



# **PARTNERSHIP *for*** **PUBLIC HEALTH LAW**

*Advancing Public Health Through Law*

## **Overview of Nuisance Law**

### **Private vs. Public Nuisance**

In general, a nuisance is defined as a “condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property...”<sup>1</sup> The interference created must be **unreasonable and substantial** to qualify as a nuisance. When this interference affects the use and enjoyment of a single or small group of properties it is considered a **private nuisance**.<sup>2</sup> A tree from one property that has fallen across the entrance of the neighboring driveway is an example of a private nuisance. However, when an activity unreasonably interferes “with a right common to the general public,” it is considered a **public nuisance**.<sup>3</sup> For example, if the tree from the earlier scenario had fallen and blocked access to a public road it would be a public nuisance. At times, conduct may be both a private and a public nuisance if it causes both a particular harm to a specific property and a more generalized harm to the greater community.<sup>4</sup>

A private nuisance is addressed by the affected individual bringing a tort claim against the perpetrator of the nuisance. In contrast, it generally takes a public official to initiate an action over a public nuisance.

Public nuisances are generally investigated by the local government. In some cases, it is the local health department or local law enforcement depending on the type of nuisance activity. However, jurisdictions vary in their enforcement personnel and some rely on building inspectors, civilian code enforcement officers or animal control officers. If legal action is required to abate the nuisance, it is generally the city attorney, county attorney or the attorney general that prosecutes the case. Nonetheless, some states, like Georgia, will allow an individual to bring a public nuisance claim if the government does not bring the claim and the individual has suffered some unique or special damage.<sup>5</sup>

### **State and Local Law**

Public Nuisance is a concept addressed through state and local law; there is variation in the structure and content between jurisdictions. To better understand public nuisance in your jurisdiction, it is critical to familiarize yourself with relevant state and local laws.

#### **STATE LAW**

States usually provide a general definition that captures threats to the public health, public safety, and public morality. For example California defines “public nuisance” as

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is 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, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.<sup>6</sup>

These broad delegations of authority are meant to give the state the ability to adapt to new challenges. However, some states provide examples of activities that qualify as a nuisance. Listed below are a few examples of specified nuisances grouped in categories.

- **Health nuisance** examples include public health threats such as breeding areas for flies, collection of sewage, water serving as a mosquito breeding areas, rat harborages, bed bugs and other mediums of disease transmission.<sup>7</sup> Noise pollution may also qualify as a public nuisance. However, there are state laws specific to noise pollution<sup>8</sup> that may preempt attempts to address it as a public nuisance. Also, if noise pollution is specifically identified as a public nuisance, it is more likely to be addressed at the local ordinance level.<sup>9</sup>
- **Moral nuisance** is a nuisance that is “injurious to public morals.”<sup>10</sup> These statutes often prohibit the public viewing of lewd movies, lewd publications, prostitution, illegal gambling and illegal drug use.<sup>11</sup>
- **Drug nuisances** prohibit all manner of drug activity. In a neighborhood, illegal drug use can have many of the same impacts as other traditional nuisance activities: decreased quality of life and property values. Nuisance law provides the government with an important tool in combating illegal drug activity, such as the ability to have the courts issue injunctions shutting down buildings or units connected to illegal drug activity.<sup>12</sup>
- **Criminal gang activity** is included in some jurisdictions definition of nuisance.<sup>13</sup> In Shelby County, Tennessee, a gang was recently declared a public nuisance and an injunction was issued prohibiting gang members from congregating together.<sup>14</sup>

## Local Law

Local Governments play a critical role in addressing nuisance. Generally, any power local authorities exercise must be delegated from the state. States delegate considerable authority to local governments to address nuisances in their communities. For example, the state of New Hampshire has granted local health officers the ability to draft regulations for the “prevention and removal of nuisances, and such other regulations relating to the public health as in their judgment the health and safety of the people require. . .”<sup>15</sup>

In defining nuisances, local governments follow the same approach as the state; there is usually a general definition of nuisance and many jurisdictions provide a non-exhaustive list of examples. For example, the Pennington Borough Board of Health, in New Jersey, adopted a nuisance ordinance that covers any “condition or act...deemed to be injurious, detrimental or a menace to the public health or environment...” while providing 20 examples of prohibited activities.<sup>16</sup>



*The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.*

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## Endnotes

- <sup>1</sup> Black’s Law Dictionary, Ninth Edition (2009). It is also important to note that most states define nuisance by statute and allow further development through local ordinances.
- <sup>2</sup> *Dunlap v. Daigle*, 122 N.H. 295, 298 (1982).
- <sup>3</sup> *Robie v. Lillis*, 112 N.H. 492, 495 (1972).
- <sup>4</sup> *Urie v. Franconia Paper Co.*, 107 N.H. 131, 133(1966).
- <sup>5</sup> Ga. Code Ann., § 41-1-3 (2013).
- <sup>6</sup> Cal. Civ. Code § 3479 (2013).
- <sup>7</sup> See, e.g., Tex. Health & Safety Code Ann. § 341.011 (2013)
- <sup>8</sup> See, e.g., Mass. Regs. Code tit. 310, § 7.10 (2013)
- <sup>9</sup> See, e.g., LaConner, Washington Municipal Code § 7.05.010 (available at <http://www.codepublishing.com/wa/laconner/html/LaConner07/LaConner0705.html#7.05.010>) see, also, San Diego, California Municipal Code Art. 9.5 § 59.5.0501 (available at <http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art9.5Division05.pdf>), see also Stockton, California Municipal Code 8.20.030 (available at [http://qcode.us/codes/stockton/view.php?topic=8-8\\_20-8\\_20\\_030&frames=on](http://qcode.us/codes/stockton/view.php?topic=8-8_20-8_20_030&frames=on)).
- <sup>10</sup> See, e.g., Idaho Code Ann. § 52-103 (2013)
- <sup>11</sup> See, e.g., Idaho Code Ann. § 52-104(2013); Wash. Rev. Code § 7.48.052 (2013); Haw. Rev. Stat. § 712-1270 (2013).
- <sup>12</sup> See, e.g., Wash. Rev. Code RCW § 7.43.10(2013).
- <sup>13</sup> See, e.g., N.C. Gen Stat. §§ 14-50.42, 43 (2013).
- <sup>14</sup> See *Gang Declared a Public Nuisance*, <http://wreg.com/2013/09/23/gang-declared-a-public-nuisance/>.
- <sup>15</sup> N.H. Rev. Stat. § 147:1 (2013).
- <sup>16</sup> Pennington Borough, New Jersey, § 136-2 (available at <http://www.penningtonboro.org/BOH%20Ordinance%202008-1%20-%20Nuisance%20Code.pdf>)