LEAGUE of MINNESOTA CITIES

INFORMATION MEMO

Public Nuisances

Defines public and private nuisances, giving common examples such as weeds, smoke, noise, animals and more. Examines tools cities can use to effectively and fairly prevent nuisances or eliminate nuisance conditions when they occur. Evaluates complaint versus inspection enforcement options.

RELEVANT LINKS:

I. Considering community nuisances

Nuisances impact a community's livability. Minnesota cities provide for and protect the general welfare of its residents. This can include the prevention or abatement of various nuisance activities. In addition, state statutes provide cities the specific authority to abate nuisances within their jurisdictions.

Although it may seem relatively simple in theory, nuisance enforcement is much more difficult in practice. When adopting local regulations, cities need to consider many things, such as:

- Is the conduct or activity really a nuisance?
- Does that type of activity negatively impact the entire community or only certain individuals?
- Will we actively investigate nuisance conditions, or will we rely on resident complaints?
- How will we address an individual's rights when the city investigates or removes nuisance conditions?
- What resources do we have (or need) to enforce our ordinances?

Enforcement can be difficult, even in the most obvious situations. The "nuisance" owner may honestly have no idea that the use of his or her property is negatively impacting the community. Nuisance owners often have their own questions, such as:

- Why am I required to shovel the sidewalk in front of my property?
- Who are you to tell me how loud I can play my music?
- Why should my neighbors care how many cars I park on my property?
- Don't you need a warrant to enter my property?
- These are questions city officials should be prepared to answer.

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RELEVANT LINKS:

II. What is a nuisance?

Minn. Stat. § 561.01.

Matter v. Nelson, 478 N.W.2d 211 (Minn. Ct. App. 1991).

See *Public Nuisances*, LMC Model Ordinance.

As defined by statute, a nuisance is anything injurious to health, indecent or offensive to the senses, or that obstructs the free use and comfortable use of life or property. Nuisance laws attempt to balance the competing interests and uses of property. As such, nuisance regulations commonly address neighborhood and land use issues, such as zoning, building codes, and fire codes, as well as more general quality-of-life concerns. City ordinances tend to provide a more detailed definition for nuisance conditions within a jurisdiction.

Highview N. Apts. v. County of Ramsey, 323 N.W.2d 65 (Minn. 1982).

Nuisances can spring up in a variety of ways. A nuisance may be created by:

- An intentional act.
- Negligent conduct.
- An ultra-hazardous activity.
- A violation of state statute.
- A violation of city ordinance.
- Any other wrongful (or "tortious") activity.

Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc., 624 N.W.2d 796. (Minn. Ct. App. 2001).
28A Minn. Prac., Elements of an Action § 18:1-2 (2016).

With nuisances, a person's intent is often immaterial; the person's motive or intent doesn't necessarily enter into the analysis of whether the condition or conduct is a nuisance. While nuisances may often include negligent conduct, determining whether an individual failed to exercise due care is not always critical. Consequence, rather than intent or care, is the primary concern.

See Part V – *Common nuisances*.

Nuisances may occur when someone fails to do something that is required. For example, the failure to cut one's grass may become a nuisance. Nuisances can also occur when people do something they shouldn't. Common examples of these action-based nuisances are: vehicle noise; accumulation of garbage or other junk; and parking an excessive number of vehicles at one location.

See LMC information memo, *Zoning Guide for Cities*.

Often, the location and its surroundings are critical in determining if a nuisance exists. Something considered a nuisance in a higher density, residential area may be appropriate in an industrial zone (or in another city altogether).

III. Creation and classification

Nuisances can generally be categorized as follows:

RELEVANT LINKS:

A. Nuisance per se

Robinson v. Westman, 224 Minn. 105, 29 N.W. 1 (1947). *State v. Lloyd A. Fry Roofing Co.*, 310 Minn. 535, 246 N.W.2d 692 (Minn. 1976).
See Part IV – A – 2 – *Injunctions and abatements*.

A "nuisance per se" (or "nuisance at law") is an act, occupation, or structure which is a nuisance at all times and under all circumstances, regardless of the actual location or its surroundings. In the case of a nuisance per se, the right to relief is established more simply through proof of the act itself. For example, conduct specifically prohibited by state statute or local ordinance would be a nuisance per se.

