

Emily F. Shapiro, Legislative Analyst, 651-296-5041\*  
Deborah K. McKnight, Legislative Analyst, 651-296-5056\*

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## **Minnesota’s Public and Private Nuisance Laws**

This information brief describes Minnesota laws that provide civil remedies to combat offensive or injurious conditions or activities that are a “nuisance” to the surrounding community. A condition or activity may be either a “public nuisance” or a “private nuisance” depending on the scope of the problems caused by the nuisance and on whether it is challenged by a public agency or a private individual. Part one of the information brief describes the state and local public nuisance laws. Part two outlines the scope of private nuisance actions. Finally, part three explains how state and local public nuisance laws have been used in several Minnesota jurisdictions. It also provides information on specific provisions that have either been particularly successful or are in need of improvement.

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## State Public Nuisance Law

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### What is nuisance activity?

Minnesota's public nuisance law defines "nuisance activity" to include:

- two or more behavioral incidents
- committed within a building<sup>1</sup>
- within the previous 12 months
- involving one or more of the following activities:
  - ▶ prostitution or prostitution-related activity;
  - ▶ gambling or gambling-related activity;
  - ▶ unlawful activity involving controlled substances (drugs);
  - ▶ unlicensed sales of alcoholic beverages;
  - ▶ unlawful furnishing of alcoholic beverages to a person under age 21;
  - ▶ unlawful use or possession of a firearm;
  - ▶ maintaining or permitting a condition which unreasonably annoys, injures, or endangers the safety, health, morals, or repose of any considerable number of members of the public;
  - ▶ engaging in any other activity declared by law to be a public nuisance; or
  - ▶ the violation by any commercial enterprise of a local nuisance ordinance or regulation.<sup>2</sup>

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<sup>1</sup> "Building" includes both residences and any commercial structure maintained for business activities involving human occupation. The term also includes the land surrounding the structure. [Minn. Stat. § 617.80, subd. 2.](#)

<sup>2</sup> [Minn. Stat. § 617.81, subd. 2.](#) The law's definition of nuisance activity was revised significantly in 1995 in order to simplify the prosecutor's evidentiary burden. Prior to 1995, prosecutors could establish a nuisance only if the illegal conduct (e.g., prostitution, gambling) resulted in a requisite number of criminal *convictions* within a 12-month period. Current law no longer requires that the behavior result in a criminal conviction although it does require that the existence of the nuisance be proven by the heightened standard of "clear and convincing evidence." [Minn. Stat. § 617.81, subd. 2\(c\).](#)

### **Where within a building must the nuisance activity occur?**

Nuisance activity is considered to have occurred within the building if it takes place in any portion of it or on the surrounding property. If the building is a multi-unit building, usually only the unit where the activity occurs comes within the scope of the nuisance civil action. However, tenants are responsible for nuisance activity they or their guests commit inside or outside the tenant's unit, and the building owner<sup>3</sup> is responsible for nuisance acts committed by the owner or persons under the owner's control anywhere in the building.<sup>4</sup>

### **How can nuisance activity be stopped?**

If a prosecuting attorney<sup>5</sup> has reasonable grounds to believe a nuisance exists in any building in a neighborhood, he or she may bring a civil action in district court to put an end to the nuisance activity. Before filing the action, the prosecuting attorney must send a written notice by personal service or certified mail to all interested parties.<sup>6</sup> The written notice must:

- specify the type of nuisance being maintained or permitted;
- summarize the evidence, including the dates on which nuisance-related activities are alleged to have occurred;
- inform the recipient that failure to abate the conduct or otherwise resolve the matter within 30 days may result in the filing of a nuisance action in court and that the court action may result in an injunction closing the building for one year or, in the case of a tenant, cancellation of the lease; and
- inform the owner of the option of canceling the offending tenant's lease and, thereby, avoiding a nuisance action.<sup>7</sup>

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<sup>3</sup> "Owner" is the person whose name is on the property tax record for the building. [Minn. Stat. § 617.80, subd. 7.](#)

<sup>4</sup> [Minn. Stat. § 617.81, subd. 2.](#)

<sup>5</sup> "Prosecuting attorney" includes the local city or county attorney as well as the state attorney general. [Minn. Stat. § 617.80, subd. 9.](#)

<sup>6</sup> "Interested parties" include any known lessee or tenant, any known agent of the owner, lessee, or tenant, and any other person who maintains or permits a nuisance and is known to the prosecuting attorney. [Minn. Stat. § 617.80, subd. 8.](#)

<sup>7</sup> This notice provision was added in 1995 for the purpose of resolving nuisance problems without court involvement, where possible. [Minn. Stat. § 617.81, subd. 4.](#)

