



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF
October 17, 2006

Honorable Members of the
Law & Legislation Committee

Subject: Ordinance: Trespassing within the City Limits

Location/Council District: All Districts (Citywide)

Recommendation:

Approve and forward to City Council for adoption of an **Ordinance** repealing and reenacting Section 9.16.140 of the Sacramento City Code relating to trespassing on private property within the City.

Contact: Jeff Schiele, Captain, 566-6464
Don Rehm, Lieutenant, 566-6457

Presenters: Don Rehm, Lieutenant

Department: Police

Division: Operations

Organization No: 2127

Summary:

Within the City of Sacramento, there are businesses and properties that are plagued with the unlawful acts of trespassing on private property. People trespassing at businesses and other private properties often are engaged in other illegal activity and create blight for the business owners and residents. Currently, police officers respond to complaints of a trespasser and take the following action:

- Arrest the suspect pursuant to a "Citizen's Arrest" by the business or property owner, or simply tell the violator to leave the property.
- Arrest the suspect if the property is posted and the owner signs a Citizen's Arrest form. If the owner is on file with the City, the officer can act as the agent of the owner when making the arrest. The offender is then cited or arrested.

The problem that arises is the inability to prosecute the individual trespassers due to limitations in the State's anti-trespassing law, Penal Code 602(k). A new ordinance, reflective of Sacramento County Code 9.80.010, to enforce trespassing violations in the City limits is being suggested as an alternative method. Compared to the current

method, a City ordinance will ease enforcement, prosecution, and conviction of trespassers.

Committee/Commission Action: None

Background Information:

Throughout the City of Sacramento there are areas that are plagued with the unlawful act of trespass on private property. As a preventative measure, the Sacramento Police Department (SPD) had property owners post their property with signs advising of the provisions of Penal Code (PC) section 602(k). The property owner signed a letter authorizing any officer of the SPD to detain and arrest an offender who violated PC 602(k). This practice of police officers acting as the agent of the owner does not suffice in the prosecution of the violator.

Questions and answers regarding the issue at hand:

Q. Why does Sacramento need a trespassing ordinance?

A. The current enforcement method of trespassing is problematic in several areas. It is difficult to get a conviction for violations of PC 602(k) when the officer acts as the agent of the property owner. An officer cannot successfully testify that the offender's trespass interfered, obstructed, or injured the owner's business or property. In addition, documentation of the initial advisement to leave the involved property is not clearly documented. With this ordinance prior written notification will be given to the offender, property owner, and SPD as record of initial advisement to leave the property. The proposed trespassing ordinance will streamline the enforcement of trespassing, increase the chances of a conviction, and provide an enforcement tool for not only the SPD, but also the District Attorney and the City Attorney's Office.

Q. Who will serve the violator the written notice to leave the involved property?

A. The owner or agent will serve "written notice" to the offender. Police officers will stand by to facilitate this action and acquire a copy of the advisement and document that the advisement was done, but not serve it as an agent of the owner.

Q. How will officers actually enforce the new ordinance?

A. Protocols on Issuing a Notice of Trespass

First incident.

1. A police officer will meet the property owner on site where the trespasser is located. If possible, a photograph of the trespasser engaged in trespassing will be taken.
2. A police officer will take a statement from the owner as to how the conduct of the trespasser is interfering with the business or occupation of the landowner.
3. A police officer identifies the trespasser.
4. A police officer stands by while the owner fills out and gives the trespasser a copy of the notice. There is no requirement for the trespasser to sign the notice.
5. The owner gives the original to the police officer and retains a copy for himself/herself.
6. The police officer files a copy of the notice in a designated binder at the station house and enters the record in the police records system.

Second incident

1. If the trespasser returns, the owner will contact police and request the trespasser be arrested.
2. The trespasser will be cited or arrested for violating PC 602(k) and the amended section 9.16.140 of the Sacramento City Code.
3. A crime report will be completed, including a statement by the owner of why the presence or behavior of the person interferes with lawful business or occupation of the property.
4. A copy of the original Notice of Trespass given to the trespasser on the first offense will be attached to the crime report.
5. The report is sent to Intake at DA's office.

The proposed ordinance allows for effective prosecution by the owner or witness testifying as to the identity of the violator, of prior written notification, and that the behavior interfered, injured, or obstructed the business.

Financial Considerations:

The proposed ordinance has no current fiscal effects.

Environmental Considerations:

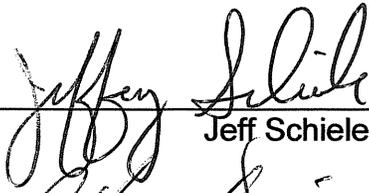
This report is not considered a project and is therefore exempt from the California Environment Quality Act (CEQA), CEQA Guidelines Sections 15061(b) and 15378(b)(3).

Policy Considerations:

The proposed trespassing ordinance is consistent with policies associated with the City's mission to protect, preserve, and enhance the quality of life for present and future generations by:

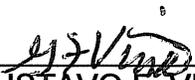
- Reducing calls for service,
- Preventing unwanted criminal loitering and narcotic related activity on private property,
- Reducing crimes associated with the unlawful trespass on private property,
- Effective prosecution of arrestees, and
- Providing the City Attorney the option to enforce the ordinance against the violator if the District Attorney's Office does not prosecute.