B. Nuisance in fact

Olsen v. City of Minneapolis, 263 Minn. 1, 115 N.W.2d 734 (Minn. 1962).

A "nuisance in fact" is an act, occupation, or structure that becomes a nuisance based upon its relationship to its surroundings, its location, or the manner in which it is performed or operated.

C. Ordinance classifications

See *Public Nuisances*, LMC Model Ordinance.
See Part IV – *Public vs. private nuisances*.

When defining nuisance activities, it is quite common for city ordinances to classify nuisances with the following general classifications. Such classifications separate nuisances by the harms that they cause, but also upon the broad police powers a city has to remedy such situations. It is quite possible for each category to include both per se and in fact nuisances.

1. Against the peace

Certain actions can be categorized as a "nuisance against the peace." These and similar conditions can create fire, traffic, or other safety hazards:

- Snow, ice, or other obstructions impacting city streets and sidewalks.
- Trees or other materials blocking traffic or sightlines.
- Unnecessary or excessive noises and vibrations.
- Accumulation of old machinery, appliances, motor vehicles, and the like.

2. Against the quality of life

Minn. Stat. § 609.72.

State v. Hensel, 901 N.W.2d 166 (2017).

Some activities impact more generally upon a community's "quality of life":

- Disorderly conduct.
- Use and/or sale of drugs and alcohol.
- Prostitution.
- Loud music.
- Barking dogs or animal fighting.

RELEVANT LINKS:

3. Affecting morals

Some are categorized due to the detrimental impact on community morals:

Minn. Stat. § 609.755.

Minn. Stat. § 609.322.

Minn. Stat. ch. 340A.

- Use of illegal gambling devices.
- Houses of prostitution.
- Illegal sale or production of alcoholic beverages.

4. Affecting public health

Some activities are nuisances because they impact public health:

Minn. Stat. §§ 18.76-.91.

- Accumulation of rotting food, household wastes, and other refuse.
- Animals running at large.
- Noxious weeds.

IV. Public vs. private nuisances

In evaluating how it will respond to nuisances a city must first decide whether something is a public or private nuisance.

Handbook, *City Regulatory Functions*.
Excelsior Baking Co. v. City of Northfield, 247 Minn. 387, 77 N.W.2d 188 (Minn. 1956).

Public nuisances affect a considerable number of people; they violate public rights and produce a common or general injury, or they injure or annoy the portion of the public that comes into contact with them. Because they harm the general public, they can be addressed through city action.

Hill v. Stokely-Van Camp, Inc., 260 Minn. 315, 109 N.W.2d 749 (Minn. 1961).

A private nuisance, on the other hand, produces damages or injuries to only one person or a few people. As such, the prevention or abatement of a private nuisance is generally the responsibility of the individual injured, not the city.

Aldrich v. Wetmore, 52 Minn. 164, 53 N.W. 1072 (Minn. 1893).
Minn. Stat. § 609.74.
See Part VII – *Remedies*.

Nuisances can be both public and private. For example, a tree on private property could overhang both the public right of way and the adjoining private property. Public nuisances are generally remedied by criminal prosecution or injunction or abatement actions. Private nuisances are typically remedied by a private civil action.

When the city receives a nuisance complaint, alleging some harmful or inappropriate conduct, city officials should consider the following questions:

- Is the activity actually a nuisance (as provided in state law or as defined in the city ordinances)?
- If it is a nuisance, is it a public or private nuisance?
- If it is a public nuisance, what enforcement actions should be used?

RELEVANT LINKS:

A. Public nuisances

Victor E. Schwartz & Phil Goldberg, The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort, 45 Washburn L.J. 541 (2006).

Public nuisance laws have developed over centuries of English and U.S. court decisions (common law). In addition, state and local governments determine through state statutes and/or local ordinances what are considered nuisance activities for a particular jurisdiction.

Nuisance laws have evolved over time and will continue to do so. With more and more people living and working closely in our cities, individuals have a greater opportunity to impact the living conditions of their neighbors. Changes in industrial and commercial practices also lead to different beliefs on what are appropriate uses of property, real and personal, and what is not proper.

Kelsey v. Chicago R.I. & P.R. Co., 264 Minn. 49, 117 N.W.2d 559 (Minn. 1962).

Public nuisances negatively impact a community—perhaps the city at large, or an otherwise significant area such as a neighborhood. Public nuisance laws address both intentional acts and negligent conduct.