### **How can the owner avoid the filing of a nuisance action?**

If the owner either abates (ends) the nuisance activity or enters into an abatement plan with the prosecuting attorney within 30 days of receiving the written notice, the prosecutor may not file the nuisance action with the court. However, if the owner fails to act within this time period or fails to comply with the abatement plan, the prosecuting attorney may file the nuisance action.<sup>8</sup>

### **What procedures must the prosecuting attorney follow when filing a nuisance action?**

First, the prosecuting attorney must file a petition seeking a temporary injunction to abate the nuisance. The court then must hold a “show cause” hearing and provide the respondents an opportunity to be heard on the allegations contained in the petition. If the court finds that there is reason to believe nuisance activity has occurred, it must issue the temporary injunction describing the conduct enjoined. After the temporary injunction is issued, the court must issue a permanent injunction and an order of abatement if it finds, by clear and convincing evidence, that a nuisance exists.<sup>9</sup>

### **What is the effect of an order of abatement?**

The effect of the order of abatement is to close the building or a portion of it for up to one year. The abatement order must be posted conspicuously on the building so as to inform the building occupants and the public of the order’s contents. In addition to closing the building, the abatement order may order the removal of moveable property used to conduct or maintain the nuisance and may order the sale of any property owned by a respondent who was notified of or appeared in the nuisance action.

Instead of closing the building, the court may appoint a receiver to oversee use of the building during the abatement period. Net proceeds of any rents collected during the receivership are paid to the treasury of the local government unit.<sup>10</sup>

### **How can an owner avoid an abatement order?**

The law provides three ways for building owners to avoid the issuance or enforcement of an abatement order.

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<sup>8</sup> [Minn. Stat. § 617.82.](#)

<sup>9</sup> [Minn. Stat. §§ 617.82; 617.83.](#)

<sup>10</sup> [Minn. Stat. §§ 617.83; 617.84.](#)

- **Abatement plan.** First, as mentioned above, the owner may enter into an abatement plan with the prosecuting attorney.<sup>11</sup>
- **Motion to cancel lease.** Second, if the nuisance activity was conducted by a tenant in the building, the owner may file a motion in court to cancel the tenant's lease.<sup>12</sup> The owner may conduct the eviction action directly or assign that right to the prosecuting attorney. In that proceeding, the court shall order the tenant evicted if it finds that the tenant was responsible for the nuisance activity. Moreover, the court may not issue or enforce an abatement order against the building unless it further finds that the tenant was acting in conjunction with or under the control of the owner.
- **Bond.** Third, the court may release the building from the abatement order if: (1) the owner pays the costs of the nuisance action; (2) the owner posts a bond in an amount determined by the court, conditioned on the abatement of the nuisance for one year; and (3) the court is satisfied the owner is acting in good faith. The injunction against further nuisance activity continues in full force, however, and the law directs that the owner forfeits \$1,000 of the bond for each day that the owner knowingly violates the abatement order.<sup>13</sup>

### **What is the penalty for violating an injunction or abatement order?**

The law states that any violation of a temporary or permanent injunction or abatement order issued under the nuisance law shall be treated as contempt of court.<sup>14</sup>

### **Can the public nuisance law be used to abate nuisance activity that is not associated with a building?**

During the three-year period from 1996 to 1999, Minnesota law<sup>15</sup> permitted the filing of a civil action against an individual for engaging in nuisance activity<sup>16</sup> without requiring any connection

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<sup>11</sup> [Minn. Stat. § 617.82.](#)

<sup>12</sup> [Minn. Stat. § 617.85.](#) The law provides that the maintaining or conducting of nuisance activity is grounds for cancellation of the lease and eviction even if the lease document itself is silent on this point.

<sup>13</sup> [Minn. Stat. § 617.87.](#)

<sup>14</sup> [Minn. Stat. § 617.86.](#)

<sup>15</sup> Laws 1996, ch. 453, §§ 1, 2 (codified as [Minn. Stat. §§ 617.88-617.89](#) (1998 ed.)).

<sup>16</sup> "Nuisance" was defined in this law in a similar way as in the general public nuisance law, except that references to unlawful gambling activity or alcoholic beverage sales were omitted.

between the activity and a building. This law, known as the “person as nuisance” law, was intended to address specified nuisance activities conducted in places (*e.g.*, streets, sidewalks, or other public areas) other than the kinds of structures and private premises that are subject to the public nuisance statute.

