

CHAPTER 1329
Nuisance Abatement

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CROSS REFERENCES

Removal of unsafe structures - see Ohio R.C. 715.26(B), 715.261

Maintaining a nuisance - see GEN. OFF. 521.06

Maintenance of buildings in unsafe condition - see GEN. OFF. 521.08

1329.01 DEFINITIONS.

As used in this chapter, "public nuisance" means a condition which exists when:

- (a) Any building or structure upon any lot of land is so out of repair or dilapidated that it endangers the public health, safety, welfare or property.
- (b) Any tree, stack or other object standing upon any lot of land is in such a condition that it endangers the public health, safety, welfare or property.
- (c) Any excavation or cellar upon any lot of land is unguarded or in such condition that it endangers the public health, safety, welfare or property.
- (d) Any accumulation upon any lot of land of earth, rubbish or other material which attracts or propagates rats, vermin or insects in such manner that it endangers the public health, safety, welfare or property.
- (e) Any building or structure upon any lot of land is so out of repair that it constitutes a fire hazard.
- (f) There is located upon any lot of land or in any building or structure located thereon rubbish or other material in such an amount that it constitutes a fire hazard.
- (g) The conduct of any activity upon any lot of land generates noxious odors, smoke, dust or dirt which endangers the public health, safety, welfare or property.

- (h) The conduct of any activity upon any lot of land generates loud, unusual or unnecessary noise, which annoys, disturbs, injures or endangers the public health, safety, welfare or property.
- (i) Any material which, by its nature, endangers the public health, safety, welfare or property, is placed, thrown or swept into any street, highway, alley, park or public ground.
- (j) Any condition exists which, at common law, was classified as a public nuisance.
- (k) Any condition exists which has been declared a public nuisance by the Ohio Revised Code.
(Ord. 87-91. Passed 9-4-91.)

1329.02 COMPLAINTS; INSPECTION OF PREMISES.

(a) Whenever a complaint is made to the Building Inspector of the existence of a public nuisance as defined in Section 1329.01, he shall promptly inspect or cause an inspection to be made of the premises on which it is alleged that such public nuisance exists. Should the Building Inspector, after such inspection, find that a public nuisance exists, he shall promptly notify the Fire Chief of the City and the Commissioner of Health of Lucas County and request such officials to make an inspection of the premises.

(b) Upon receipt of the notice required by subsection (a) hereof, the Fire Chief and Commissioner of Health shall inspect such premises and make a written report of their findings, which, together with the report of the Building Inspector, shall be filed with the Director of Public Service of the City.

(c) Should the Fire Chief or the Commissioner of Health concur in the finding of the Building Inspector that a public nuisance exists, abatement of such public nuisance shall proceed in accordance with the provisions of Section 1329.03 and 1329.04.
(Ord. 87-91. Passed 9-4-91.)

1329.03 SUMMARY ABATEMENT.

(a) Should the Code Official or his designee, and either the Fire Chief or Commissioner of Health find that a public nuisance exists and that the nature thereof is such as to require its summary abatement, the Director of Public Service shall cause photographs to be made of such nuisance and shall file and keep in his office such photographs along with the reports of the Code Official or his designee, Fire Chief and Commissioner of Health pertaining to the public nuisance. The Director of Public Service or his designee shall then determine the individual, firm or corporation who from the records in the Auditor's Office of Lucas County, appears to be the titled owner of the property and immediately cause a written notice to be served on such titled owner. Notice shall be served personally on the titled owner or by certified mail with a return receipt requested. If service of such written notice is unable to be perfected by the aforesaid methods, then the Director of Public Service or his designee shall cause a copy of the aforesaid notice to be left with the individual, if any, in possession of the premises on which the public nuisance exists, or if there is no individual in possession of the premises, he shall cause a copy of the notice to be posted on the premises.

