

Covenants, Conditions & Restrictions (CC&R) Committee
Monday, August 6, 2018
5:30 p.m.

Cameron Park Community Services District
2502 Country Club Drive, Cameron Park

Agenda

Members: Director Ellie Wooten (EW), Director Monique Scobey (MS), Gerald Lillpop (GL),
Robert Dalton (RD), Sidney Bazett (SB)
Alternate Director Margaret Mohr (MM)
Staff: General Manager Jill Ritzman, CC&R Compliance Officer Kate Magoolaghan

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF AGENDA**
- 4. APPROVAL OF CONFORMED AGENDA**
- 5. OPEN FORUM**

At this time, members of the Committee or public may speak on any item not on the agenda that falls within the jurisdiction of this Committee; however, no action may be taken unless the Committee agrees to include the matter on a subsequent agenda.

Principal party on each side of an issue (where applicable) is allocated 10 minutes to speak, individual comments are limited to four minutes and individuals representing a group allocated five minutes. Individuals shall be allowed to speak to an item only once. The Committee reserves the right to waive said rules by a majority vote.

- 6. COMMITTEE REVIEW/ACTION**
 - CC&R Officer response to Mr. Harp's letter
 - Granting variances
 - Proposed separate CC&R workshops
 - Architecture Review Committee members
- 7. MONTHLY STAFF REPORT**
 - CC&R Officer Transition
 - Initial Notices
 - Final Notices
 - Pre-Legal Notices

- Legal Cases
- Pending
- Corrected Violations

8. MATTERS TO AND FROM COMMITTEE MEMBERS

9. REPORT BACK ITEMS

10. ADJOURNMENT

*Cameron Park
Community Services District*

Agenda Transmittal

DATE: August 6, 2018

FROM: Kate Magoolaghan, CC&R Compliance Officer

AGENDA ITEM #6: **CC&R OFFICER RESPONSE TO MR. HARP'S LETTER**

RECOMMENDED ACTION: Review CC&R Compliance Officer response to Mr. Harp's Letter dated July 1, 2018 and enforcement recommendations.

BUDGET ACCOUNT: N/A

BUDGET IMPACT: N/A

It is the mission of the District to enforce the Covenants, Conditions and Restrictions in a fair and equal manner to the full extent of our authority. It is the responsibility of the CC&R Officer to thoroughly investigate all complaints and to explore all possible options for a resolution that is in the best interest of the Cameron Park community. Consideration is made as to what will be necessary in order for the District to successfully resolve a complaint.

Upon receiving a complaint, the first step in the enforcement process is to make a visit to the property and attempt to observe the violation. If no violation can be observed by the CC&R Compliance Officer no action is taken. If a purported violation is confirmed, a letter is sent to the offending property owner. If the violation is not corrected in a reasonable amount of time, typically 10 days, then a second letter is sent. If there is still no compliance, the District will begin taking steps to pursue legal action. There are certain circumstances in which the District may exercise the legal option to not fully pursue all available enforcement steps.

The following complaints are reported to be violations to the Eastwood Park Unit 5 CC&Rs.

Complaint 1: Offensive smoke emanating from Mr. Hoover's chimney violating clause 3.03.

Earlier this year, CC&R Compliance Officer Lyle Eickert received a complaint from Mr. Harp regarding the excessive smoke issue. On February 27, 2018, a letter was sent to Mr. Harp stating that the District is unable to regulate indoor wood burning. This letter was drafted after consulting with the El Dorado Planning Director and also referenced the role of the Air Quality Management District (AQMD).

Additionally, residents in El Dorado County are permitted to burn wood in their fireplaces and Mr. Hoover has not broken any law.

The CC&R clause does not include specific verbiage addressing chimney smoke. Nor does it provide specific clarification for what constitutes a “Nuisance.” As such, the District has referred to a commonly recognized legal definition of “Nuisance” as found on the online resource <https://legal-dictionary.thefreedictionary.com/nuisance>. Please refer to the attached printout for the complete definition.