According to this law, any resident of the neighborhood or any neighborhood organization in the area where the nuisance activity occurred could file the nuisance action. Alternatively, the neighborhood resident or organization could ask the local prosecuting attorney to file the action. Proof of a nuisance could be established by clear and convincing evidence that the respondent engaged in nuisance activity during two or more behavioral incidents within the past 12 months.<sup>17</sup> The law authorized two defenses to the nuisance action: that the respondent was coerced into committing the nuisance activity or that the prosecution of the nuisance was motivated by unlawful discrimination against the respondent, as defined in the state Human Rights Act. Finally, the law provided the following remedies:

- the issuance of a permanent injunction against further nuisance activity;
- the award of costs and attorney’s fees to the prevailing party; and
- a damage award equal to either the amount of actual damages caused by the nuisance or exemplary damages of \$500 per incident, whichever amount is greater.<sup>18</sup>

When this “person as nuisance” law was enacted in 1996, the legislature considered it to be an experiment and, therefore, included a three-year “sunset” date in the original legislation.<sup>19</sup> This sunset date was not extended or eliminated by subsequent legislative action and, as a result, the law was repealed effective August 1, 1999.<sup>20</sup>

## **Local Public Nuisance Laws**

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Most local units of government have the authority to define and abate nuisances by means of local ordinance. In the case of home rule charter cities, this authority may be derived from the city charter. Statutory cities and towns have specific authority under state law to define and abate

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<sup>17</sup> This law also allowed a nuisance to be established by proof that the respondent had been convicted two or more times in the previous 12 months of any offense listed in either this law or the general public nuisance law.

<sup>18</sup> Any exemplary damages received by a prosecuting attorney under this law would be paid to the local crime victim and witness fund. [Minn. Stat. § 617.89, subd. 3.](#)

<sup>19</sup> Laws 1996, ch. 453, § 3.

<sup>20</sup> See pages 16-17, *infra*, for information on practical experience with the “person as nuisance” law.

nuisances.<sup>21</sup> Although state law does not state as explicitly for counties as it does for cities the county's general authority to define and provide for the prevention and abatement of nuisances, it does, in effect, authorize them to do so.<sup>22</sup>

Under Minnesota case law, city ordinances may only regulate public nuisances and may only declare a condition to be a nuisance if the condition has been so recognized by the courts.<sup>23</sup> Many conditions have been declared to be nuisances by the courts, including the accumulation of filth, noise, dogs, and offensive odors.<sup>24</sup>

Local governments also may approach nuisance problems from a regulatory perspective, through the use of licensing fees. When a type of activity or business (such as an adult entertainment business) has the potential to deteriorate into a nuisance condition, the local government may choose to set the license fee for the activity at a high enough level to discourage a large number of license applicants. The courts historically have given local governments wide latitude to establish high licensing fees for these nuisance-prone businesses, at least with respect to activities that the local government could choose to prohibit instead of regulate.<sup>25</sup>

## **Private Nuisance Actions**

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Separate from public nuisance but sometimes overlapping it, Minnesota statutes also recognize private nuisance. Private nuisance is defined as anything "injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property."<sup>26</sup>

Private nuisance is a form of damage caused by wrongful conduct. The wrongful activity may consist of a statute or ordinance violation, or it may be lawful and involve intentional conduct, negligence, or an ultra-hazardous activity. If the conduct both violates a public nuisance statute and interferes with an individual's ability to freely use and enjoy property, the activity can be addressed both by the prosecutor through the public nuisance statute and by an individual's separate private civil action for damages or an injunction.

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<sup>21</sup> See e.g. [Minn. Stat. §§ 412.221, subs. 23 and 24](#) (statutory cities); [368.01, subd. 15](#) (urban towns); and [365.10, subd. 17](#) (other towns).

<sup>22</sup> The combination of specific statutes authorizing counties to address nuisances appears to amount to a general authority. In particular, see [Minn. Stat. § 145A.05](#) (public health) and [§ 394.21](#) (zoning).

<sup>23</sup> *St. Paul v. Gilfillan*, 36 Minn. 298, 31 N.W. 49 (1886).

<sup>24</sup> See 14A Dunnell *Minn. Digest* Nuisances.

Correction (August 2003): See 35 Dunnell Minnesota Digest, "Nuisance," Part 4 (1997).

<sup>25</sup> League of Minnesota Cities, *Handbook for Minnesota Cities* (1999 ed), p. 295.

<sup>26</sup> [Minn. Stat. § 561.01](#).

