

TO: Ricardo Cervantes
Deputy Director, Licenses and Consumer Services

FROM: Steven Heng, Assistant City Attorney

DATE: March 13, 2006

RE: Statutes and Ordinances regarding Public Nuisance Abatement

INTEROFFICE MEMORANDUM

This memorandum provides a review of the State statute and the Minneapolis ordinances regarding public nuisance abatement related to grocery stores.

Minnesota Public Nuisance Law

The State Public Nuisance Law is set forth in Minnesota Statutes Sections 617.80 to 617.87. Minnesota Statute Section 617.81, Subd. 2 provides that “a public nuisance exists upon proof of two or more separate behavioral incidents . . . , committed within the previous 12 months within the building.”

The behavioral incidents set for by Section 617.81, Subd. 2 include:

- Prostitution or Prostitution related activity;
- Gambling or Gambling related activity;
- Maintaining a public nuisance in violation of Minn. Stat. §§ 609.74 or 609.745;
- Unlawful activity involving controlled substances;
- Unlicensed sale of alcoholic beverages;
- Unlawful furnishing of alcoholic beverages to a person under age 21;
- Unlawful use or possession of a firearm; or
- Violation by a commercial enterprise of local licensing regulation prohibiting the maintenance of a public nuisance in violation of Minn. Stat. §§ 609.74 or 609.745.

The term building is defined to include a commercial structure maintained for business activities and the land surrounding the structure. Minn. Stat. § 617.80, Subd. 2. Thus, a behavioral incident would count towards the two required whether the incident took place inside of a commercial structure or on the property surrounding the structure.

Abatement of a Nuisance

Upon proof that two separate behavioral incidents have occurred, the prosecuting attorney must send written notice to the owner and all interested parties known to the

prosecuting attorney. The prosecuting attorney can be the attorney general, county attorney or city attorney serving the jurisdiction where the nuisance is located. Minn. Stat. 617.80, Subd. 9. The written notice must:

- Specify the type of nuisance that is being maintained or permitted;
- Summarize the evidence supporting the allegation that a nuisance is being maintained or permitted, including the dates on which the activity occurred;
- Inform the recipient that failure to abate the conduct constituting the nuisance or to otherwise resolve the matter with the prosecuting attorney within 30 days of service may result in the filing of a complaint for relief in district court that could result in enjoining the use of the building for any purpose for one year or, in the case of a tenant, could result in cancellation of the lease; and
- Inform the owner of the option of canceling the offending tenant's lease and, thereby, avoiding the nuisance action.

Minn. Stat. § 617.81, Subd. 4.

After receiving notice, the recipient of the notice must either abate the nuisance or enter into an agreed abatement plan within 30 days of the notice. If the recipient either abates the nuisance or complies with the abatement plan, the prosecuting attorney cannot file a nuisance action. If the recipient fails to abate the nuisance or enter into an agreed abatement plan, the prosecuting attorney may seek a temporary injunction in district court. A temporary injunction hearing would be held and on proof of a public nuisance as described above, the district court shall issue a temporary injunction, which must describe the conduct to be enjoined. Minn. Stat. § 617.82. After the temporary injunction is issued, the district court shall issue a permanent injunction and an order of abatement, if it finds, by clear and convincing evidence, that a public nuisance exists. The order of abatement must direct the closing of the building or a portion of it for one year. Minn. Stat. § 617.83. The abatement order could also direct the removal of movable property that was used to conduct or maintain the public nuisance. Minn. Stat. § 617.84. Anyone who violates a temporary or permanent injunction or the abatement order issued pursuant to this law may be adjudged to be in contempt of court. Minn. Stat. § 617.86

Minneapolis Ordinances

For those licensees that are licensed pursuant to Title 13 (Licenses and Business Regulations and Title 14 (Liquor and Beer), Minneapolis Ordinance Section 259.250 sets forth minimum standards and conditions that a licensee must meet in order to hold a license. With regard to preventing nuisances, section 259.250 requires that the licensee:

- Take appropriate action to prevent further violations following conduct by any person on the premises, including parking areas, involving violations of statutes or ordinances prohibiting:
 - Gambling;
 - Prostitution and acts relating thereto;
 - Sale or possession of controlled substances;
 - Indecent exposure and exhibition or distribution of obscene materials or performances;
 - Owning or maintaining a disorderly house;
 - Noisy assemblies;
 - Unlawful possession, transportation, sale or use of a weapon;

- Disorderly conduct;
- Lurking and loitering;
- Permitting a public nuisance;
- Obstructing legal process, arrest, or firefighting; and
- Any other criminal activating arising out of the conduct of the business.
- Maintain and operate the business in compliance with all laws and ordinances; and
- Provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the premises, including parking areas.

A licensee who failed to comply with the requirements of Minneapolis Ordinance Section 259.50 could have their license be revoked or suspended. One suggestion for strengthening Minneapolis Ordinance Section 259.50 would be to amend the ordinance to included licenses and permits issued pursuant to Title 10 (Food Code).