A public nuisance interferes with the public as a class, not merely one person or a group of citizens. Therefore, this situation would be considered a Private Nuisance.

Based on the current facts of this situation, it would be difficult to bring successful legal action against Mr. Hoover. The District does not have sufficient evidence, nor the resources to conduct a comprehensive investigation into the intended or unintended actions of Mr. Hoover or to determine the subsequent harm resulting to Mr. Harp as a result of those actions.

The District is not legally obligated to pursue all available enforcement steps for every violation and must consider factors such as whether the potential for successful court action is likely and whether the increased cost to the District in terms of cash funds and resources would be reasonable in the service of the community.

Recommendation:

It is my recommendation that should Mr. Hoover resume burning wood which causes what Mr. Harp considers to be a nuisance, then the enforcement process as outlined above would commence but in a reduced capacity. The District may submit a letter to Mr. Hoover informing him that the smoke emanating from his chimney is creating a nuisance to his neighbor. It is our hope that a letter would be sufficient to compel Mr. Hoover to cease the activity. However, if Mr. Hoover continues, I recommend that the District not pursue legal action as I do not feel that the District would be able to present a compelling case against Mr. Hoover

Complaint 2: Amplified sound resonating from Mr. Hoover’s property violating clause 3.03 and 3.14.

This CC&Rs do not include specific verbiage to address excessive noise. As noted in Mr. Harp’s letter to the committee dated July 1, 2018, the El Dorado County Sheriff’s Department has already taken action against Mr. Harp in regards to the loud music and disturbing the peace. Legal action has already commenced with a law enforcement agency which, if successful, should deter Mr. Hoover from creating this nuisance in the future. If Mr. Hoover is not found guilty of disturbing the peace, it would be unlikely that the District would be able to take successful legal action to declare this a nuisance.

Recommendation:

It is my recommendation to proceed along the same lines as complaint 1. If Mr. Hoover continues to generate excessive noise then the enforcement process would commence as outlined above but the District would not pursue legal action.

Complaint 3: Commercial vehicle parked on the street violating 3.04.B

The CC&Rs do state that a commercial vehicle is considered a recreational vehicle in clause 1.07. The photos provided to the CC&R Officer have been reviewed and it does appear to meet the basic definition of a Motor Truck (CVC §410) under the Commercial Vehicle Definition section 13.00 of the California Vehicle Code. California Vehicle Code defines Recreational and Commercial vehicles as separate classes. However, taking this clause at face value the District has investigated the suspected vehicle as a commercial vehicle. As such, the CC&Rs state that it is a violation for the reported vehicle to be parked where it is visible from the street or another lot. However, during multiple drives by the property I have been unable to locate the vehicle. In order for the enforcement process to take place the vehicle must be observed to be parked in front of the property.

Recommendation:

It is my recommendation that the CC&R Officer will make 3 additional inspections at different times during the day to confirm whether the vehicle is improperly parked. If after 3 attempts the vehicle is not located, the complaint will be closed.

Complaint 4: Fallen shared fence violating 4.13E and unapproved sign violating 3.05

It is my understanding that the sign has been removed and is no longer a violation. Mr. Harp has asked that the District “broker” an agreement in regards to repairing the fence in which Mr. Harp has offered to pay to replace the two failed 4X4 fence posts provided Mr. Hoover agrees to set the posts in the ground and reinstall the undamaged fence panels. While this offer is a well-intended step in the right direction to resolve this issue, it is not within the authority of the District to act as a mediator for neighbor to neighbor disputes. Becoming party to such an agreement puts the District at an increased risk of liability that is not reasonable for the District to assume.

Mr. Harp indicated in his letter that after consulting with a local Licensed Surveyor he has concluded that the failed posts were on Mr. Hoover’s lot. However, it is unclear if the surveyor conducted an official survey using proper equipment and measurements or if he advised Mr. Harp to consult the County Plat Plan which he states in his letter was the basis for his determination.

