernadine Kelly
phone: 658-6050; address: 3900 N. Claiborne Ave., NO, LA 70117

6th District: Capt. Robert Bardy
phone: 658-6060; address: 1930 Martin L. King Blvd., NO, LA 70113

7th District: Capt. Jerome Laviolette
phone: 658-6070; address: 10101 Dwyer Blvd., NO, LA 70127

8th District: Capt. Kevin Anderson
phone: 658-6080; address: 334 Royal St., NO, LA 70130

Filing a Complaint with the Health Department

To file a complaint call, write, or visit:

New Orleans Health Department: Director: Kevin Stephens*
phone: (504) 658-2500; address: 1300 Perdido Street, Room 8E18, NO, LA
70112

*Names and contact information were current as of the date of this publication.

III. Louisiana Alcoholic Beverage Control Law:

LA Revised Statutes: [26:90](#); [26:91](#); [26:92](#); [26:93](#); [26:286](#); [26:287](#); [26:288](#); [26:289](#); [26:290](#) . See "Louisiana Laws" link: www.legis.state.la.us.

1. What actions by anyone holding a retail dealer's permit or any of their employees will place an ABO license at risk?

- a. Failing to keep the premises clean and sanitary. La. R.S. 26:90A(9).
- b. Illegally selling, offering for sale, possessing, or permitting the consumption on or about the licensed premises of any narcotics or habit forming drugs. La. R.S. 26:90A(11) and La. R.S. 26:286(A)(11).
- c. Permitting any disturbance of the peace or obscenity or any lewd, immoral, or improper entertainment, conduct, or practices on the premises. La. R.S. 26:90A(13) and La. R.S. 26:286(A)(13).
- d. Playing live or recorded music that is so unreasonably intrusive or offensive as to interfere with the comfortable enjoyment of the property of a person residing within 200 feet of the premises. (The licensed premises may have a reasonable time either to modify the premises or cease to play the music.) La. R.S. 26:90A(14)(a).

2. What may happen if a permit holder violates any of the above-mentioned provisions?

- a. A violation of these provisions is cause to suspend or revoke a permit. La. R.S. 26:90(I) and La. R.S. 26:286(I).
- b. If the live or recorded music provision is violated, nearby residents within two hundred feet may have a cause of action for damages and may obtain injunctive relief. La. R.S. 26:90A(14)(b) and La. R.S.26:286(A)(14)(b).

3. How may a citizen file a petition?

- a. Any person may file a complaint with the Commissioner of the Office of Alcohol and Tobacco Control, the local Office of Alcohol & Tobacco Control, and the local ABC Board a sworn petition requesting that a permit be suspended or revoked. La. R.S. 26: 93(C).
- b. Any citizen who has resided in the parish where the premises are located for at least six months prior to filing may file a petition with the Commissioner of the Office of Alcohol and Tobacco Control, the local Office of Alcohol & Tobacco Control, and the local ABC Board. La. R.S. 26: 290(B).
- c. A petitioner must swear in an affidavit that the petitioner, together with any witnesses, will appear at the hearing to establish the allegations of the petition. The petition must also describe the facts calling for the suspension or revocation of a permit, or else the Commissioner will not consider it. La. R.S. 26: 93(D) and La. R.S. 26:290(D).

4. What is the procedure for suspension or revocation of permits?

- a. The commissioner conducts periodic examinations of the business of all persons holding permits under this Chapter. La. R.S. 26: 290(A) and La. R.S. 26: 93(A).
- b. The Secretary of the Department of Revenue, municipal authorities, and sheriffs also conduct periodic investigations of the business of all permittees within their jurisdiction. La. R.S. 26: 290(A).
- c. After a petition is filed, it is then transmitted to the commissioner, who will call a hearing on the petition. La. R.S. 26: 290(B) and La. R.S. 26: 93(C).
- d. If a violation occurs, the permittee may be given a warning. La. R.S. 26: 93(A).
- e. If the permittee has been previously warned or if the violation is serious, the commissioner may prepare and file a petition for suspension or revocation of the permit, describing the facts and circumstances of the violation and summoning the permittee to appear and show cause why the permit should not be suspended or revoked. La. R.S. 26: 93(A).