While case law indicates a business should not be destroyed unless necessary to protect another's rights, abatements have been ordered that have closed down legitimate businesses. Examples of business activities that Minnesota case law has recognized to be private nuisances include industrial plants transferring dust to adjacent residential property;<sup>27</sup> a limestone quarry giving off noise, fumes, and odors;<sup>28</sup> wastewater treatment plant odors;<sup>29</sup> poultry and hog farm odors;<sup>30</sup> and water and sewage runoff.<sup>31</sup>

Activities need not be part of a business or be unlawful to be found a nuisance; for example, one case held that a tree overhanging a neighbor's yard was a private nuisance.<sup>32</sup>

## **Use of Minnesota's Public Nuisance Law**

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### **How and where are the public nuisance laws used?**

Two Minnesota jurisdictions account for the vast majority of actions arising out of the state's public nuisance laws: Hennepin and Ramsey counties. Other jurisdictions have relied upon the state statute only on very rare occasions or, more frequently, have developed their own city ordinances to tackle nuisance problems specific to their communities.<sup>33</sup> City attorneys in Minneapolis and St. Paul also generally do not pursue actions under the state statute, letting the county attorneys handle such cases.<sup>34</sup>

In contrast, Hennepin and Ramsey counties frequently rely upon the state's public nuisance statutes in their community prosecution programs. The Hennepin County Attorney's Office alone has opened approximately 1,000 nuisance property cases since late 1995.<sup>35</sup> The following types of cases reflect the most prevalent nuisance problems in Twin Cities communities:

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<sup>27</sup> *Heller v. American Range Corp.*, 234 N.W. 316 (Minn. 1931).

<sup>28</sup> *Brede v. Minnesota Crushed Stone Co.*, 179 N.W. 638 (Minn. 1920).

<sup>29</sup> *Fagerlie v. City of Wilmar*, 435 N.W.2d 641 (Minn. App. 1989).

<sup>30</sup> *Schrupp v. Hanson*, 235 N.W.2d 822 (Minn. 1975).

<sup>31</sup> *Highview North Apts. v. County of Ramsey*, 323 N.W.2d 65 (Minn. 1982).

<sup>32</sup> *Holmberg v. Bergin*, 172 N.W.2d 739 (Minn. 1969).

<sup>33</sup> See discussion of local nuisance law provisions on page 13, *infra*.

<sup>34</sup> LeFevour, Andrew (assistant Hennepin County attorney). Telephone interview. 22 June 2000 (hereinafter LeFevour interview).

<sup>35</sup> LeFevour interview.



- drug-related complaints, which account for the majority of nuisance complaints and nuisance property cases;
- prostitution-related saunas, which have been significantly reduced or, in the case of Ramsey County, eliminated through use of Minnesota's public nuisance statutes;
- properties where pit-bull dogs are bred;
- chronic party houses;
- trash houses; and
- houses used as "chop shops" by automobile or bicycle theft rings.

Hennepin county's nuisance abatement program is more aggressive in its scope than its counterpart in Ramsey County. Ramsey County attorneys seldom receive alcohol-related and gambling complaints, and while the county sometimes pursues party houses under the public nuisance statutes, it finds those cases more difficult to prove.<sup>36</sup>

The Ramsey and Hennepin county nuisance property programs target all types of property, including landlord-tenant residential properties, owner-occupied residences, and—in Hennepin county—commercial enterprises, notably motels, liquor stores, and corner markets.

### **Are the state public nuisance laws effective?**

The local prosecutors who utilize Minnesota's public nuisance law in their community prosecution programs find the statute's provisions generally quite workable. They note that it captures the balance of interests between property owners and neighborhoods.<sup>37</sup> Overall, Minnesota's current public nuisance law has created flexibility for local prosecutors in dealing with a variety of nuisance-related issues.<sup>38</sup>

***The current efficacy of Minnesota's public nuisance statutes represents a significant change from the problems associated with the previous law.*** Prior to 1995 amendments to the state public nuisance law, attorneys in Hennepin and Ramsey counties say they essentially accomplished nothing related to public nuisance.<sup>39</sup> The prior law's stricter evidence requirements, including the need to prove a minimum number of *convictions* within the previous year or two made it difficult

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<sup>36</sup> West-Hest, Patrick (assistant Ramsey County attorney). Telephone interview. 23 June 2000 (hereinafter West-Hest interview).

<sup>37</sup> West-Hest interview.

<sup>38</sup> LeFevour interview.

<sup>39</sup> LeFevour interview.

to target true nuisance problems. For example, most drug-related nuisance cases involved chronic selling of small amounts of cocaine or individuals who let others use cocaine in their residences. These cases typically were resolved by sending the violator to a county diversion program. Because diversion does not result in a conviction, these instances could not be used as evidence of prior nuisance conduct in nuisance civil cases.<sup>40</sup> Prostitution, also covered by the public nuisance law, involved a migrating population against whom there was no guarantee of obtaining the requisite number of prior convictions. Thus, the activities which created many of the nuisance-related complaints in neighborhoods were also among those most difficult to prove under the pre-1995 nuisance laws.