(b) The notice required by subsection (a) hereof shall state, in brief, the findings with respect to the existence of the public nuisance by the Code Official or his designee and the concurrence of either the Fire Chief or Commissioner of Health. The notice shall further state that unless the owner causes the nuisance to be abated by the City at the expense of the owner. (Ord. 98-2002. Passed 10-21-02.)

1329.04 NONSUMMARY ABATEMENT.

(a) Should the Code Official or his designee, and either the Fire Chief or Commissioner of Health find that a public nuisance exists, but that the nature thereof is not such as to require summary abatement, reports of their findings shall be made and filed with the Director of Public Service. The Director of Public Service shall cause photographs to be made of such nuisance and shall file and keep in his office such photographs along with the reports of the Code Official or his designee, Fire Chief and Commissioner of Health pertaining to the public nuisance. The Director of Public Service or his designee shall then determine the individual, firm or corporation who from the records in the Auditor's Office of Lucas County, appears to be the titled owner of the property and shall, within five days, cause a written notice to be served on such titled owner. Notice shall be served by certified mail with a return receipt requested. If service of such written notice is unable to be perfected, then the Director of Public Service or his designee shall cause a copy of the aforesaid notice to be left with the individual, if any, in possession of the premises on which the public nuisance exists, or if there is no individual in possession of the premises, he shall cause a copy of the notice to be posted on the premises.

(b) The notice required by subsection (a) hereof shall state, in brief, the findings with respect to the existence of the public nuisance by the Code Official or his designee and the concurrence of either the Fire Chief or Commissioner of Health. The notice shall further state that unless the owner causes the nuisance to be abated within thirty days after service of the notice, the nuisance shall be abated by the City at the expense of the owner. (Ord. 98-2002. Passed 10-21-02.)

1329.05 APPEAL PROCEDURE.

(a) The owner of the premises, or his designated representative, upon which a public nuisance is located and who has been served with a notice, pursuant to Section 1329.03, that a public nuisance exists and that it must be abated within seventy-two hours may, within that seventy-two hour period, appear in person before the Director of Public Service and request a hearing on the question of whether a public nuisance exists, as defined in Section 1329.01, and merits summary abatement.

(b) A hearing held pursuant to subsection (a) hereof shall be held no later than three business days from the date of the in-person request for a hearing by the owner of the premises upon which the public nuisance is located. The Director of Public Service shall provide to the owner the hearing date, time and place at the time the in-person request for a hearing is made.

(c) The owner of the property upon which a public nuisance exists and who has been served with a notice, pursuant to Section 1329.04, that a public nuisance exists and that it must be abated within thirty days, may, within seven days after receipt of such notice, make a written demand to the Director of Public Service for a hearing on the question of whether a public nuisance exists as defined in Section 1329.01.

(d) A hearing held pursuant to subsection (c) hereof shall be held no later than ten days following receipt of the written demand to the Director of Public Service and at least three days notice of the hearing shall be given to the individual who made the written demand for the hearing. (Ord. 87-91. Passed 9-4-91.)

1329.06 HEARING PROCEDURE.

(a) All hearings requested pursuant to the provisions of Section 1329.05 shall be conducted before a Hearing Board (which shall be known as the Nuisance Abatement Board) comprised of the Mayor, the Director of Law, and the Director of Public Service, or their designated representatives. The Board may affirm, reverse or modify the finding of a public nuisance and the issuance of the abatement order by the Building Inspector by a majority vote.

(b) A copy of the decision of the Hearing Board shall be served upon the person who made the written demand for the hearing, by certified mail with a return receipt requested. In cases involving summary abatement, a decision shall be rendered at the conclusion of the hearing. The decision of the Nuisance Abatement Board shall be final and conclusive, unless an appeal is filed in a court of competent jurisdiction within ten days of the date of the delivery of the decision.