Neighborhood State Alcoholic Beverage Control Plan

- (1) Neighbors report instances of any violation of the State Alcoholic Beverage Control Law on the premises to the police and to the neighborhood association.
- (2) Neighborhood association gets police to the scene to investigate allegations of violations and issue citations, as appropriate.
- (3) Neighborhood association notifies the commissioner of alcohol and tobacco control in the Department of Revenue, who will conduct an investigation into the violations.
- (4) Upon further conviction of prohibited activity on the premises, any citizen of the parish where the premises are located may file with the Commissioner of the Office of Alcohol and Tobacco Control, the local Office of Alcohol & Tobacco Control, and the local ABC Board, a sworn petition brought against the bar owners and operators to revoke or suspend the business' permit.

Louisiana Office of Alcohol & Tobacco Control Contact & Complaint Information

Legal Division Commissioner & Hearing Officer for ATC Administrative Hearings: Murphy J. Painter,
phone: (225) 925-4041; address: 8549 United Plaza Blvd., Ste. 220, Baton Rouge, LA 70809*

Enforcement Region 2 (Orleans Parish) Supervisor: Jerry Jones,
phone: (504) 568-5336; fax: (504) 568-6902; address: 1515 Poydras Street, NO, LA*

To file a complaint with the Office of Alcohol & Tobacco Control Enforcement Division e-mail: louis.thompson@la.gov; or call: (225) 925-4041

Louisiana Alcohol & Tobacco Control Web page:
<http://www.atc.rev.state.la.us/>

Louisiana Alcohol & Tobacco Control Law: Title 26 of the Revised Statutes link:
<http://www.atc.rev.state.la.us/docs/legal/law.pdf>

Louisiana Office of Alcohol & Tobacco Control Enforcement Web page:
<http://www.atc.rev.state.la.us/divs/enf.html>

*Names and contact information were current as of the date of this publication.

IV. New Orleans Code for Alcoholic Beverages:

[City Code §10-5 to §10-160](#) . See New Orleans City Code Sections at MuniCode.com website: <http://www.municode.com/resources/gateway.asp?pid=10040&sid=18>.

1. In order to renew an alcoholic beverages permit, an applicant must comply with the litter abatement program, requiring that:

- a. All trash receptacles, excluding dumpsters, be located inside of a structure. City Code §10-136(1)(a).
- b. All litter be cleared from the site of the ABO, the adjacent public right-of-way, and any accessory parking lot on a daily basis. City Code §10-136(1)(b).
- c. The permittee sweep the public right-of-way adjacent to the petitioned site and any accessory parking lot daily and periodically clear it with a watering hose, as needed. City Code §10-136(1)(c).
- d. A particular individual be assigned as the contact person to notify if a violation of the litter abatement program occurs. City Code §10-136(1)(d).
- e. The permittee screen any dumpster with a six-foot opaque fence with gates, and a dumpster not be placed within the public right-of-way. City Code §10-136(2).

2. What health codes, building codes, and zoning requirements must a permit holder meet?

- a. A retail outlet where alcoholic beverage is sold to paying customers on the premises for consumption on or off the premises must meet all state and city health and zoning requirements. City Code §10-53(1)(a).
- b. The Department of Safety and Permits conducts investigations that may be required to certify if the business complies with local building codes and zoning ordinances. City Code §10-110(a).
- c. The Department of Finance will not issue an alcoholic beverage permit if it finds that the location does not substantially comply with the local health requirements of the city and state. City Code §10-111(1) and (2).

3. A city retail alcoholic beverage permit may be suspended or revoked, or remedial sanctions may be imposed, for any of the following reasons:

- a. Permitting any disturbance of the peace or obscene, lewd, sexually indecent, immoral, or improper conduct on the licensed premises. Improper conduct consists of actions that violate any penal ordinances of the city. City Code §10-157(a)(5).
- b. Violation of any municipal health or sanitation ordinances or the state sanitary code. City Code §10-157(a)(12).