The CC&Rs state that the owner shall maintain and repair the fences on his lot or lots. Without a surveyors report confirming that the fence is entirely on Mr. Hoover's property the District cannot compel him to absorb the entire responsibility of repairing or replacing the fence.

In addition, the CC&Rs Article 4, section 2 states that "exterior of all the initial improvements on a lot and all subsequent alterations or additions thereto shall require the prior written approval of the architectural control committee." This includes fences that are visible from the street and adjacent lots. The property owner submitting the application would submit "specifications and samples of colors and materials as are appropriate to adequately depict the style, size, location, shape, kind, color and materials." Thus, if Mr. Hoover was to take action to repair or replace the fence he would be responsible for submitting an application for approval and would have the ability to determine the specifications for the fence as long as they are approved by the Architectural Review Committee.

Overarching the scope of CC&R enforcement is California's "Good Neighbor Fence Law" Civil Code Section 841 which states in part:

(a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.

(b)(1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.

As stated in Mr. Harp's letter, he was advised by the District to pursue a resolution to this dispute by reaching an agreement with Mr. Hoover based on the direction outlined in the good neighbor fence law. The letter further states that Mr. Harp was not inclined to pursue a resolution in this manner.

Recommendation:

It is my recommendation to encourage both parties to put their differences aside and seek an amicable end to this dispute based on the good neighbor fence law. If this cannot be achieved, the District may take enforcement action against both property owners on the basis that this is a common fence.

These recommendations come after many hours of research, review, interpretation and consultation with legal counsel. I believe these recommendations are fair and unbiased and in the best interest of the community based on the facts that have been presented to me.

Nuisance legal definition of nuisance

<https://legal-dictionary.thefreedictionary.com/nuisance>

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nuisance

Also found in: Dictionary, Thesaurus, Medical, Financial, Idioms, Encyclopedia, Wikipedia.

Related to nuisance: private nuisance, public nuisance

Nuisance

A legal action to redress harm arising from the use of one's property.

The two types of nuisance are private nuisance and public nuisance. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual Trespass or physical invasion to the land. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Public Nuisance

The term *public nuisance* covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both. A defendant may also be required to remove a nuisance or to pay the costs of removal. For example, a manufacturer who has polluted a stream might be fined and might also be ordered to pay the cost of cleanup. Public nuisances may interfere with public health, such as in the keeping of diseased animals or a malarial pond. Public safety nuisances include shooting fireworks in the streets, storing explosives, practicing medicine without a license, or harboring a vicious dog. Houses of prostitution, illegal liquor establishments, Gaming houses, and unlicensed prizefights are examples of nuisances that interfere with public morals. Obstructing a highway or creating a condition to make travel unsafe or highly disagreeable are examples of nuisances threatening the public convenience.

A public nuisance interferes with the public as a class, not merely one person or a group of citizens. No civil remedy exists for a private citizen harmed by a public nuisance, even if his or her harm was greater than the harm suffered by others; a criminal prosecution is the exclusive remedy. However, if the individual suffers harm that is different from that suffered by the general public, the individual may maintain a TORT ACTION for damages. For example, if dynamiting has thrown a large boulder onto a public highway, those who use the highway cannot maintain a nuisance action for the inconvenience. However, a motorist who is injured from colliding with the boulder may bring a tort action for personal injuries.

Some nuisances can be both public and private in certain circumstances where the public nuisance substantially interferes with the use of an individual's adjoining land. For example, Pollution of a river might constitute both a public and a private nuisance. This is known as a mixed nuisance.

Private Nuisance

A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to

reasonable comfort and convenience in its occupation.

