

# Don't Be a Nuisance: What to Do About Nuisance Conditions in Townships

**T**he nuisance process can be a good tool for townships to manage properties that have fallen into disrepair in one way or another, and to address the accompanying complaints from neighbors. Nuisances are pesky for everyone, and we could easily spend several articles just discussing the nuisance processes. That being said, we will limit ourselves to two articles: summarizing the essentials here, and in the next magazine issue, focusing on township abatement of nuisances, including everyone's favorite: trimming and removing grass and weeds.

There are three general categories of nuisance conditions under the Ohio Revised Code: vegetation and debris, junk motor vehicles, and insecure or unsafe buildings and structures. For each category, these basic steps should be followed for declaring the condition to be a nuisance and abating it if the owner fails to do so:

1. **Determination.** The board of trustees determines the condition to be a nuisance. In all of the categories, it is statutorily required or at least advisable to make this determination by board resolution.
2. **Notice.** The township sends notice to the property owner and any holders of liens on the property. The notice must contain certain information, letting the owner and lienholders know about the township's nuisance determination, and allowing the specified amount of time for the nuisance to be addressed before the township acts to abate. In the case of an unsafe building, the notice must provide information about the opportunity for a hearing.
3. **Abatement.** If the nuisance remains on the property and owner/lienholder has not entered into an agreement with the township to address it, the township may abate the nuisance and assess the costs of doing so on the property tax duplicate.

While the processes for the three types of nuisance follow the same basic steps, the specifics of each process vary depending on the type of nuisance, so it is important to be familiar with the specific requirements for each. Also, even though a single piece of property may contain vegetation and debris, junk motor vehicles, and an unsafe structure at the same time, townships must follow the individual statutory process for the abatement of each type of nuisance.

## **Vegetation, Garbage, Refuse, and Debris - R.C. §505.87**

We've all seen them - nuisance properties like these fill the spectrum from overgrown grass and shrubs all the way to permanent outdoor "storage" of broken furniture, appliances, and equipment. To combat these unsightly conditions, a board of trustees may determine that the maintenance of vegetation, garbage, refuse, or other debris on a property constitutes a nuisance. Once such a determination is made, the board must notify the property owners and lienholders that they have seven days to abate, control, or remove the nuisance or enter into an agreement with the township for its removal. The statute includes specific requirements regarding how and where to provide



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notice and what information the notice must contain. You only need to publish notice in the newspaper if you don't know - and can't find out - the property owner's address. Otherwise, generally, you can send notice to the owner and lienholders by certified mail, or notify the owner by posting notice on the property and taking a photograph of the posting.

There is also an expedited process for repeat nuisance properties. For a repeat nuisance of vegetation and debris, within twelve consecutive months since a prior nuisance determination at that same property, the township must follow the determination and notification steps, but can allow the owner only four days, instead of seven, to take care of the nuisance issues before the township may move forward with abatement. Once the time expires, whether four or seven days, and the nuisance remains, the township may abate the nuisance, including employing the necessary labor, materials, and equipment to do so. Once the township abates the nuisance, it may certify the costs of abatement to the county auditor for addition to the owner's tax duplicate.



### ***Junk Motor Vehicles - R.C. §505.871***

The junk motor vehicle statute is another nuisance abatement tool for townships. It is a fairly recent addition to the nuisance abatement toolbox; the statute took effect in 2008. Before that, pursuant to an opinion issued by the Ohio Attorney General's Office in the 1990's, townships were considering vehicles to be "junk and debris" under the vegetation and debris statute, and abating them under that process. Now that R.C. §505.871 exists specifically for junk motor vehicles, you should follow the statutory process for those vehicles, rather than continue to consider vehicles as general junk and debris.

Under R.C. §505.871, the board of trustees shall pass a resolution determining a vehicle to be a nuisance. R.C. §505.173(E) defines a junk motor vehicle as one that is "(1) three model years old, or older; (2) apparently inoperable; and (3) extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission." Being "apparently inoperable," is subjective, based on the zoning inspector's observation of the vehicle. Being "extensively damaged..." is objective, based on the condition of the vehicle, such as whether it is missing necessary parts. Previous law required the vehicle to have a fair market value of \$200 or less, but there is no longer a "fair market value" threshold.



If the vehicle is located on public property, the board may provide for its immediate removal. If the vehicle is located on private property, the board must give the property owner 14 days to remove the vehicle from the property. If there are multiple nuisance vehicles located on the property, you can include them all in one resolution, as long as each meets the definition for a junk motor vehicle.

Just as for other types of nuisances, the board must notify property owners and holders of liens on the property that they have 14 days to remove the vehicle. The notice must generally describe the vehicle, indicate that the board has determined it to be a junk motor vehicle, and note that if the owner fails to remove it, the board may remove or have the vehicle removed and charge the expenses to the tax duplicate, which shall become a lien on the land. Notice must be given by certified mail and, if certified mail is refused or unclaimed, or if the address is not known,

notice may be published in the newspaper and posted on a structure located on the property, if there is one.