1. Statutory criminal offenses

Minn. Stat. § 609.74.

State statutes provide that a person is guilty of maintaining a public nuisance (a misdemeanor offense) when he or she, by an affirmative action or upon a failure to act, does any of the following:

- Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public.
- Interferes with, obstructs, or renders dangerous for passage any public highway, right-of-way, or waters used by the public.
- Is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

State v. Nelson, 189 Minn. 87, 248 N.W. 751 (Minn. 1933). *Borchardt v. City of North Mankato* (Minn. Ct. App. Oct. 4, 2021) (unpublished opinion).

Minn. Stat. § 609.745.

Both the person in control of the real property where a public nuisance is maintained, as well as a property owner who rents property with knowledge of the nuisance conditions, may be guilty of a misdemeanor. Statutory nuisance violations can be enforced through criminal prosecutions.

2. Injunctions and abatements

Minn. Stat. §§ 617.80-.87.

In addition to possible criminal prosecutions, the state statutes also provide a mechanism for obtaining temporary or permanent injunctions or orders for abatement of certain defined public nuisance activities. An injunction is an order that requires a person to stop doing something that harms (e.g., refraining from loud noises, odors, etc.); an abatement order would require a harmful condition to be removed from the property (e,g., cutting weeds, draining stagnant water, etc.).

RELEVANT LINKS:

Minn. Stat. § 617.81, subd. 2.

Minn. Stat. § 617.80, subd. 2.

For purposes of statutory injunction or abatement proceedings, a public nuisance exists upon proof of one or more separate incidents committed within the previous 12 months either within a building or upon the land surrounding the structure of:

- Prostitution or prostitution-related activity.
- The unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances.
- Selling alcohol without a commercial license and/or the unlawful sales or gifts of alcohol to persons under 21 years of age, when multiple violations occur during the same behavioral incident when the building is not occupied by the owner or a tenant, lessee, or occupant.
- The unlawful use or possession of a dangerous weapon.

Minn. Stat. § 340A.401 (unlicensed sales).
Minn. Stat. § 340A.503, subd. 2(1) (persons under 21 years of age).

Minn. Stat. § 609.02, subd. 6.

Minn. Stat. § 617.81, subd. 2.

In addition, for purposes of injunction or abatement, a public nuisance also exists upon proof of two or more separate behavioral incidents committed within the previous 12 months within a building (or upon the land surrounding the structure) of:

- Gambling or gambling-related activities.
- Maintaining a public nuisance as defined by Minn. Stat. § 609.74, clause (1) or (3).
- Permitting a nuisance to occur in violation of Minn. Stat. § 609.745.
- The sale of alcoholic beverages without commercial license.
- The unlawful sale or gifts of alcoholic beverages to an individual under 21 years of age.
- The violation by a commercial enterprise of state or local licensing regulations, state statute, or local ordinance prohibiting the maintenance of a public nuisance.

See Part IV – A – 1 – *Statutory criminal offenses*.

Minn. Stat. § 609.745.

Minn. Stat. § 340A.401.

Minn. Stat. § 340A.503, subd. 2(1).

Minn. Stat. § 617.81, subd. 2(c).

To obtain an injunction or abatement order, proof of each element of the conduct constituting the nuisance must be established by clear and convincing evidence.

3. Court decisions

35 Dunnell Minn. Digest Nuisances §§ 4.00-.15 (4th ed. 1997).

Minnesota courts have found, among others, the following specific circumstances to be nuisances:

- Accumulation of filth.
- Noise.
- Offensive odors.
- Automobile wrecking.
- Houses of prostitution.
- The operation of steam shovels.
- Hazardous buildings.

RELEVANT LINKS:

- Three or more people obstructing the free passage of sidewalk traffic.
- Icy sidewalks or driveways.
- A building overhanging a public street.
- Stockyards, slaughtering houses, and rendering works.
- Gases and gas odors, including those emanating from gas plants, petroleum tanks, and engines.
- Smoke, dirt, and cinders emitted from chimneys and smoke stacks.
- Obstructions or pollution of public streets or waters.
- Discharge of water and sewage unto adjacent lands.
- Cesspools.

4. Local regulation

See Part VI – *Municipal regulations*.

In addition to the statutory and the common law authorities, cities have the ability to define and establish through local ordinances additional nuisance conduct—so long as it is able to demonstrate that the condition or activity is a public nuisance.