Examples of private nuisances abound. Nuisances that interfere with the physical condition of the land include vibration or blasting that damages a house; destruction of crops; raising of a water table; or the pollution of soil, a stream, or an underground water supply. Examples of nuisances interfering with the comfort, convenience, or health of an occupant are foul odors, noxious gases, smoke, dust, loud noises, excessive light, or high temperatures. Moreover, a nuisance may also disturb an occupant's mental tranquility, such as a neighbor who keeps a vicious dog, even though an injury is only threatened and has not actually occurred.

An attractive nuisance is a danger likely to lure children onto a person's land. For example, an individual who has a pool on his property has a legal obligation to take reasonable precautions, such as erecting a fence, to prevent foreseeable injury to children.

Trespass is sometimes confused with nuisance, but the two are distinct. A trespass action protects against an invasion of one's right to exclusive possession of land. If a landowner drops a tree across her neighbor's boundary line she has committed a trespass; if her dog barks all night keeping the neighbor awake, she may be liable for nuisance.

Legal Responsibility

A private nuisance is a tort, that is, a civil wrong. To determine accountability for an alleged nuisance, a court will examine three factors: the defendant's fault, whether there has been a substantial interference with the plaintiff's interest, and the reasonableness of the defendant's conduct.

Fault Fault means that the defendant intentionally, negligently, or recklessly interfered with the plaintiff's use and enjoyment of the land or that the defendant continued her conduct after learning of actual harm or substantial risk of future harm to the plaintiff's interest. For example, a defendant who continues to spray chemicals into the air after learning that they are blowing onto the plaintiff's land is deemed to be intending that result. Where it is alleged that a defendant has violated a statute, proving the elements of the statute will establish fault.

Substantial Interference The law is not intended to remedy trifles or redress petty annoyances. To establish liability under a nuisance theory, interference with the plaintiff's interest must be substantial. Determining substantial interference in cases where the physical condition of the property is affected will often be fairly straightforward. More challenging are those cases predicated on personal inconvenience, discomfort, or annoyance. To determine whether an interference is substantial, courts apply the standard of an ordinary member of the community with normal sensitivity and temperament. A plaintiff cannot, by putting his or her land to an unusually sensitive use, make a nuisance out of the defendant's conduct that would otherwise be relatively harmless.

Reasonableness of Defendant's Conduct If the interference with the plaintiff's interest is substantial, a determination must then be made that it is unreasonable for the plaintiff to bear it or to bear it without compensation. This is a **Balancing** process weighing the respective interests of both parties. The law recognizes that the activities of others must be accommodated to a certain extent, particularly in matters of industry, commerce, or trade. The nature and gravity of the harm is balanced against the burden of preventing the harm and the usefulness of the conduct.

The following are factors to be considered:

- Extent and duration of the disturbance;
- Nature of the harm;
- Social value of the plaintiff's use of his or her property or other interest;
- Burden to the plaintiff in preventing the harm;
- Value of the defendant's conduct, in general and to the particular community;
- Motivation of the defendant;
- Feasibility of the defendant's mitigating or preventing the harm;

- Locality and suitability of the uses of the land by both parties.

Zoning boards use these factors to enact restrictions of property uses in specific locations. In this way, zoning laws work to prohibit public nuisances and to maintain the quality of a neighborhood.

Defenses

In an attempt to escape liability, a defendant may argue that legislation (such as zoning laws or licenses) authorizes a particular activity. Legislative authority will not excuse a defendant from liability if the conduct is unreasonable.

A defendant may not escape liability by arguing that others are also contributing to the harm; damages will be apportioned according to a defendant's share of the blame. Moreover, a defendant is liable even where his or her actions without the actions of others would not have constituted a nuisance.

Defendants sometimes argue that a plaintiff "came to a nuisance" by moving onto land next to an already operating source of interference. A new owner is entitled to the reasonable use and enjoyment of his or her land the same as anyone else, but the argument may be considered in determining the reasonableness of the defendant's conduct. It may also have an impact in determining damages because the purchase price may have reflected the existence of the nuisance.

