



THE SUNRISE CITY

FORT PIERCE
CITY ATTORNEY'S OFFICE *Florida*

TO: NICHOLAS MIMMS, CITY MANAGER
FROM: James Messer, Esq., City Attorney
RE: Nuisance Abatement Procedures
DATE: September 29, 2016

Attached is a summary of nuisance abatement procedures and accompanying flowchart, for distribution at your convenience. This matter has been assigned to Senior Assistant City Attorney, Iola Mosley. If you have any comments or inquiries regarding this matter please feel free to contact her at (772) 467-3044.

RECEIVED
TIME _____

SEP 30 2016

CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

NUISANCE PROCEDURES

In General

Evidence will be compiled and routed to the City Attorney's office for review.

Evidence appropriate for review includes but is not limited to:

- Arrest reports
- Calls for police
- Service and search warrants contained in local departmental records
- Affidavit
- Notice to the property owner giving a deadline for abatement of the nuisance including the date of mailing certified and if not served an affidavit of mailing

Following review, if the evidence packet is deemed legally sufficient, City Attorney will forward a memo attesting to the same. If not sufficient, the memo will state what additional information will be needed to make the item sufficient. If there are additional steps that are required then the memo will specify the particular information that is required.

If there is no additional information that will render the matter legally sufficient it will be reflected within the memo.

If the matter is legally sufficient then the PD filing officer will submit the matter for Commission approval to file the lawsuit i.e. filing an injunction with the Circuit Court.

Investigation

Most of the evidence needed to support the initiation of a nuisance abatement proceeding is contained in local law enforcement 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 those illegal activities addressed by the State of Florida Nuisance Abatement Statutes¹. This evidence can be obtained from;

- ✓ Arrest reports,
- ✓ Citations,
- ✓ Search warrants,
- ✓ Incident reports,
- ✓ Intelligence reports,
- ✓ Complaints and calls for police service at the property.

¹ FLA STAT §60.05

NUISANCE PROCEDURES

If the investigation shows that an *inordinate number* of calls for police service have been made and six or more arrests for the same type of illegal activity have occurred in the last six months to a year, this may indicate a good nuisance abatement case. However, the case materials should be submitted to the City Attorney's Office for a more definite determination of the weight and sufficiency of the case to be made once all the information is gathered.

ILLEGAL ACTIVITIES

Offense reports must establish the habitual use of the property for illegal activities. It is important that the offense reports indicate that the illegal activity occurred, began or ended on the targeted property or immediately adjacent to it. In other words, the crime must be firmly associated with the target property. The reports must identify the property and be specific in the narrative as to the connection between the crime and the property. For example, to state that a "Known prostitute or drug dealer was observed "coming out of or going into the establishment or parking lot of the property" or that the "criminal activity occurred in the establishment or on the parking lot of the property," clearly connects the crime to the property. Stating that the prostitute or drug dealer was observed "on the street or roadway in front of the establishment" does not necessarily connect the crime to the 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. **If code violations of any kind are observed, representatives from any other applicable agency should be contacted to determine if a formal inspection of the property would be in order. During the investigation, compile a case file that consists of the sections mentioned below with the described information included.** Many departments have an automated database that will provide statistical information.

Summary of Illegal Activity

A general summary of the events occurring on the property and any pertinent information related to the investigation. Provide a list of all officers who have conducted investigations on the property and those officers who have made arrests on the property. Also, provide a list and give statistical data on calls for police service, general complaint citations and offense reports generated on the subject property.

Property and Property Owner Information

NUISANCE PROCEDURES

The legal owner of the real property must be identified by obtaining a certified copy of the recorded deed (Warranty Deed or Deed of Trust) from the county clerk's office or a title agency. The deed will not only provide the name of the owner(s) of the real property, but it will also provide the legal description of the property. The owner(s) of the real property **must not be confused with the owner of a business** that may be located on the property. The legal owner may be an individual, a group of individuals (joint venture or partnership), or a corporation. Any other information that can be obtained regarding the property owner(s) may be added to this section. For example, if the owner owns any other property or businesses, or if he has a record of any kind, this information can be included. This section may also include the names, addresses, telephone numbers, driver license numbers, photographs and criminal histories of *owners, managers, employees, agents or persons who may be directly involved with the ownership or management of the property.*

Correspondence, Documents and Notes

Copies are needed of any correspondence, documents, notes or memos regarding the subject property. Copies of all communications between the property owner, employees, managers or any other people who have personal knowledge of the property should be included in this section. All registered or certified mail return receipts of correspondence and all documents evidencing an informal meeting with the property owner should be in this section. This will show the court that your law enforcement agency has attempted to obtain the property owner's cooperation to address the illegal activity *before* filing suit in the case.

