

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 14, 2017

NUMBER: 4.09 - LEGAL

SUBJECT: LOUD PARTIES – LAWS AND PROCEDURES

RELATED POLICY: N/A

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 4.09 08/08/2014

I. PURPOSE

This Department procedure establishes guidelines for handling loud party incidents.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

Loud parties often involve large numbers of people, amplified music, the consumption of alcoholic beverages, drunkenness, vehicular noise, parking violations and blockage of sidewalks and streets. This type of setting often results in violations of one or more of the following laws:

- A. Penal Code section 415(2) – Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.
 - 1. It is necessary that the loud and unreasonable noise creates a disturbance to someone other than a police officer, and the person creating the disturbance has knowledge of that fact. This section requires a private party who can say his or her peace was disturbed. This section is used for noise violations that occur at any time, day or night.

2. In most cases, a First Response notice should be issued before enforcement action is taken since a violation of PC section 415(2) requires persons to know that their conduct is disturbing others. Circumstances such as noncompliance and/or unruliness may constitute the need for immediate enforcement action.
 3. Band members or others actually engaged in the disturbing noise, are in violation of PC section 415(2). Amplifiers, instruments, and other noisemakers may be impounded as evidence if enforcement action is taken.
 4. Bar or club owners, and householders or party hosts may be held liable for violation of section 415(2) PC as “aiders and abettors” by permitting a loud and boisterous party to be held on their premises and have knowledge that other people are being disturbed by the party. If enforcement action is taken, any instruments, amplifiers, stereo equipment, or other noisemakers may be impounded as evidence.
- B. Penal Code section 415(3) – Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.
1. Conduct that can reasonably be anticipated as having a tendency to incite others to violence or to breach the peace constitutes a violation of PC section 415(3).
- C. San Diego Municipal Code section 59.5.0501(a) - proscribes public nuisance noise. This SDMC section is the equivalent of PC section 415(2). It proscribes a person from making and/or continuing to make disturbing, excessive, or offensive noise which causes discomfort or annoyance to any reasonable person of normal sensitivities residing in the area.
1. Requires a private person who can state his or her peace was disturbed.
 2. Used for noise violations that occurs any time of day or night. Officers should consider the factors listed in SDMC section 59.5.0501(b), such as level of the noise; duration of the noise; proximity to other residences.
- D. San Diego Municipal Code Section 59.5.0502(b)(2)(A) - proscribes loud radios, TVs, stereos, and other types of amplified noise or music.
1. A violation of this section must occur between the hours of 2200 and 0800 in such a manner as to be plainly audible at a distance of 50 feet from the source of the noise. While the ordinance requires a 50-foot distance, for charging purposes, the City Attorney’s Office requires 75 feet.

2. Applies to loud music and other sound devices that create disturbing noise during the designated hours and from the specified distance.
3. An officer can state he or she heard the loud noise from 75 feet away, so a private citizen is not required. Officers must state how the distance was measured (paced off the distance; used a tape measure; heard from a block away which is a distance of x feet).

IV. **PROCEDURES**

A. Advance Notice of a Large Party

If the Department receives information in advance that a large party will be held and there is reason to believe that problems will arise from it, a patrol supervisor will contact the party host, preferably in person. The patrol supervisor is to advise the party host of the applicable laws; potential consequences of violations, including the impounding of property; and, the Department's position with respect to the party.

B. Receiving Calls of a Loud Party

1. When a call is received by Communications Division regarding a large party or disturbance, the person receiving the call should determine the following:
 - a. The exact location of the disturbance, including the address if possible; and,
 - b. The size and type of party (i.e., loud band, drunkenness, etc.).
2. Any additional calls regarding the party should be recorded in a similar manner and cross-referenced by incident number. Communications Division should keep the Watch Commander advised on all party calls that appear to be escalating or create concern for the Department.

C. Responding to a Large Party

When approaching the scene of a reported loud party, officers should be especially aware of factors that indicate the scope and effect of the disturbance upon the neighborhood. Residents standing outside, cars blocking driveways and sidewalks, glass and debris scattered about, and the numbers of persons outside the party location are noteworthy items for subsequent prosecution. Particular attention should be given to noise level distance plainly audible from the party structure and the nature and type of noise.

1. First Response Notice

- a. Upon arrival, officers should contact the party hosts, band members, and other suspected offenders to try to persuade them in a positive manner to reduce the noise level so the party can continue without disturbing the neighborhood.
- b. Officers should advise suspected offenders, including aiders and abettors, of the basis of the complaint and their criminal liability if the disturbance continues.
- c. Officers shall not divulge information regarding the identity of complainants.
- d. Unless immediate enforcement action is called for, officers should advise the suspected offenders, including aiders and abettors, that a subsequent complaint will result in criminal charges, either by citation or by physical arrest, and that musical instruments, amplifiers, stereo equipment, or any other devices causing the loud noise, may be impounded as evidence.
- e. Officers should prepare field interrogation slips on responsible parties, including enough information for a notify warrant. Copies of all field interrogation slips must be given to the field supervisor at the end of the shift.
- f. A First Response Notice should be used if it is the opinion of the officer(s) that the disturbance is of such magnitude that a second response is likely. Officers should complete and deliver a Public Service Fee First Response Notice (PD-1117), in accordance with Municipal Code Section 51.1004, to each of the offenders. The First Response Notice is pre-printed and references a violation of PC 415 as the basis for the notice. Officers who issue First Response Notices should add “SDMC 59.5.0501(b) and/or 59.5.0502(b)(2)(A)” to the notice if they are relying on either one of those ordinances for enforcement.
 - (1) The issuing officer(s) will determine who is responsible for the disturbance (party). If more than one person is responsible, all responsible persons will be given a First Response Notice. When juveniles are found to be responsible for the party, the notice should be completed incorporating their parent’s information in the appropriate places on the notice.