If the vehicle remains on the property after the allotted time, the board may have it removed, paying for any such services out of the general fund. One option available under the statute is having a salvage dealer or scrap facility tow away the vehicle. The statute includes a process for a salvage dealer to obtain salvage title from the clerk of courts if it wants to sell the vehicle. Once the company has removed the vehicle, the township's only involvement would be to execute the necessary affidavit if the salvage dealer wants to obtain title to the vehicle. If the vehicle owner wants to pay to get it back or make other arrangements, it would be between the salvage dealer or scrap facility and the owner to resolve those issues. Finally, townships may use any lawful means to collect their costs, including certifying the costs to the county auditor to place on the tax duplicate.

### ***Insecure or Unsafe Buildings and Structures - R.C. §505.86***

The township's ability to abate and remove nuisance structures is arguably the most powerful tool in its arsenal. Properties with unsafe, insecure, and structurally defective buildings are, at best, an eyesore and, at worst, dangerous to the surrounding community. The township has the authority to, by resolution, order the removal, repair, or securance of a building located within the unincorporated area of the township that a fire department or county building department (or other authority responsible for enforcing building regulations/conducting inspections) has determined to be insecure, unsafe, or structurally defective, or the applicable health department has declared the structure to be dangerous to life or health, or unfit for human habitation.

The township must notify all "parties in interest," by certified mail, of the township's intention to remove, repair, or secure the nuisance structure, and that the party has the right to request a hearing before the board of trustees. The party must make that request in writing to the township fiscal officer within 20 days from the date the notice was sent. A "party in interest" is defined as an owner of record or any lienholder on the property. The township may identify lienholders, if any, by obtaining a title search for the property upon which the nuisance structure is located. If the address for a party in interest is unknown and cannot reasonably be obtained, the township may fulfill this requirement by publishing the notice once in a newspaper of general circulation in the township.

In the event of an emergency, the township can give notice other than by certified mail, and with less than 30 days' notice before the removal, repair, or securance of the nuisance structure. The Revised Code does not define what specifically constitutes an emergency, and a board of trustees should proceed with caution in making such a determination.

If a "party in interest" makes a timely request for a hearing, the board of trustees is required to set the time, date, and place of the hearing, and send notice to the "party in interest" via certified mail return receipt requested. The hearing must take place between seven and 15 days from the date the party in interest requests the hearing, or be held on a mutually agreeable date to both parties.

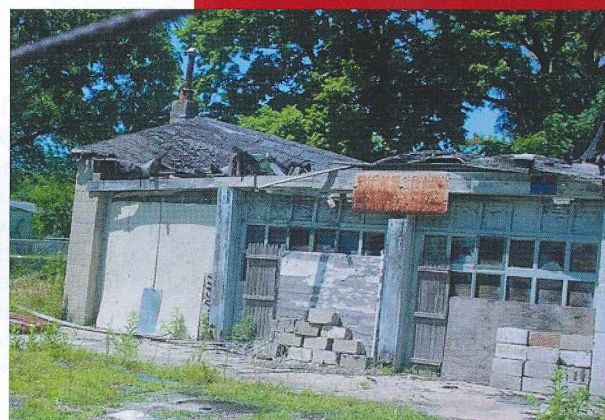


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With respect to the hearing itself, it must be "recorded by stenographic or electronic means". While this is the only express requirement for the hearing under §R.C. 505.86, at the hearing, the "party in interest" should be provided the opportunity to be present in person or through legal counsel; present arguments, evidence, and testimony under oath; cross-examine witnesses; as well as any other requirements consistent with R.C. §2506.03. R.C. §2506.03 comes into play because a "party in interest" who requests to have a hearing and is "adversely affected" by the order of the board of trustees has the ability to appeal the decision to the court of common pleas, pursuant to the provisions of R.C. Chapter 2506, which governs appeals from orders of administrative agencies. The board must render a decision on the matter no later than 30 days after the hearing or, if a hearing is not requested, within 30 days after the notice is sent to the "parties in interest", ordering the removal, repair, or securance of the structure, or dismissing the matter.

Should the board authorize the removal, repair, or securance of a nuisance structure, the cost incurred by the township must be paid out of the general fund, and collected back to the township either by (a) the fiscal officer certifying the costs, along with a description of the property, to the county auditor's office for the purpose of placing the cost upon the tax duplicate; or (b) filing a civil action against the record owner to recover the costs incurred byAs you can see, timing is everything with this process. It is important for the board of trustees, the fiscal officer, and whoever the board authorizes to prepare and send the notices to "parties in interest" to maintain open lines of communication, and be cognizant of where the township is in the overall process to ensure that the township adheres to the statutory requirements and time frames. Additionally, at any time throughout the nuisance abatement process, the township and a "party in interest" may enter into an agreement regarding the removal or repair of the structure. Obviously, the individual circumstances will control whether or not the township can realistically enter into an agreement with a "party in interest", however, in our experience, townships have had some success with these types of arrangements, and it is something to consider.

So, if a nuisance condition becomes a problem for your township, whether it's vegetation and debris, a junk motor vehicle, or an insecure or unsafe building (or any combination of these), know that you have statutory tools available to you to address the problems. Each process generally follows the steps of determination, notice, and abatement, but there isn't a one-size-fits-all approach, so be sure you're familiar with the requirements and steps for each type of nuisance. One final reminder: when it comes time for the next issue of this magazine, we'll be approaching springtime, which starts up the most wonderful time of the year - grass-cutting season - so keep an eye out for our follow-up article focusing on township abatement of vegetation and debris. ■



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