(c) All hearings held by the Nuisance Abatement Board shall be administrative in nature. At all hearings conducted pursuant to this section, any party may be represented by legal counsel. The rules of evidence utilized by the courts shall not be applicable in hearings before the Board. The Hearing Board is hereby empowered to subpoena witnesses and take testimony under oath.
(Ord. 87-91. Passed 9-4-91.)

1329.07 ABATEMENT BY CITY.

(a) Should a public nuisance not be abated within the time stated in the notice given pursuant to this chapter, or within such additional time as the Nuisance Abatement Board may grant for such abatement, the Director of Public Service or his designated representative shall have the right to enter upon the premises and abate such nuisance. In abating a public nuisance, the Director of Public Service

may take such action as is necessary to complete the abatement and should it be practicable to sell or salvage any material resulting from such abatement, he may cause the same to be sold at public or private sale at the best price obtainable and shall keep an account of the proceeds thereof. Such proceeds shall be deposited in the General Fund of the City. Should the amount recovered be insufficient to pay the cost of the abatement, the deficiency shall be reported to Council, which shall levy an assessment against the property upon which the nuisance was abated and cause such assessment to be certified and collected as other assessments by the City. Should the amount recovered exceed the cost of such abatement, the amount of such excess shall be paid to the owner of the premises upon the filing of a claim thereto and proof of title and right to such surplus.

(b) The Director of Public Service may utilize any labor or equipment of the City in abating a public nuisance or may contract for the abatement thereof provided that Council authorizes the expenditure of funds for such abatement.
(Ord. 87-91. Passed 9-4-91.)

1329.08 EMERGENCY ABATEMENT.

(a) Whenever a public nuisance exists as defined in Section 1329.01 and the nature thereof constitutes an emergency as defined in subsection (b) hereof, the City may take immediate action to abate the nuisance and such abatement may take place without prior notice to the titled owner of the premises on which the public nuisance exists. Notice of the action taken to abate the nuisance shall immediately be sent to the titled owner by certified mail with a return receipt requested.

(b) As used in this section, "emergency" means an unforeseen combination of circumstances which calls for immediate action in order to preserve the public health, safety, welfare or property.

(c) In any proceeding pursuant to this section, the determination that a public nuisance exists and that the nature thereof constitutes an emergency as defined in subsection (b) hereof shall be made solely by the Building Inspector and the concurrence of the Fire Chief or the Lucas County Health Commissioner shall not be required.
(Ord. 87-91. Passed 9-4-91.)

1329.09 AUTHORITY OF CITY.

The provisions of this chapter shall be deemed to be an enlargement and not a limitation or restriction on the power or authority of the City or any officer thereof to take any action or bring any suit or proceeding in respect to public nuisances otherwise provided for by law or ordinance of the City.
(Ord. 87-91. Passed 9-4-91.)

1329.10 UNLAWFUL INTERFERENCE PROHIBITED.

No person shall interfere with any municipal officer, assistant, subordinate, employee or agent while he is engaged in or about the carrying out of any of the duties set forth in this chapter. (Ord. 87-91. Passed 9-4-91.)

1329.11 CONFLICT OF LAW.

In the event of conflict between any provisions of this chapter, including any rules and regulations adopted pursuant to its provisions and any other provisions of the Codified Ordinances, including any rules and regulations adopted pursuant to such Codified Ordinances, the more restrictive provision or provisions shall prevail and control.
(Ord. 87-91. Passed 9-4-91.)

1329.99 PENALTY.

(a) Whoever refuses or neglects to obey a proper order issued pursuant to this chapter shall be guilty of a misdemeanor of the fourth degree. Each and every day such order is not obeyed shall be deemed to be a separate offense.

(b) It shall be an affirmative defense to the refusal or neglect to obey a proper order issued pursuant to this chapter that the person was willing to comply with the order but was financially unable to do so.

(c) Whoever violates the provisions of Section 1329.10 shall be guilty of a misdemeanor of the second degree.
(Ord. 87-91. Passed 9-4-91.)