- (2) Upon issuing a First Response Notice, officers are required to give the recipients an explanation of the Police Service Fee, and explain what they must do to avoid a second response by police.
- (3) Officers should get the responsible person's signature on the First Response Notice but it is not required. If a person refuses to sign, officers should write "Refused to Sign." The top portion of the notice must be completed and the first copy of the triplicate form is given to the responsible person(s).
- (4) After clearing the call, the officer issuing the notice(s) must contact a field supervisor and inform him or her that a First Response Notice has been issued. The remaining two copies of the notice will be given to the supervisor, and the responsibility to monitor any recurrence of the disturbance will rest with that field supervisor.

2. Second Response Notice Within 24 Hours

- a. If a second response to the same party location is necessary, the officer issuing the first notice, if possible, should return along with the field supervisor.
- b. After ending the disturbance, a Second Response Notice should be given to the responsible person(s). If possible, the original issuing officer should give the Second Notice to the responsible person.
- c. If a supervisor is unable to respond to the disturbance with the original notice, a new notice can be completed and given to the responsible person(s). The Second Response Notice portion will then be filled out for a signature. A signature is NOT MANDATORY.
- d. Upon issuing a Second Response Notice to a responsible person, the issuing officer should explain that it does NOT constitute a criminal offense. Officers must explain the Police Services Fee procedure and what is expected of the citizen. Officers should tell recipients of the notice that all applicable information concerning the Police Services Fee is printed on the form.
- e. The notice does NOT preclude any concurrent or subsequent criminal prosecution that may be necessary to quell the disturbance.

- f. It is the responsibility of the issuing officer to ensure that all necessary information for successful cost recovery is contained on the Police Service Fee Second Response Notice.
 - g. The officer who issued the notice must notify Communications Division that the incident is a “Cost Recovery.” The officer will print out a CAD copy of the incident and attach it to the remaining copy of the Second Response Notice.
 - h. The Second Response Notice and CAD print-out will be placed in the appropriate investigative bin at the command where the incident occurred.
3. Field Supervisors should be present when Second Response Notices are issued.
- a. If a supervisor is unable to respond to the second response, they should advise responding units that a First Response Notice has been issued. The supervisor should give the responsible persons’ names to the responding units and request a Second Response Notice be given to them.
 - b. When a change of shift occurs and a First Response Notice has been issued, it will be the responsibility of the field supervisor to inform the next shift supervisor of the situation and provide the Notice to the next shift supervisor.
 - c. If it is necessary for the next shift to return to the disturbance on a second response, all of the listed procedures should be followed. If a second response does not occur within a TWENTY-FOUR hour period, the initial notice can be destroyed.
4. If the loud party disturbance is taking place on a beach or in a public park, officers should advise the participants that a permit from the Park and Recreation Department is required. Procedures for a First Response Notice should be followed.

D. Enforcement Action

- 1. 415 (2) PC, disturbing the peace. If reasoning with the person(s) creating the disturbance has failed to solve the problem, enforcement action should be considered. The key requirement is that there must be a civilian witness. This person can be the complainant or somebody else who can testify to the crime. A citizen’s arrest is not required as long as the crime is occurring in the officer’s presence and a named person has complained.

2. 59.5.0501(a) SDMC, public nuisance noise, requires the same enforcement guidelines and action as PC section 415(2). There must be a civilian witness to testify to the crime. A citizen's arrest is not required as long as the crime is occurring in the officer's presence and a named person has complained. Officers should consider the factors listed in SDMC section 59.5.0501(b) to substantiate this charge.
3. 59.5.0502 (b) (2) (A) SDMC, operation of a loud sound device. The key requirement is the operation of such devices, between the hours of 2200 and 0800 hours, when the noise is plainly audible at a distance of 50 feet from the building or vehicle. The City Attorney requires 75 feet, and the reporting officer must state how the distance was measured or determined. A citizen's arrest is not required as long as the crime is occurring in the officer's presence.
4. When enforcement action is required, the field sergeant should assemble a sufficient number of officers away from the actual scene. Upon arrival at the scene, officers should:
 - a. Park police cars in such a manner that the way is clear for people leaving the disturbance area;
 - b. Attempt to secure the host's cooperation in dispersing party guests.
 - c. Issue a misdemeanor citation or, if applicable, make a physical arrest for Penal Code Section 415(2), Municipal Code section 59.5.0501(a), or Municipal Code Section 59.5.0502 (b) (2) (A). Certain situations may dictate preparing notify warrants in the event party hosts cannot be located;
 - d. Consider impounding band instruments, amplifiers, stereo equipment, and any other devices responsible for the noisemaking. Make note of the volume dial settings. Switches and dials should be taped in position and the tape initialed by the officer;
 - f. If arrests are made via citations or physical custody, officers must document the scope and effect of the disturbance upon the neighborhood, and the responsible person's refusal to eliminate the problem. Documentation includes, but is not limited to, the nature and type of noise, the distance the noise is heard from the source, and witness statements describing how their peace was disturbed. In addition, document information on the First Response Notice(s) by including the officers present, the date and time, and people identified.

E. Exigent Circumstances

Even if an officer has probable cause to believe there is a loud party violation, he or she may not enter a home without consent, a warrant, or exigent circumstances. Exigent circumstances include situations where a person is placed in imminent harm or danger, or requires immediate medical attention. An exigent circumstance does not include making an arrest for the loud party itself, or for a minor consuming alcohol.