



# CLEVELAND MUNICIPAL COURT

## HOUSING DIVISION

JUDGE Cheryl M. Wiltshire

## Nuisance Abatement

### ***Administrative Action***

The Administration of the City of Cleveland has several remedies available under law **without** judicial involvement. These procedures are outlined in R. C. § 3707.01.

#### **Health Code:**

- **Determination of nuisance:** the Commissioner of Environmental Health is empowered to determine conditions that amount to nuisance, or are defined by law as a nuisance. Written notice to the property owner is required. The Commissioner can remove or abate a nuisance if the owner does not, with any costs assessed to the property. C.C.O. § 203.02.
- **Clean-Up:** Weed and grass cutting or vacant lot clean-up may be performed by the Health Department, with costs billed to the owner C.C.O. § 209.05.
- **Extermination:** The Health department can take action to prevent rodent and vermin infestation and perform exterminations as required. The city can collect any costs in a civil filing. C.C.O. § 211.03.

#### **Building & Housing Code:**

- **Repair of Property:** If the owner fails to abate a nuisance, the Director of Building and Housing may repair, remove or otherwise abate the nuisance. The owner, agent or person in control is responsible for the costs. C.C.O. § 3103.09(h).
- **Boarding:** The Director of Building and Housing has the authority to determine whether a building is structurally unsound and a nuisance. Upon the identification of nuisance, the commissioner may board the premises, and issue a violation notice to the owner. If the controlling party does not act to abate the nuisance, the city can take action. The city may also institute criminal actions against the owner.
- **Demolition:** The Director of Building and Housing may determine whether a public nuisance exists, and thereafter serve a violation notice upon the owner. When there is no owner compliance, the Commissioner may demolish or otherwise abate the nuisance. Cost recovery may be made through county assessment or through civil legal filing by the director of law. C.C.O. § 367.05. Alternative criminal misdemeanor prosecution is also available under this chapter and C.C.O. § 3103.09(j).
- **Spot Eminent Domain:** when a legislative determination of spot blight has been made by the City Council, the Director of Community Development may rehabilitate property, use eminent domain to legally acquire the property, demolish the premises to remove the blighted condition or sell the premises to the appropriate parties. C.C.O. § 324.11, R.C. § 3767.41.
- **Junk Motor Vehicles:** Junk cars can be removed from a property if they have not been housed in a garage or other suitable structure or removed from the property after notice. C.C.O. § 3103.09(i).

## **Criminal Court Action**

The City of Cleveland can criminally prosecute individuals and corporations that maintain nuisances under R.C. § 715.44. In criminal cases, the City must prove beyond a reasonable doubt that the defendant meets all the elements of the alleged offense. The defendant is entitled to certain constitutional rights as outlined in the Rules of Criminal Procedure, including the right to counsel and the right to a jury trial in a first degree misdemeanor charge. Possible criminal penalties include:

- **Fines:** The city can ask the court to criminally fine or sanction owners for owning/maintaining nuisances. R.C. § 3767.11.
- **Imprisonment:** permitted where municipal ordinances allow, and violation notices are given pursuant to sections like C.C.O. § 3103.09.
- **Contempt:** criminal contempt proceedings may be pursued by the city when violation of nuisance ordinances is proved, or when the owners' neglect has resulted in continued infractions. R.C. § 3767.24.

## **Civil Court Action**

In a civil action, the plaintiff must show that the defendant satisfies the elements of the offense by a preponderance of the evidence. A civil action may be brought by the city, a community organization, a neighbor or a tenant. The plaintiff can pursue the following remedies to combat a nuisance:

- **Injunctions/Temporary Restraining Orders:** the plaintiff may seek an injunction and/or a temporary restraining order ("TRO") to prohibit or halt nuisances while other civil procedures are ongoing. R.C. § 3707.021.
- **Permanent Injunctions:** the plaintiff also has the right to pursue permanent injunctions against continued nuisances. R.C. § 3767.02, C.C.O. § 203.05.
- **Remuneration:** the plaintiff may also seek compensation for costs associated with abatement actions pursued by the plaintiff and clean-up costs if applicable. C.C.O. §§ 203.02, 367.05.
- **Contempt:** civil contempt proceedings may be brought where owners refuse or neglect to comply with TROs, injunctions or other civil actions to abate. R.C. § 3767.07
- **Receivership:** under R.C. § 3767.41, the city, a community non-profit organization, a neighbor or a tenant can petition the court to declare a property a public nuisance, and to appoint a receiver to abate the nuisance in the short term. The court would then consider appointment of a receiver for long term renovation and restoration of the property to benefit the neighborhood.

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