B. Private nuisances

Minn. Stat. § 561.01.
"Minnesota's Public and Private Nuisance Laws," Minnesota House Research (July 2015).
Holmberg v. Bergin, 285 Minn. 250, 172 N.W.2d 739 (Minn. 1969).

Similar to public nuisances, a private nuisance is anything injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, interfering with the comfortable enjoyment of life or property. An activity does not need to be unlawful to be a nuisance; for example, a tree overhanging into a neighbor's yard may become a private nuisance.

Hill v. Stokely-Van Camp, Inc., 260 Minn. 315, 109 N.W.2d 749 (Minn. 1961).

A private nuisance harms few persons. As such, the responsibility for prevention or abatement is the responsibility of those harmed and is not a proper ground for city actions. In contrast to public nuisances, which are redressed by state prosecution or abatement actions, private nuisances are only addressed by the individuals harmed through private actions.

C. Creating a private duty

Cracraft v. City of St. Louis Park, 279 N.W.2d 801 (Minn. 1979).

Even though cities do not generally play a role in abating private nuisances, in limited circumstances it is possible for a city to assume a duty and subsequent responsibilities in protecting or preventing private harms from occurring. For such a private duty to exist, an individual will need to demonstrate that:

- The city had actual knowledge of the dangerous condition.
- There was reasonable reliance by those subject to the council's representation and conduct and the reliance was based on specific actions or representations which caused the person harmed to forgo other means of protection.

RELEVANT LINKS:

- The ordinance set forth a mandatory act intended to protect a particular class of people and not just the general public.
- The city's action or inaction increased the risk of harm.

Danielson v. City of Brooklyn Park, 516 N.W.2d 203 (Minn. Ct. App. 1994).

The burden will be on the individual to demonstrate that the city has assumed such responsibility. While courts have been reluctant to find cities liable for otherwise private injuries, examples where such a duty has been found includes:

Hansen v. City of St. Paul, 298 Minn. 205, 214 N.W.2d 346 (Minn. 1974).

Gilbert v. Billman Const., Inc., 371 N.W.2d 542 (Minn. 1985).

- Someone bitten by a dangerous dog running at large, where the city had knowledge but failed to enforce its own ordinance.
- An employee who exceeds their authority by either making specific promises to a homeowner that the conditions will be remedied or provides a guarantee or approval as to private conditions.

It is important for cities to enforce their ordinances and to refrain from making promises that they are unable or unwilling to keep.

V. Common nuisances

Nuisances are typically location-specific. Depending on the location, an activity could be either appropriate or terribly harmful. It is generally inappropriate to simply label something a nuisance without investigating the actual impact upon the community. However, there are particular broad categories of activities that often constitute nuisances.

A. Noise

Sounds are a byproduct of life. Inevitably, noise can negatively impact the quality of life. Typical complaints involve:

- Barking dogs.
- Lawn mowers, leaf blowers, and other similar equipment.
- Radios.
- Construction equipment.
- Parties, concerts, and other social events.
- Motor vehicles.

Village of Wadena v. Folkestad, 194 Minn. 146, 260 N.W. 221 (Minn. 1935). *City of Edina v. Dreher,* 454 N.W.2d 621 (Minn. Ct. App. 1990).

For noise to be considered a nuisance, it must significantly interfere with one's enjoyment of life and property. Slight or occasional noises are typically not sufficient to create a nuisance condition. Similarly, those "usual" noises, such as the afternoon operation of a lawn mower, don't generally rise to nuisance levels.

Minn. Stat. § 116.07. MPCA.

Although the Minnesota Pollution Control Agency (MPCA) has statewide authority over noise and noise control issues, local noise ordinances enable city officials to address community concerns.

RELEVANT LINKS:

Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686 (1971).

Cities should be prepared to defend the specific regulations and criteria, as subjective standards are more vulnerable to legal challenge.

B. Weeds, trees, and long grass

Failing to control a property's vegetation can become a public nuisance.

Minn. Stat. §§ 18.75-.91. *State v. Boehm,* 92 Minn. 374, 100 N.W. 95 (Minn. 1904). *Holmberg v. Bergin,* 285 Minn. 250, 172 N.W.2d 739 (Minn. 1969). *Jones v. Farnham,* 299 Minn. 156, 216 N.W.2d 834 (Minn. 1974). *Borchardt v. City of North Mankato* (Minn. Ct. App. Oct. 4, 2021) (unpublished opinion).