Emerging Small Business Development (ESBD): Not applicable

Respectfully Submitted by: 
Jeff Schiele, Captain

Approved by: 
Albert Nájera
Chief of Police

Recommendation Approved:


GUSTAVO F. VINA
Assistant City Manager

Ref: COP 9-16

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING SACRAMENTO CITY CODE SECTION 9.16.140
RELATING TO TRESPASS ON PRIVATE PROPERTY OR BUSINESS PREMISES**

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

Section 1

Section 9.16.140 of Title 9 of the Sacramento City Code is repealed and re-enacted to read as follows:

9.16.140 Trespass on Private Property or Business Premises Prohibited

A. Definitions

The following words and phrases shall have the following meanings when used in this section:

1. "Owner" means the owner, lessee, or other person in charge of the private property or business premises.
2. "Agent" means any person or organization expressly authorized by the Owner of the private property or business premises to serve the Notice of Trespass.
3. "Notice of Trespass" means a pre-printed document that contains:
 - a. The address of the private property or business premises;
 - b. The date on which the Notice of Trespass was given;
 - c. The name of the Owner or Agent serving the Notice of Trespass;
 - d. The name and date of birth of the person being given the Notice of Trespass;
 - e. The text of Sacramento City Code section 9.16.140(B)(1) & (B)(2);
 - f. A Declaration of Proof of Service which states where, when, and upon whom the Notice of Trespass was served. This Declaration of Proof of Service shall be signed by the Owner or Agent serving the Notice of Trespass.

B. Violation

1. It shall be unlawful for any person to enter or remain upon any private property or business premises after having been notified by the Owner or Agent to keep off or keep away therefrom. Such notification shall be provided by service of a Notice of Trespass on such person.

2. A violation of this section is a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment.

C. Exceptions

Subdivision (B) shall not apply in any of the following instances:

1. Where the Owner or Agent rescinds a Notice of Trespass by the giving of written permission to enter or remain upon the private property or business premises. Such permission shall void the existing Notice of Trespass, and should the Owner or Agent want to exclude the person at a later time, that person shall be re-noticed pursuant to subdivision (B).

2. Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of sex, race, color, religion, creed, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

3. Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers.

4. Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities.

5. Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech including, but not limited to, peaceful expressions of political or religious opinions, not involving offensive personal conduct.

6. Where the person who is upon another's private property or business premises is there under claim of legal right. This exception is applicable, but not limited to, the following types of situations involving disputes where the participants have available to them practical and effective civil remedies:

- a. marital and post-marital disputes;
- b. child custody or visitation disputes;
- c. disputes regarding title to or rights in real property;
- d. landlord-tenant disputes;

- e. disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute;
- f. employer-employee disputes;
- g. business-type disputes such as those between partners;
- h. debtor-creditor disputes;
- i. instances wherein the person claims rights to be present pursuant to order, decree or process of a court.

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

Section 1

Section 9.16.140 of Title 9 of the Sacramento City Code is repealed and re-enacted to read as follows:

~~9.16.140 Remaining on exterior business premises when business closed.~~

~~_____ A. _____ It is unlawful and a misdemeanor for any person to remain upon the exterior premises of any business, including any parking area, when the business is closed, which is posted with at least one sign stating:~~

~~PRIVATE PROPERTY
Permission to Enter Limited to Patrons
During Business Hours~~

~~_____~~
~~(_____)~~
~~Insert hours~~

~~_____ No arrest shall be made hereunder during the hours of six a.m. to midnight unless the person has first been requested to leave and given a reasonable opportunity to leave by a peace officer, the property owner or person in lawful possession, or the agent of the property owner or the person in lawful possession.~~

~~_____ B. _____ This section shall not apply to any person who has a bona fide intent to exercise a constitutional right. (Prior code § 26.01.078)~~

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A. Definitions

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2. “Agent” means any person or organization expressly authorized by the Owner of the private property or business premises to serve the Notice of Trespass.
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 - a. The address of the private property or business premises;
 - b. The date on which the Notice of Trespass was given;
 - c. The name of the Owner or Agent serving the Notice of Trespass;
 - d. The name and date of birth of the person being given the Notice of Trespass;
 - e. The text of Sacramento City Code section 9.16.140(B)(1) & (B)(2);
 - f. A Declaration of Proof of Service which states where, when, and upon whom the Notice of Trespass was served. This Declaration of Proof of Service shall be signed by the Owner or Agent serving the Notice of Trespass.

B. Violation

1. It shall be unlawful for any person to enter or remain upon any private property or business premises after having been notified by the Owner or Agent to keep off or keep away therefrom. Such notification shall be provided by service of a Notice of Trespass on such person.
2. A violation of this section is a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment.

C. Exceptions

Subdivision (B) shall not apply in any of the following instances:

1. Where the Owner or Agent rescinds a Notice of Trespass by the giving of written permission to enter or remain upon the private property or business premises. Such permission shall void the existing Notice of Trespass, and should the Owner or Agent want to exclude the person at a later time, that person shall be re-noticed pursuant to subdivision (B).
2. Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of sex, race, color, religion, creed, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

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5. Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech including, but not limited to, peaceful expressions of political or religious opinions, not involving offensive personal conduct.

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