- c. Violation at the premises of any provision of the municipal building code. City Code §10-157(a)(14).
- d. Finding the existence of a public nuisance, as defined in titles 13, 14 and 40 of Louisiana Revised Statutes or any other applicable law, by a court of competent jurisdiction. City Code §10-157(a)(19).
- e. Maintaining or creating a nuisance within the meaning of Article 667 of the Louisiana Civil Code¹. City Code §10-157(a)(22).
- f. Written complaints (individually or in petition form) from 70% of the owners of real property² situated within 300 feet of the premises asserting that the outlet constitutes a nuisance as to noise, litter, or loitering of clientele in the immediate neighborhood. City Code §10-157(a)(23).
- g. Three or more violations of the litter ordinance within a period of one year. City Code §10-157(a)(25).

4. Who may file a petition?

The Mayor, the Superintendent of Police, the Director of the Department of Finance, or the City Attorney may file a petition fully explaining the causes for suspension, revocation, or other sanctions. City Code §10-78(a).

5. What is the administrative procedure once a petition is filed?

The Alcoholic Beverage Control (ABC) Board will conduct a hearing to determine whether the permit of the person charged should be suspended or revoked. City Code §10-78(a).

6. What is the procedure for suspension or revocation of Permits?

- a. The Police Department conducts periodic investigations of businesses holding city alcoholic beverage permits and licenses. City Code §10-5(e).
- b. When a violation of any provision occurs, the Police Department must file an affidavit with the Mayor and the ABC Board describing the facts and circumstances of the violation. City Code §10-5(e).

¹ A landowner may do with his estate whatever he pleases, yet he cannot work on it to the extent by which it may deprive his neighbor of the liberty of enjoying his own property or cause any damage to him. La. C.C. Art. 667.

² In calculating 70% of the real property owners as required in this subdivision, each individual owning immovable property, whether one or more parcels or parts, will have one vote. Joint ownership by more than one person will be considered as one unit of ownership and the consent of a majority in number of the co-owners will be required to cast the unit vote. Ownership of one or more parcels by identical co-owners will also be considered as one unit of ownership irrespective of varying proportions of ownership between such identical co-owners. City Code §10-315.

- c. A hearing must then be held by the ABC Board to determine whether the alcoholic beverage permit will be suspended or revoked. City Code §10-5(e).
- d. When a permit is revoked, no new permit may be issued to the same licensee until one year after the date of revocation. City Code §10-5(e).

Neighborhood Local Alcoholic Beverage Control Plan

- (1) Neighbors report instances of any violation of the municipal Alcoholic Beverage Control Law on the premises to the Department of Safety and Permits or the Department of Finance.
- (2) Neighborhood association gets police officer to the scene to investigate alleged violations and issue citations, as appropriate.
- (3) Neighborhood association files written complaints from 70% of the adjacent neighbors that the premises constitute a nuisance.
- (4) The Finance Department and the City Attorney's Office (Nolan Lambert) prosecute alleged violations, secure convictions, and file affidavits with the Mayor and the Alcoholic Beverage Control Board.
- (5) A hearing will then be held by the Alcoholic Beverage Control Board to determine whether the permit will be suspended or revoked.
- (6) Conviction of a violation of the Alcoholic Beverage Control Law on the premises provides the basis for a proceeding to revoke or suspend the business' permit by a sworn petition brought against the bar owners and operators by any citizen of the parish where the premises are located, the Mayor, the Superintendent of Police, the Director of the Department of Finance, or the City Attorney.
- (7) The Alcoholic Beverage Control Board will conduct a hearing on the alleged violations to determine if the permit should be suspended or revoked.

Filing a Complaint

To file a complaint with any of the following offices, call, fax, write, or visit:

Office of Safety & Permits: phone: 658-7130; fax: 565-6143; address: 1300 Perdido Street, Room 7E07, NO, LA 70112*

Office of the Mayor: phone: 658-4900; address: 1300 Perdido Room, 2E04, NO, LA 70112*

Superintendent of Police: Warren J. Riley; phone: 826-1410; address: 715 South Broad St., NO, LA 70119

(To file a complaint with your local district please see "Filing a complaint with the NOPD" above.)

Director of Finance: Reginald Zeno; phone 658-1500 or 658-1679; fax: 565-6603; address: 1300 Perdido St., Room 2E04, NO, LA 70112*

City Attorney's Office: phone: 658-9800; address: 1300 Perdido Street, Room 5E03, NO, LA 70112*