



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

October 7, 2011

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02145

Re: Nuisance Control Ordinance

Dear Honorable Board Members:

Enclosed for your review is Nuisance Control Ordinance.

The ordinance reflects changes made in the Legislative Matters Committee. I have included a clean and red-lined copy.

Please feel free to contact me if you have any questions.

Very truly yours,

David Shapiro
Assistant City Solicitor

**CITY OF SOMERVILLE
ORDINANCE NO. _____
IN THE BOARD OF ALDERMEN**

BE IT ORDAINED: By the Board of Aldermen, in session assembled, that Section 9-97 of the Code of Ordinances of the City of Somerville, is hereby added by insertion of the following:

Section 9-97: NUISANCE CONTROL

1. Purpose

In order to protect the health, safety, and welfare of the inhabitants of the City of Somerville, this ordinance shall permit the City to impose penalties on Property Owners and other responsible persons for the nuisances and harm caused by loud and/or unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

2. Definitions

Eviction means actively trying to evict a tenant from a premise by delivery of a notice to quit and subsequent court proceedings, if a tenant fails to vacate the Premises.

Gathering is a party or event where two or more persons have assembled or are assembled.

Premises means any residence or other private property, place, or location, including any commercial or business property.

Property Owner means the legal owner of record of a Premises as listed by the tax assessor's records.

Public Nuisance means a Gathering of persons on any Premises in a manner that creates a substantial disturbance of the quiet enjoyment of private or public property in a neighborhood. Behavior constituting a Public Nuisance includes, but is not limited to excessive noise and excessive pedestrian and vehicular traffic related thereto, obstruction of public ways or sidewalks by crowds, vehicles, trash or refuse, illegal parking, public urination, the service of alcohol to underage persons, public consumption of alcohol, fighting, disturbances of the peace, and littering.

3. Mailing of Notice to Property Owners and Others

In the event police or other duly authorized local officials have responded to a Gathering constituting a Public Nuisance, a notice of response shall be made within ten (10) days of the Gathering as follows:

(a) Property Owners: The Chief of Police or his/her designee shall mail a notice of response by Certified Mail to the Property Owner of the Premises where the Gathering occurred as listed in the City of Somerville tax assessment records and shall advise the Property Owner that the second such response on the same Premises within a one year period, as measured from the date of the first notice, shall result in responsibility of the Property Owner for all penalties associated with such response as more particularly described in subsections 4 and 5 herein.

(b) Educational Institutions: The Chief of Police or his/her designee shall send a notice of response to the president/headmaster or his/her designee of an educational institution if the persons who are liable in subsections 4 and 5 herein are students at such educational institution. Such notice shall be sent by mail or other appropriate means.

(c) Persons Cited: The Chief of Police or his/her designee shall send a notice of response to any person who was personally cited at the time of the offense. Such notice shall be sent by mail or other appropriate means to the address stated on the individual's government issued identification.

(d) The officer in charge shall attempt to provide verbal notice to the Property Owner at the time of the offense.

4. Liability for a First Response to a Gathering Constituting a Public Nuisance on a Premises

If the police department or other duly authorized local officials have responded to a Gathering constituting a Public Nuisance on a Premises, the following persons shall be responsible for fines as set forth below, provided that no previous Gathering constituting a Public Nuisance on a Premises has occurred at the Premises within the previous one year period.

(a) The person or persons residing on or otherwise in control of the Premises where such Gathering took place whether present or not.

(b) The person or persons who organized or sponsored such Gathering.

(c) All persons attending such Gatherings who engage in any activity resulting in the Public Nuisance.

5. Liability for a Second and Subsequent Response to a Gathering constituting a Public Nuisance on a Premises

If the police department is required to respond to a Gathering constituting a Public Nuisance on a Premises more than once in any one year period, as measured from the date of the first response, the following persons shall be responsible for fines as set forth below.

(a) The person or persons residing on or otherwise in control of the Premises where such Gathering took place whether present or not.

(b) The person or persons who organized or sponsored such Gathering.

(c) All persons attending such Gatherings who engage in any activity resulting in the Public Nuisance.

(d) The person, or persons or business entity which at the time of the Gathering owned the Premises where the Gathering which has resulted in a Public Nuisance took place, provided that notice of the first and subsequent responses has been mailed to the Property Owner of the Premises as set forth herein and the Gathering occurs at least fourteen (14) days after the mailing of the first such notice. The Property Owner shall not be held responsible for any violation and penalties if the Property Owner is actively pursuing Eviction from the Premises of a tenant who controlled, organized, sponsored or attended the Gathering. The one-year time period for violations for a Premises shall pertain only to the same residents occupying the Premises who have had the prior violation(s). New residents shall start a new time cycle of one year should they violate the provisions of this ordinance.