Remedies

Redress for nuisance is commonly monetary damages. An **Injunction** or abatement may also be proper under certain circumstances. An injunction orders a defendant to stop, remove, restrain, or restrict a nuisance or abandon plans for a threatened nuisance. In public nuisance cases, a fine or sentence may be imposed, in addition to abatement or injunctive relief.

Injunction is a drastic remedy, used only when damage or the threat of damage is irreparable and not satisfactorily compensable only by monetary damages. The court examines the economic hardships to the parties and the interest of the public in allowing the continuation of the enterprise.

A **Self-Help** remedy, abatement by the plaintiff, is available under limited circumstances. This privilege must be exercised within a reasonable time after learning of the nuisance and usually requires notice to the defendant and the defendant's failure to act. Reasonable force may be used to employ the abatement, and a plaintiff may be liable for unreasonable or unnecessary damages. For example, dead tree limbs extending dangerously over a neighbor's house may be removed by the neighbor in danger, after notifying the offending landowner of the nuisance. In cases where an immediate danger to health, property, or life exists, no notification is necessary.

Further readings

Cleary, Joseph W. 2002. "Municipalities Versus Gun Manufacturers: Why Public Nuisance Claims Just Do Not Work." *University of Baltimore Law Review* 31 (spring).

Dodson, Robert D. 2002. "Rethinking Private Nuisance Law: Recognizing Esthetic Nuisances in the New Millennium." *South Carolina Environmental Law Journal* 10 (summer).

Fischel, William A. 1985. *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls*. Baltimore, Md.: Johns Hopkins Univ. Press.

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Scott, Michael S. 2001. *Loud Car Stereos*. Washington, D.C.: U.S. Dept. of Justice, Office of Community Oriented Policing Services.

Wade, John W., et al. 1994. *Prosser, Wade, and Schwartz's Cases and Materials on Torts*. 9th ed. Westbury, N.Y.: Foundation Press.

Cross-references

Land-Use Control; Tort Law.

West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

nuisance

n. the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public. Nuisances can include noxious smells, noise, burning, misdirection of water on to other property, illegal gambling, unauthorized collections of rusting autos, indecent signs and pictures on businesses, and a host of bothersome activities. Where illegal they can be abated (changed, repaired, or improved) by criminal or quasi-criminal charges. If a nuisance interferes with another person's quiet or peaceful or pleasant use of his/her property, it may be the basis for a lawsuit for damages and/or an injunction ordering the person or entity causing the nuisance to desist (stop) or limit the activity (such as closing down an activity in the evening). (See: public nuisance, private nuisance)

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nuisance *noun* affliction, aggravation, annoyance, anxiety, bedevilment, bother, burden, cause of distress, devilment, difficult situation, difficulty, discomfort, disturbance, grievance, handicap, harassment, hardship, hindrance, imposition, inconvenience, infliction, infringement, injurious interference, interference, intrusion, irritation, molestation, obstacle, ordeal, pain, pest, plague, problem, scourge, trial, trouble, unlawful obbtruction, unwarrantable intrusion, vexation, worry

Associated concepts: abatement of a nuisance, attractive nuisance, common nuisance, continuing nuisance, nuisance at law, nuisance in fact, nuisance per se, public nuisance

Foreign phrases: Aedificare in tuo proprio solo non licet quod alteri noceat. It is not lawful to build upon one's own land what may injure another.

See also: aggravation, disadvantage, mischief, molestation

Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc.

nuisance the tort or delict of wrongful conduct by the defendant - usually of the defendant's own land - which affects the claimant's use of his (the claimant's) land. In England a public nuisance may be a crime. The core concept involves a continuing interference or harm but single instances have been held enough to prevent repetition.

