REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
February 6, 2007

Honorable Mayor and
Members of the City Council

Title: Ordinance: Trespassing on Private Property or Business Premises

Location/Council District: All Districts (Citywide)

Recommendation: 1) Review the **Ordinance** repealing and reenacting Section 9.16.140 of the Sacramento City Code relating to trespassing on private property within the City of Sacramento; 2) pass for publication of the **Ordinance** title as required by Sacramento City Charter section 32c; and 3) continue to February 13, 2007, for final adoption.

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

Presenters: Not applicable

Department: Police

Division: Operations

Organization No: 2127

Description/Analysis

Issue: 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 has an agent letter 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 section 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 facilitate

enforcement, prosecution, and conviction of trespassers.

Policy Considerations: The proposed trespassing ordinance is consistent with policies associated with the Police Department'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.

Environmental Considerations: This activity is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines, and is otherwise exempt pursuant to Sections 15321(b) (law enforcement activities) and 15601(b)(3) (no significant effect on the environment) of the CEQA Guidelines.

Commission/Committee Action: On October 17, 2006, the Law & Legislation Committee approved the draft ordinance and forwarded to the City Council with one revision relating to security companies. The ordinance was revised to incorporate the use of security companies as agents.

Rationale for Recommendation: The proposed trespassing Ordinance will more efficiently and effectively aid in the prosecution of the offender(s) arrested within the City limits.

Financial Considerations: The proposed ordinance has no current fiscal effects.

Emerging Small Business Development (ESBD): Not applicable

Respectfully Submitted by: Kim Riley
FOR Jeff Schiele, Captain

Approved by:
Albert Nájera, Chief of Police

Recommendation Approved:

for Patty Bishard
Ray Kerridge
City Manager

Ref: COP 1-2

Table of Contents:

	Report	pg. 1
Attachments		
1	Background	pg. 4
2	Sample Form – Notice of Agency	pg. 7
3	Sample Form - Notice of Trespass	pg. 8
4	Trespassing Ordinance	pg. 9

Attachment 1

Background

Throughout the City of Sacramento, there are areas plagued with the unlawful act of trespass on private property. As a preventative measure, the Sacramento Police Department 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 SPD officer to detain and arrest an offender who violated PC 602(k). The 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 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 will not serve 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 onsite where the trespasser is located. If possible, a photograph of the trespasser engaged in the 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 owner.
3. A police officer identifies the trespasser.
4. A police officer stands by while the owner or agent 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 into 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 the 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 the District Attorney'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.

Q: *How has the proposed ordinance worked in the County of Sacramento?*
A: The Sacramento County Sheriff's Department implemented a project termed FOCUS (Free Our Complexes of Unsavory Subjects) in the Arden-Arcade area. With the implementation of their modified trespassing ordinance, the Arden-Arcade business owners and managers served 226 people with trespass notices. Of those 226 people, there have been a total of 43 trespassing arrests from December 2005 to December 2006. The majority of cases were either dismissed or the person pled guilty. The sentences ranged from 3 days for the first offense to 45 days for multiple offenses. The County's ordinance has helped in deterring subsequent trespassing violations after the first notice of trespass was served and has assisted in obtaining guilty pleas, primarily with repeat offenders.

Q: *How will City staff inform the public about the changes to the Trespassing Ordinance if it is adopted?*
A: A collaborative approach involving staff from the Sacramento Police Department, Neighborhood Services Department, City Attorney's Office and the Sacramento District Attorney's Office will be utilized to disseminate information and educate key stakeholders about the Trespassing Ordinance. Initially, presentations to neighborhood

associations, business affiliates, and community organizations will be conducted to inform them of the intent of the Trespassing Ordinance, the process of enforcement, and distribute forms of authorization that will be used to ensure compliance. Staff intends to outreach to customers in the central City and the downtown area immediately following Council's endorsement of the Trespassing Ordinance. Efforts will then proceed to conduct outreach Citywide.

NOTICE OF AGENCY

DATE:____/____/____

OFFICIAL NOTICE

Name of Business (if applicable): _____

Name of property owner, lessee, or person-in-charge of the business or private property: _____
(Please Print)

Address of private property or Business premises: _____

_____

I, _____, am the actual owner of the property, lessee, or person in charge of the private property or business premises. I hereby authorize the below described person or organization to act as my Agent for the sole purpose of serving the Notice of Trespass pursuant to Sacramento City Code section 9.16.140 and California Penal Code section 602(k).

_____
(Name of person or organization authorized to act as my Agent)

_____
(Address of person or organization authorized to act as my Agent)

_____
(Phone number of person or organization authorized to act as my Agent)

I understand that I may be required to testify in a future criminal proceeding regarding charges brought against individuals who were served a Notice of Trespass by the Agent I have designated pursuant to this Notice of Agency. I further understand that at this proceeding I will be asked to testify as to how the actions of the individual violating the Notice of Trespass have injured my property or have interfered, obstructed, or have injured the lawful business carried on by the premises.

By signing below, I hereby certify that I understand the above, and that I am the actual owner of the property, lessee, or person-in-charge of the private property or business premises and am authorized to grant Agency to the above person or organization for the purposes of serving the Notice of Trespass pursuant to Sacramento City Code section 9.16.140 and California Penal Code section 602(k).

Dated this _____ day of _____, 200____, at

_____, _____
(city) (state)

_____ _____
(print name) (signature)

Revised 1/23/2007

NOTICE OF TRESPASS

OFFICIAL NOTICE

DATE:_____/_____/_____

Name of business or property owner: _____

Address: _____

_____

Notice given by (please print): _____

I am the:

1) ☐ Actual owner of the property, lessee, or person-in-charge of the private property or business premises.

2) ☐ Agent of the person described in No. 1, above, and have been authorized to act as such by a Notice of Agency for the purposes of serving this Notice of Trespass.

TO: _____ DOB: _____

This official notice informs you that effective immediately you are not permitted to enter or remain upon the private property or business premises located at the above location.

Sacramento City Code section 9.16.140(B)(1): Trespass on Private Property or Business Premises
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.

California Penal Code section 602(k): Trespass upon Private Property
Every person commits a trespass, a misdemeanor, if they enter any lands, fenced or not, for the purpose of injuring any property, or with the specific intent of interfering, obstructing, or injuring the lawful business carried on by the premises.

Based upon Sacramento City Code section 9.14.160 and California Penal Code section 602(k), any further entry upon the property described above after being served with this notice will be viewed as having the purpose of injuring the property or interfering, obstructing, or injuring the lawful business carried on by the premises.

Any violation of these sections is a misdemeanor, punishable by up to 6 months in jail and/or a fine.

PROOF OF SERVICE

I PERSONALLY SERVED THIS NOTICE ON _____ AT THE
(name of subject)

PROPERTY LOCATED AT _____.

DATED_____/_____/_____IN SACRAMENTO, CALIFORNIA.

SIGNED: _____

(The owner, lessee, person-in-charge of the property or business premises, or expressly authorized Agent thereof)

Revised 1/23/2007

Attachment 4

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 actual owner of the property, a 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.

a. "Person" as used in this subsection shall include:

i. a proprietary private security officer as defined in California Business and Professions Code section 7574.1

ii. a security guard, security officer or street patrolperson as defined in California Business and Professions Code section 7582.1.

b. "Organization" as used in this subsection shall include a private patrol operator as defined in California Business and Professions Code section 7582.1.

3. "Notice of Trespass" means a pre-printed document in triplicate form which contains:

a. A description and 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);
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 or by imprisonment for not exceeding six 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.