6. Consumption of Alcohol by Underage Persons is Prohibited in a Public Place, Place Open to Public or Place Not Open to Public

Except as permitted by law, it is unlawful for any underage person to:

(a) Consume any alcoholic beverage at any public place or any place open to the public; or

(b) Consume any alcoholic beverage at any place not open to the public.

7. Hosting, Permitting, or Allowing a Public Nuisance or Party, Gathering, or Event where Underage person Consume Alcoholic Beverages is Prohibited.

(a) It is the duty of any person having control of any Premises who knowingly hosts, permits, or allows a Gathering at said Premises to take all responsible steps to prevent the consumption of alcoholic beverages by any underage person at the Gathering. Reasonable steps include, but are not limited to, controlling access to alcoholic beverages at the Gathering; controlling the quantity of alcoholic beverages present at the Gathering; verifying the age of persons attending the Gathering by inspecting driver's licenses or other government issued identification cards to ensure that underage persons do not consume alcoholic beverages while at the Gathering; and supervising the activities of underage persons at the Gathering.

(b) A Gathering constituting a Public Nuisance may be abated by all reasonable means including, but not limited to, an order by the Police requiring the Gathering to be disbanded and citation and/or arrest of any persons under any applicable provision of local or state law.

(c) It is the unlawful for any person having control of any Premises to knowingly host, permit, or allow a Gathering to take place at said Premises where at least one underage person consumes an alcoholic beverage, provided that the person having control of the Premises either knows an underage person has consumed an alcoholic beverage or reasonably should have known that an underage person consumed an alcoholic beverage and the person having control of said Premises failed to take all reasonable steps to prevent the consumption of alcohol by an underage person.

(c) This subsection shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between an underage person and his or her parent or legal guardian as set forth in G. L. c.138, §34.

(e) This subsection shall not apply to any Massachusetts Beverages Control Commission licensee at any Premises regulated by the Massachusetts Beverages Control Commission.

8. Enforcement

This ordinance may be enforced by the noncriminal disposition process of M.G.L. c.40, §21D. For the purpose of noncriminal enforcement, the enforcing persons shall be any police officer of the City of Somerville. All violation(s) of this section are subject to penalty in accordance with Section 1-11 of the Code of Ordinances.

Each violation of a provision of this Ordinance is a separate and distinct offense. The provisions of this Ordinance are enforceable independent of any provisions of the Somerville Code of Ordinances pertaining to noise and without reference to the fact that the police officer issuing a citation has not obtained a scientific noise measurement prior to issuing the citation. No such scientific noise measurement is required under this ordinance and the lack of a measurement shall not constitute a defense.

The provisions of this ordinance shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated herein, nor shall they limit the City of Somerville or the Commonwealth of Massachusetts' ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of any provision of this Ordinance, nor shall they limit the authority of the police officers to enforce any other applicable state laws or city ordinances.

Further, if in the discretion of The Chief of Police or his/her designee of the City of Somerville, it is necessary to post a police detail in order to enforce the provisions of this ordinance, he may do so in accordance with Somerville Code of Ordinances Section 10-16.

9. Appeal of Imposition of Penalty

Any interested person may request, in writing, a hearing before a municipal hearing officer to contest the issuance of a fine, as provided in Chapter 106 of the Acts of 2008.

10. Effect

This ordinance shall take effect upon its passage.

Be it further ordained by the Board of Aldermen, Section 1-11(b) of the Code of Ordinances is hereby amended by inserting the following language providing for penalties:

Offense:

Fine:

Nuisance Control
(Section 9-97)

1st offense: \$100

2nd offense within 1 year: \$200.00

3rd or subsequent offense within 1 year: \$300.00

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Premises means any residence or other private property, place, or location, including any commercial or business property.

Property Owner means the legal owner of record of a Premises as listed by the tax assessor's records.

Public Nuisance means a Gathering of persons on any Premises in a manner ~~that~~^{which} constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a neighborhood. Behavior constituting a Public Nuisance includes, but is not limited to excessive noise and excessive pedestrian and vehicular traffic related thereto, obstruction of public ways or sidewalks by crowds, vehicles, trash or refuse, illegal parking, public urination, the service of alcohol to underage persons, public consumption of alcohol, fighting, disturbances of the peace, and littering.

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(a) The person or persons residing on or otherwise in control of the Premises where such Gathering took place whether present or not.

(b) The person or persons who organized or sponsored such Gathering.

(c) All persons attending such Gatherings who engage in any activity resulting in the Public Nuisance.

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(b) A Gathering constituting a Public Nuisance may be abated by all reasonable means including, but not limited to, an order by the Police requiring the Gathering to be disbanded and citation and/or arrest of any persons under any applicable provision of local or state law.

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