It is largely a matter of fact and degree, depending upon the circumstances of the case, whether or not a nuisance has been or is being committed: 'Things which are forbidden in a crowded urban community may be permitted in the country. What is prohibited in an enclosed land maybe tolerated in the open'. Injunction in England or interdict in Scotland will be granted to prevent a nuisance being continued or repeated and damages will be granted in respect of loss caused by it. Here the laws of England and Scotland diverge.

The law of England distinguishes between public and private nuisance. A *public nuisance* is one that affects a

particular class or group of citizens. The conduct must be such as materially affects the complainer. No one can complain of a public nuisance if he is not himself able to allege and prove some special or particular damage over and above that of the ordinary public. Thus, a hole in the road would not be actionable under this head but it would become so if someone fell into it and broke a leg. *Private nuisance*, in its pure form, happens when someone interferes with another's use or enjoyment of land. This is a simple matter of balance, depending on the locality. In modern times, planning legislation has had a tremendous impact on such cases, preventing as it does certain excesses. In English law, nuisance provides the remedy for infringement of a land law servitude. A plaintiff must own or have an interest in the land in question, thus depriving the visitor of a right in private nuisance for personal injury. Generally, in England, it is thought that the standard of care is strict. However, it may well be the case that different considerations apply where the remedy is for injunction as opposed to when it is for damages. When restraining conduct, the court is more likely to take the view that if a plaintiff is suffering more than it is reasonable that he should suffer, that he be entitled to injunction. When seeking damages the courts may want to look for some blameworthy conduct, but the English law has not made this distinction firm, and it is probably still the case that liability is strict. The significance of this is that a plaintiff in England is better served by trying to make out a claim in nuisance instead of negligence, assuming the conduct is of a kind that constitutes a nuisance. In particular, the harm must usually be a continuing one.

In Scotland there is no distinction between public and private nuisance. In Scotland there will be no liability for damages without proof of fault although in most cases that would be called nuisance there will be an almost irresistible inference of fault. Scots law remains very similar to the English law where the remedy sought is interdict (the Scots equivalent of injunction), the courts will restrain any use of land that results in unreasonable inconvenience to another.

Collins Dictionary of Law © W.J. Stewart, 2006

NUISANCE, crim. law, torts. This word means literally annoyance; in law, it signifies, according to Blackstone, "anything that worketh hurt, inconvenience, or damage." 3 Comm. 216.

2. Nuisances are either public or common, or private nuisances.

3.-1. A public or common nuisance is such an inconvenience or troublesome offence, as annoys the whole community in general, and not merely some particular person. 1 Hawk. P. C. 197; 4 Bl. Com. 166-7. To constitute a Public nuisance, there must be such 'a number of persons annoyed, that the offence can no longer be considered a private nuisance: this is a fact, generally, to be judged of by the jury. 1 Burr. 337; 4 Esp. C. 200; 1 Str. 686, 704; 2 Chit. Cr. Law, 607, n. It is difficult to define what degree of annoyance is necessary to constitute a nuisance. In relation to offensive trades, it seems that when such a trade renders the enjoyment of life and property uncomfortable, it is a nuisance; 1 Burr. 333; 4 Rog. Rec. 87; 5 Esp. C. 217; for the neighborhood have a right to pure and fresh air. 2 Car. & P. 485; S. C. 12 E. C. L. R. 226; 6 Rogers' Rec. 61.

4. A thing may be a nuisance in one place, which is not so in another; therefore the situation or locality of the nuisance must be considered. A tallow chandler seeing up his baseness among other tallow chandlers, and increasing the noxious smells of the neighborhood, is not guilty of setting up a nuisance, unless the annoyance is much increased by the new manufactory. Peake's Cas. 91. Such an establishment might be a nuisance in a thickly populated town of merchants and mechanics, where Do such business was carried on.