***Local prosecutors have proven successful in developing strong programs based on the statute's provisions.*** Hennepin and Ramsey counties have both instituted community prosecution programs to complement their nuisance abatement programs. The nuisance abatement programs have drawn neighborhoods together and enhanced community prosecution efforts.<sup>41</sup>

Local prosecutors believe that Minnesota's public nuisance law has helped to strengthen communities. Attorneys in Hennepin and Ramsey counties frequently attend community meetings and have seen many neighborhood communities strengthened as a result of the ability to reduce nuisance problems in their local area.<sup>42</sup> Even communities which rely upon their own city code nuisance provisions have incorporated into them the most successful aspects of the state statute—particularly the notice provision and the more workable evidence requirements.<sup>43</sup>

Nuisance abatement programs developed under Minnesota law have received recognition on the national level. For example, the Hennepin County Attorney's Office has assisted several jurisdictions, including two counties in California, in developing nuisance programs based on their model. Hennepin County also has received the National Association of Counties award for its nuisance abatement program and community prosecution program.

### **How is Hennepin County's nuisance abatement program structured?**

Hennepin County has worked during the past few years to develop a nuisance abatement program centered around the state public nuisance law. The program focuses not just on removing nuisances but on solving nuisance problems. County attorneys coordinate and attend neighborhood mediation sessions, for example, and strive to help landlords of nuisance properties resolve nuisance problems.<sup>44</sup>

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<sup>40</sup> LeFevour interview.

<sup>41</sup> LeFevour interview.

<sup>42</sup> LeFevour interview; West-Hest interview.

<sup>43</sup> See discussion of local nuisance law provisions on page 13, *infra*.

<sup>44</sup> LeFevour interview.

***The required notice-to-abate period resolves most nuisance problems.*** In Hennepin County, most nuisance complaints are resolved during the 30-day notice-to-abate period required by statute.<sup>45</sup> In fact, many resolutions result from plans developed during meetings between county attorneys and landlords. The county attorney office's willingness to assist troubled landlords in solving nuisance problems during this early stage of the process has provided a service both to the community and to local property owners. By assisting landlords in devising abatement plans or interacting with problem tenants, rather than merely "picking on" them as some landlords feared they would, county attorneys help meet the needs of both property owners and communities.<sup>46</sup> To date, Hennepin County attorneys have pursued action beyond the notice-to-abate period in only one residential landlord-tenant nuisance case.

***Owners of all types of property frequently opt to voluntarily abate nuisance problems.*** In addition to working with residential landlords and tenants, the county also has used the public nuisance laws to facilitate discussions with commercial enterprises. Hennepin County bars, corner stores, and hotels—particularly along the Interstate 494 corridor—that receive public nuisance complaints take advantage of the notice-to-abate period, thus avoiding further legal action.<sup>47</sup>

***County prosecutors have successfully acted against owners who do not abate nuisance problems.*** Owner-occupied residences which double as drug houses more frequently attract legal action beyond the notice stage than do other types of property. Hennepin County has filed 100 cases in court against such properties, and approximately 50 of those have been boarded up as the result of a permanent injunction.<sup>48</sup> Saunas also have received attention, with all but two now shut down as a result of nuisance property actions by county prosecutors.

***Hennepin County's nuisance abatement program has improved relationships among community members.*** County attorneys have used the nuisance abatement program as a way to expand their involvement in communities struggling to overcome problems. The neighborhood mediation sessions it coordinates often evolve from situations in which neighbors have nuisance complaints against an individual or a few individuals, but not enough evidence to implicate public nuisance law protocols. These gatherings typically are held in local recreation centers, where all participants have an opportunity to present their thoughts in a constructive manner. Hennepin County attorneys firmly believe that the nuisance abatement program has created better relationships in neighborhoods.<sup>49</sup>

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<sup>45</sup> Minn. Stat. § 617.81, subd. 4.

<sup>46</sup> LeFevour interview.

<sup>47</sup> LeFevour interview.

<sup>48</sup> LeFevour interview.

<sup>49</sup> LeFevour interview.

## **How has Ramsey County’s nuisance abatement program been structured?**

As in Hennepin County, most Ramsey County nuisance complaints are resolved during the notice-to-abate period. In fact, the county has yet to pursue a complaint about a residential property so far that it actually has closed down the property. County attorneys hold formal meetings with the owner to discuss the notice and need to abate, but usually landlords voluntarily abate problems when they receive notice of a nuisance complaint.