Calls for Service Summary

Statistical information showing the total number of calls made to the property for any reason. This can help show how much more activity is reported and documented at the property in comparison to other similar properties. This can help show the court how much of a burden a particular property is on the resources of the referring agency.

Offense Reports

Copies of all arrest reports generated on the property. Please provide a subsection for each category of offense that has occurred on the property. For example, place copies of all the arrest reports for narcotic violations in one section, alcohol violations in one section, prostitution cases in one section, assault cases in one section, etc. While the property is under investigation, all arresting officers should provide written narratives for each arrest report. It is important that the prosecuting attorney be provided with all pertinent arrest reports up to the date of the court hearing, as the nuisance will have *to be proven to be ongoing*. If there are additional reports that can be obtained from other agencies with jurisdiction over the crime(s) involved, those reports or information should be obtained and included.

NUISANCE PROCEDURES

Final Dispositions

Obtain Copies of all final dispositions or pending actions against any person arrested on the property for any of the illegal activities addressed by the statutes. Convictions of arrested persons and pending actions will support the allegation that the owner knew the illegal activity was occurring on the property.

Search Warrants

Copies of all search warrants served at the property, search warrant returns, and all arrest reports related to the search warrants should be included in this section. The probable cause articulated in the search warrants may contain additional information that will aid in the prosecution of the case.

Arrest Warrants

Generate a summary of all active arrest warrants for persons who listed the subject property as their residence. This will identify individuals who have no legal relationship to the property yet claim it as their residence, or it may identify individuals who may be contributing to the problems on the property.

Officer Declarations

Officer declarations should 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, who has assisted on calls for police service or has 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. This can be done in affidavit or memorandum form.

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, 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. Interviews conducted with citizens, informants and suspects will be very helpful to the case. They can aid in proving that the property has a reputation for illegal activities and can shed some light on other aspects of the property's history, such as who frequents the property, the types of concerns that they have with the property, what they have observed at the property, how the property is maintained, how the illegal activity adversely affects your law

NUISANCE PROCEDURES

enforcement agency, etc. Each statement should be documented, signed and notarized; in other words, it should be a written statement in the form of a signed declaration or affidavit.

Regulatory Agency Inspections

All documents regarding investigations or inspections by regulatory agencies should be included in this section. Please provide a subsection for each applicable regulatory agency. The governing agency should coordinate its efforts with inspectors and investigators of regulatory agencies – this will not only benefit the case by providing additional evidence, but may also improve the property and help revitalize a deteriorating neighborhood. The property owners may make necessary improvements when they are issued citations for code violations. Since most illegal activities gravitate to neighborhoods that are poorly lit and maintained, such improvements may discourage illegal activity from occurring. Once you have contacted the regulatory agency and citations for code violations have been issued, you must keep communicating with the agency regarding the status and progress of the code violations. Regulatory agencies may differ in each city or county. Below is a list of the types of inspections that may be relevant to your jurisdiction

- Building (planning and development)
- Fire Marshal
- Noise Pollution
- Housing Code Enforcement
- Restaurant & Food Business
- County Health Department Services
- County Environmental Health Services
- Alcoholic Beverage Commission

County Sheriff's Office Videotapes and Photographs

Videotapes and photographs of illegal and/or disruptive activity on the property make excellent evidence. This evidence will provide demonstrative proof of how the property is maintained and how it is a nuisance to the neighborhood.

General Complaint Citations

Obtain Copies of all general complaint citations that have been issued on the property.

Miscellaneous

Items in this section should include information that may not be categorized in any other section of the notebook, but that will be helpful or relevant in prosecuting the case.

NUISANCE PROCEDURES

Case File Checklist

Once all the above-mentioned information has been compiled, submit the case file for review by the City Attorney. If you need assistance at any time during the investigation, feel free to contact the Office of The City Attorney.

- _____ Summary of Illegal Activity
- _____ Property and Property Owner Information
- _____ Correspondence, Documents and Notes
- _____ Calls for Service Summary
- _____ Offense Reports
- _____ Final Dispositions (Judgments and Sentences)
- _____ Search Warrants
- _____ Arrest Warrants
- _____ Officer Declarations
- _____ Citizen Declarations
- _____ Declarations or Affidavits from Interviews
- _____ Regulatory Agency Inspections
- _____ Videotapes and Photographs
- _____ General Complaint Citations
- _____ Miscellaneous

Flow Chart for Property Closure via Nuisance Abatement