5. Public nuisances arise in consequence of following particular trades, by which the air is rendered offensive and noxious. Cro. Car. 510; Hawk. B. 1, c. 755 s. 10; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686. From acts of public indecency; as bathing in a public river, in sight of the neighboring houses; 1 Russ. Cr. 302; 2 Campb. R. 89; Sid. 168; or for acts tending to a breach of the public peace, as for drawing a number of persons into a field for the purpose of pigeon-shooting, to the disturbance of the neighborhood; 3 B. & A. 184; S. C. 23 Eng. C. L. R. 52; or keeping a disorderly house; 1 Russ. Cr. 298; or a gaming house; 1 Russ. Cr. 299; Hawk. b. 1, c. 75, s. 6; or a bawdy house; Hawk. b. 1, c. 74, s. 1; Bac. Ab. Nuisance, A; 9 Conn. R. 350; or a dangerous animal, known to be such, and suffering him to go at large, as a large bull-dog accustomed to bite people; 4 Burn's, Just. 678; or exposing a person having a

contagious disease, as the small-pox, in public; 4 M. & S. 73, 272; and the like.

6.-2. A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. 3 Bl. Com. 1215; Finch, L. 188.

7. These are such as are injurious to corporeal inheritance's; as, for example, if a man should build his house so as to throw the rain water which fell on it, on my land; F. N. B. 184; or erect his building, without right, so as to obstruct my ancient lights; 9 Co. 58; keep hogs or other animals so as to incommode his neighbor and render the air unwholesome. 9 Co. 58.

8. Private nuisances may also be injurious to incorporeal hereditaments. If, for example, I have a way annexed to my estate, across another man's land, and he obstruct me in the use of it, by plowing it up, or laying logs across it, and the like. F. N. B. 183; 2 Roll. Ab. 140.

9. The remedies for a public nuisance are by indicting the party. Vide, generally, Com. Dig. Action on the case for a nuisance; Bac. Ab. h.t.; Vin. Ab. h.t.; Nels. Ab. h.t.; Selw. N. P. h.t.; 3 Bl. Com. c. 13 Russ. Cr. b. 2, c. 30; 10 Mass. R. 72 7 Pick. R. 76; 1 Root's Rep. 129; 1 John. R. 78; 1 S. & R. 219; 3 Yeates' R. 447; 3 Amer. Jurist, 85; 3 Harr. & McH. 441; Rose. Cr. Ev. h.t.; Chit. Cr. L. Index, b. t.; Chit. Pr. Index, b. t., and vol. 1, p. 383; Bouv. Inst. Index, h.t.

A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

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July 1, 2018

Cameron Park Community Service District
2502 Country Club Drive, Cameron Park, CA 95682
(530) 677-2231

To: CC&R Committee

Subject: CC&R Complaints by Residents of Eastwood Park, Unit 5

Over the last several months, on an almost daily basis, several residents of Chasen Drive have had to endure many offensive nuisances emanating from Mr. Chris Hoover's residence of 3248 Chasen Drive. Our formal complaints to the District (via the Compliance Officer and General Manager) have been largely ignored and/or have not been addressed with a suitable resolution.

A summary of the complaints are as follows:

1. Mr. Hoover burns noxious materials in his fireplace insert resulting in offensive smoke emanating from his chimney. This smoke interferes with the enjoyment of the most basic aspects of living, such as opening up our windows for fresh air or just sitting in our front or back yard to enjoy the weather. He uses this fireplace insert to heat his 2800 square foot house instead of using his propane furnace which means his wood burning activities occur more often than not. One time we witnessed the offensive smoke emanating from his fireplace chimney on a near 80 degree day. Mr. Hoover has been asked several times to refrain from this activity but he refuses. We have asked the Compliance Officer and the *General Manager of the District to enforce CC&R Section 3.03 Offensive Activities; Nuisances*, however they chose not to take action.
2. Mr. Hoover has installed an outside amplified sound system which is so loud we cannot enjoy the peace and quiet of our back yards. After numerous calls and complaints to the Compliance Officer and General Manager, no action has been taken. Consequently, after numerous calls to the El Dorado County Sheriff's Department, Mr. Hoover was finally charged with PC 415, Disturbing the Peace, (a misdemeanor). Charges are currently pending at the County District Attorney's Office. Clearly, this is a violation of CC&R's Section 3.03 "Offensive Activities; Nuisances" as well as Section 3.14 "Compliance with Laws".
3. Mr. Hoover parks a white, unmarked commercial vehicle, overnight, in front of his house on the wrong side of the street (facing the wrong direction). This is in violation of CA Vehicle Code 22502 "Parking on the Wrong Side of the Street". Also, the CC&R's clearly state that recreational vehicles must be parked out of sight behind a fence or wall, and that a commercial vehicle is by definition (Section 1.07), a recreational vehicle. The District has been notified of this behavior and refuses to take action, claiming that a) it