*The county takes nuisance property problems one step at a time.* Ramsey County approaches each stage of the nuisance complaint process looking for evidence of a problem. Even after notice of a complaint goes out, county attorneys will not pursue further action against a property if they do not see evidence of a continuing nuisance problem. This approach, while it might not meet the immediate desires of angry neighbors, allows the county to focus legal attention on what it believes are the true nuisance problems. It then works with communities in other ways to strengthen neighborhoods and remove the effects of lesser nuisance problems (see “closing the gap” discussion below).

*Prosecutors have developed strategies to deal with “repeat customers.”* Sometimes after a notice to abate goes out, nuisance problems quiet down only temporarily, forcing the county attorney’s office to start the process over again. County attorneys believe this phenomenon often occurs due to the “repeat customer” problem, which involves problem landlords rather than problem tenants. Although such an owner might voluntarily evict a single problem tenant, owner management style attracts more problem tenants. The community therefore continues to experience nuisance problems associated with that property.<sup>50</sup>

To combat the “repeat customer” problem, Ramsey County has instituted a landlord training program designed to deal with problem owners who may be acting willfully or simply out of a lack of knowledge and training. County attorneys admit that this approach does not always appease neighborhood residents, since neighborhoods tend to think in longer time periods than the statutory 12-month time limit within which repeat nuisance activity must occur. Even so, Ramsey County attorneys believe that real problem properties, those which will need county attorney intervention, will register two incidents within the statutory time limit.<sup>51</sup>

*Nuisance abatement programs have closed the gap between law enforcement and communities.* According to Ramsey County attorneys, the state’s strengthened public nuisance statutes have acted as a bridge between the county attorney’s office and local communities and neighborhood organizations. It has allowed the department to expand its community prosecution program and gives staff an incentive to meet with community residents in order to address recurring issues. As in Hennepin County, the Ramsey County Attorney’s Office often attends community meetings, and has seen the frequency of these meetings increase dramatically—at least four-fold if not more—since the statute was reworked in 1995. Today, the Ramsey County

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<sup>50</sup> West-Hest interview.

<sup>51</sup> West-Hest interview.

Attorney's Office attends an average of two to three community meetings each week, where it works with neighborhood representatives to talk about nuisance properties as well as general community justice issues.<sup>52</sup>

### **How have other jurisdictions combated nuisance problems?**

Several Minnesota cities have worked nuisance-related provisions into their city codes. Many of these cities, and the counties in which they are situated, rely almost exclusively on the local code rather than on state law. The state nuisance statute sometimes is utilized as an additional threat rather than as an actively-used tool.

Many aspects of local nuisance laws are similar to those found in state law and the nuisance abatement programs modeled after it. The housing code provisions described below, for example, incorporate the notice period which has proven so successful in Hennepin and Ramsey counties. However, devising a local city code also allows individual jurisdictions to tailor nuisance abatement to their communities.

The Duluth City Attorney's Office, for example, decided to devise its own nuisance ordinance primarily because most of the city's problems deal with party houses.<sup>53</sup> The ordinance contains a long list of nuisance events which could trigger action under the city's ordinance including everything from loud music that disturbs the peace to prostitution and controlled substance-related activities.<sup>54</sup> City attorneys and police officers in Duluth believe their code helps them deal effectively with the typically lesser nuisance issues associated with party houses.

Local provisions generally fall into two categories: user charges for police service and nuisance provisions built into the housing code.

***User Charges for Police Service.*** User charges seek to pass the cost of law enforcement services onto those individuals whose nuisance activities generate significant additional costs. Duluth and St. Paul both have incorporated such provisions into their city codes.<sup>55</sup> The Duluth user service charge provision, implemented in late 1997, was modeled after a similar St. Paul city code provision that has been in place since 1995.<sup>56</sup>

Police officers responding to nuisance calls are authorized under these city code provisions to serve written notice that subsequent police responses to the same location within a specified time

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<sup>52</sup> West-Hest interview.

<sup>53</sup> Lutterman, Alison (deputy city attorney, Duluth City Attorney's Office). Telephone interview. 26 June 2000 (hereinafter Lutterman interview).

<sup>54</sup> Duluth, Minn., Legis. Code § 40.10.

<sup>55</sup> Duluth, Minn., Legis. Code §§ 40.9-40.15; St. Paul, Minn., Legis. Code § 267.01-267.06.

<sup>56</sup> Lutterman interview.

period could result in a police services fee.<sup>57</sup> If police officers respond to a call within that period, the city will bill responsible parties for the police services required for attending to the call.<sup>58</sup> In St. Paul, the police services fee is either a flat \$250 charge or an amount, up to \$1,000, to cover police costs.<sup>59</sup> Duluth and St. Paul report that the police services fee has proven effective; to date, Duluth has needed to send just one bill for police services.<sup>60</sup>

It should be noted that, because St. Paul and Duluth are home rule charter cities, their authority to impose police services fees is derived from their charter. However, statutory cities may only impose charges that are specifically authorized by state law, unless the charge is necessarily implied in order to fulfill a specific power or duty, such as to protect the general welfare. For this reason, if the state legislature believes all local governments should be empowered to combat nuisances through the imposition of police services fees, it should provide cities explicit statutory authority to do so.

A city-level law enforcement user service fee does not automatically preclude reliance on Minnesota state law in public nuisance situations. Following implementation of the user service charge, St. Paul city attorneys no longer work directly with nuisance-related activities, although Ramsey County attorneys often handle such cases under state statutes. Duluth does incorporate state law into its nuisance abatement activities, but typically does so as a threat issued at the community police officer level, rather than at the city attorney level.<sup>61</sup> In fact, the existence of the state law and the ability use it as a threat usually are enough to reach an eviction, since landlords do not want to lose the ability to operate their properties.

***Housing Code Nuisance Provisions.*** Rochester and Mankato both have incorporated nuisance laws into their housing codes. The laws generally require rental property owners to take action if tenants act in a disorderly manner and, thereby, cause a nuisance. Both the police and housing inspectors are charged with enforcing housing code nuisance provisions.

Local housing code provisions place responsibility for resolving nuisances with the property owner. If the police department or the housing inspector finds that the rental premises were used in a disorderly manner, notice is sent to the owners directing them to take action preventing additional violations.<sup>62</sup>

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<sup>57</sup> Duluth, Minn., Legis. Code § 40.11; St. Paul, Minn., Legis. Code § 267.03.

<sup>58</sup> Duluth, Minn., Legis. Code §§ 40.12-40.13.

<sup>59</sup> St. Paul, Minn., Legis. Code §§ 267.02, 267.04-267.05.

<sup>60</sup> Lutterman interview.

<sup>61</sup> Lutterman interview.

<sup>62</sup> Mankato, Minn., Code § 5.42, subd. 11; Rochester, Minn., Code § 38.152.

In Rochester, upon report of a second incident within 12 months, the owner must submit a written report of actions taken to prevent further disorderly use of the premises.<sup>63</sup> Fines, revocation, or suspension of the rental license could result if the owner fails to submit a report within five days. A third incident within 12 months could result in revocation or suspension of the rental license.<sup>64</sup> An incident occurring within 12 months of expiration of a prior license suspension also could result in revocation or suspension of the rental license.<sup>65</sup>

As noted earlier, both Hennepin and Ramsey counties have built into their nuisance abatement programs a formal solutions-oriented meeting between local prosecutors and problem property owners. The Mankato city code takes this process one step further. In Mankato, a second instance within 12 months *requires* the owner to participate in a problem-solving conference with the city manager or a designee.<sup>66</sup> Such conferences are intended to help owners develop plans of action to ensure that future disorderly events will not occur. Typically, the Mankato City Attorney's Office holds the problem-solving meeting, often with both landlord and tenant present. All parties discuss the problem and what actions should be taken to solve the problem.

### **How can Minnesota's public nuisance law be improved?**

Minnesota's public nuisance law generally has enhanced the ability of local prosecutors to take actions leading to nuisance abatement. However, prosecutors have identified a potential legal grey area regarding their ability to take proactive steps throughout the nuisance abatement process. Prosecutors also find that some of the statute's procedural steps overlap each other.

*The type of owner response required to cease a nuisance action under state law is not consistent among the jurisdictions which use the statute.* Hennepin County's proactive approach to nuisance property complaints seems to have improved neighborhoods, sparked increased interaction within communities, and generally proven successful. It also has led to some confusion when cases are taken to court. One section of the public nuisance statute states that if a notice recipient "either abates the conduct constituting the nuisance or enters into an agreed abatement plan within 30 days of service of the notice . . .," the prosecuting attorney may not file a nuisance action.<sup>67</sup> Prosecuting attorneys in Hennepin County believe that this section of the statute creates an affirmative defense, but some defendants have argued that prosecutors still must prove voluntary abatement did not occur in order to file for an injunction hearing.

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<sup>63</sup> Rochester, Minn., Code § 38.152, subd. 5.

<sup>64</sup> Rochester, Minn., Code § 38.152, subd. 6a.

<sup>65</sup> Rochester, Minn., Code § 38.152, subd. 6b.