cannot be proven that it is Mr. Hoover's vehicle and b) judging that it is not a commercial vehicle. Both of these reasons for not taking any action are weak and unacceptable.

4. A 24' section of fence between 3248 Chasen, (Mr. Hoover), and 3242 Chasen, (Mr. Harp) fell on 3/21/18. When Mr. Harp informed Mr. Hoover the fence was down and offered to help put it back up Mr. Hoover stated, "this is your fence to fix because you turned me in to the District about my backyard landscape project and they made me take down the supports I had holding the fence up, now this is your fence to fix". The following day a "No Trespassing" sign was erected by Mr. Hoover threatening prosecution of all violators. On 3/30/18 the Compliance Officer & the General Manager inspected the sign and fallen fence and weeks later informed Mr. Harp that Mr. Hoover wanted to do a "good neighbor fence" repair. Mr. Harp reluctantly agreed to pay for the broken 4"x4"'s. Later Mr. Harp was informed by the Compliance Officer "the details of a good neighbor fence repair was for Mr. Hoover and Mr. Harp to work out". Because of their relationship, these terms were not acceptable to Mr. Harp and he asked a local Licensed Surveyor for help. Based on data available on the County Plat Plan, Mr. Harp has determined the failed 4"x4" posts are indeed on Mr. Hoover's lot. This fence is still down and the Compliance Officer has washed his hands of the matter. CC&R violations (Section 3.05: "Signs" and Section 4.13.E "Fences").

Without question, we find Mr. Hoover's activities to be noxious, offensive, and a disturbance to the peaceful enjoyment of our property here in Eastwood Park. We are the surrounding neighbors of Mr. Hoover, and we all live within close proximity of 3248 Chasen Drive, and we strongly believe that the residents of 3248 Chasen Dr. are in violation of the following CC&R's:

- a. Section 3.03 Offensive Activities; Nuisances
- b. Section 3.04.B Parking Vehicles
- c. Section 3.05 Signs
- d. Section 3.14 Compliance with Laws
- e. Section 4.13.E Fences





In the past, we have tried to talk with Mr. Hoover. We have made our concerns known to the District through the Compliance Officer as well as the General Manager. In all cases there has been no improvement in Mr. Hoover's behavior beyond what the County Sheriff's Department/Court has forced this resident to do, and no action has been taken against this resident by the District. We are now asking this Committee to take a close look at what we are experiencing and confirm our findings of the CC&R violations and take appropriate action to abate these activities.

We are upstanding neighbors in an exclusive neighborhood. We committed to honoring the CC&R's upon purchasing our property (i.e. we chose to play by the rules). The CC&R's are a vehicle by which good neighbors can protect their real estate investments from those who choose to ignore the rules of the subdivision. As such, it is our conviction that the rules of the

CC&R's are to be enforced and immediate action taken against the violators of 3248 Chasen Drive.

Thank you.

The following residents of Eastwood Park Unit 5 are in support of this letter and the enforcement of the aforementioned CC&R violations:

	3242 Chasen Dr
	3242 Chasen Dr.
	3252 CHASEN DR.
	3252 Chasen Dr.