<sup>66</sup> Mankato, Minn., Code § 5.42, subd. 11 (D).

<sup>67</sup> [Minn. Stat. § 617.82\(a\)](#).

The conflict has created problems in situations where the owner does not contact the county attorney's office, then argues that prosecutors cannot prove voluntary abatement did not occur. Hennepin County attorneys believe it is the responsibility of owners who voluntarily abate to inform the county attorney that they have done so in order to avoid further action in a nuisance complaint case. If they do not receive notice of voluntary abatement by an owner, they pursue the case to the temporary injunction stage. Some Hennepin County judges have supported the prosecutors' position on this issue.<sup>68</sup>

In contrast, Ramsey County does not take action unless evidence of a continuing nuisance exists. Under this approach, the county will not pursue a temporary injunction hearing even if it has received no indication that the owner plans to voluntarily abate the problem. The county attorney's office instead looks again for the same sort of evidence it relied upon during the notice-to-abate phase; if such evidence still exists, the office will pursue further action.

The contrast between these two approaches highlights the role individual community need and demand has played in developing nuisance abatement programs, particularly considering that both Ramsey and Hennepin counties—as well as some other jurisdictions—have incorporated nuisance property abatement programs into their general community prosecution and outreach programs. However, confusion over the law still exists. If a proactive approach at each stage of the nuisance property complaint process was intended under the statute, then Minnesota Statutes, section 617.82(a) may warrant further retooling to make that intent clear. For example, the statute could indicate that prosecuting attorneys may pursue an action after the notice period if they have not received notice of voluntary abatement.<sup>69</sup>

***Because the level and type of evidence required at the temporary and permanent injunction hearings overlap, prosecutors find the two steps repetitive.*** The public nuisance statute outlines a multi-stage process, beginning with notice after a verified complaint has been made, and proceeding first to a temporary injunction hearing before moving on to a permanent injunction hearing, if required.<sup>70</sup> One assistant Ramsey County attorney notes that there is no fundamental difference between the level and amount of proof needed at a temporary injunction hearing and the proof needed further down the line at the permanent injunction hearing; the two hearings essentially cover the same material.<sup>71</sup> Ramsey County attorneys therefore recommend that the existing two-stage process be revised into one that involves only a single hearing, perhaps with a longer response time. At present, county prosecutors find that the permanent injunction stage serves only to permanently outlaw already prohibited conduct, and see no practical need for the temporary hearing as outlined in the statute.<sup>72</sup>

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<sup>68</sup> LeFevour interview.

<sup>69</sup> LeFevour interview.

<sup>70</sup> [Minn. Stat. §§ 617.80-87.](#)

<sup>71</sup> West-Hest interview.

<sup>72</sup> West-Hest interview.



In fact, the two-stage process further complicates matters by extending the timeline for handling a nuisance complaint. For example, because Ramsey County attorneys rely on live testimony at both the temporary and permanent injunction hearings, the two steps make it difficult to coordinate a strong case.<sup>73</sup> Furthermore, with live testimony presented at both hearings, the temporary and permanent injunctions become truly duplicative. Prosecutors point out that if the temporary injunction hearing could rely upon motions and affidavits rather than live testimony from neighborhood members and others, then perhaps the overlap between the two stages would not exist to the same extent.<sup>74</sup>

### **Did local prosecutors find the “person as nuisance” law helpful?**

As noted earlier, [Minnesota Statutes, section 617.89](#), in effect between 1996 and 1999, allowed prosecutors to pursue actions against *individuals* who incurred nuisance complaints within a community. The two primary users of the state’s public nuisance law relating to property, Hennepin and Ramsey counties, never used this “person as nuisance” law while it was in effect. On one occasion, Hennepin County attorneys were prepared to bring an action under [Minnesota Statutes, section 617.88](#), against a large group of alleged drug dealers; however, they discovered that most of the implicated individuals already had criminal charges pending against them. Therefore, prosecutors decided, instead, to fold their efforts into the criminal cases by making it a condition of probation that the individual not return to the site.<sup>75</sup>

Similarly, Ramsey County prosecutors hesitated over using the weak barrier to further nuisance conduct offered by the statute, noting that it essentially prohibited an individual from conduct that already was illegal.<sup>76</sup> The Ramsey County attorneys also preferred the added responsibility built into the property public nuisance statute, which imposes some vicarious liability on the landlord and, thereby, impels him or her to take control of the problem.

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<sup>73</sup> West-Hest interview.

<sup>74</sup> West-Hest interview.

<sup>75</sup> LeFevour interview.

<sup>76</sup> West-Hest interview.