The Minnesota Noxious Weed Law requires anyone who owns and occupies land to control or eradicate all noxious weeds on the property. Excessive weeds, grass and other vegetation (often intermixed with trash and other decaying property) are not only physical blight conditions, but can create fire and other safety hazards. Overhanging tree branches and expanding tree roots are often private nuisances between neighbors, but can also block intersection sight lines, push up sidewalks, and clog city sewer lines. Neglected diseased or dying trees can affect an entire community and cause significant ecological and structural hardships.

See Part VII – F – *Abatement*.

These conditions are often abated by city officials as needed.

C. Streets and sidewalks

Local regulations often address the use and possible misuse of a city's streets and sidewalks system.

LMC information memo, *Acquisition and Maintenance of City Streets*.

Since the accumulation of snow and ice can create hazardous conditions, cities often require adjoining residents to clear sidewalks of snow and ice within a reasonable time and prohibit parking on city streets until plowing is complete. Failure to comply with these regulations can result in abatement, which could include shoveling the sidewalk and fining the property owner or assessing the property, and towing and impounding of vehicles.

Some cities choose to regulate parking on city streets through specific regulations. For instance, ordinance provisions may restrict or prohibit:

- Parking or operating commercial vehicles in residential areas.
- Overnight parking of campers and recreational vehicles.
- Parking vehicles for sale in the public right-of-way.

Handbook, *City Licensing*.

In an attempt to establish an acceptable balance concerning street usage, some cities issue licenses or permits, or establish regulations for some city street and sidewalks activities, including:

LMC information memo, *Regulating Peddlers, Solicitors and Transient Merchants*.
LMC informational memo, *Sign Ordinances and the First Amendment.*

- Parades, demonstrations, and protests.
- Street dances and block parties.
- Hotdog vendors, food trucks, and other transient merchant activities.
- Sidewalk cafes.
- Informational signs.

RELEVANT LINKS:

D. Motor vehicles

Minn. Stat. ch. 168B.

Minn. Stat. § 168B.04.

Pursuant to state statutes, certain motor vehicles are considered health and safety hazards. Since they can be attractive to children and harbor rodents and other pests, the presence of abandoned or junk vehicles can lead to various concerns. Cities have the authority to take into their custody:

- Abandoned vehicles, left on public or private property with no potential for further use.
- Junk vehicles (unregistered and only valued at the scrap metal within).
- Unauthorized vehicles, in circumstances provided for in state statute.

Minn. Stat. § 168B.04, subd. 2.

Minn. Stat. § 168B.09.

When vehicles are impounded, cities are required to follow specific notice requirements concerning both the taking of the vehicle as well as the possible sale or disposal as provided by the statutes. Cities may also adopt ordinances so long as they are not less stringent than state law.

E. Adult uses

Minn. Stat. ch. 617.

Northshor Experience, Inc. v. City of Duluth, MN, 442 F.Supp.2d 713 (D. Minn. 2006).

Many cities have adopted ordinances to regulate adult uses. There is also general authority provided in state law for those decisions (though it is important to note that the statutes' constitutionality has been challenged). Public nuisances associated with the secondary effects of many adult uses can be addressed by a narrowly tailored adult use ordinance.

Handbook, *City Licensing*.

While state law prohibits indecent exposure and obscene materials and performances, many adult uses, such as strip clubs and sexually oriented adult bookstores, are not per se obscene. In many cases, such establishments are subject to certain First Amendment protections and cannot generally be prohibited within a jurisdiction. More often, however, cities are restricted to regulating adult businesses, requiring business licenses, and limiting locations through zoning code restrictions.

F. Fires and smoke

Burning Permit Information, DNR Forestry Division.

With limited exceptions provided for campfires, cooking fires, and the like, open burning is a highly regulated activity in Minnesota. Many materials are specifically prohibited from open burning and most burning require first obtaining a burning permit from the Minnesota Department of Natural Resources (DNR) or one of its agents. Cities have statutory authority to further restrict or prohibit open burning within their jurisdiction.

Of particular concern is the operation of backyard solid fuel burning stoves. Because these stoves are fully enclosed with smokestacks, they fall outside of those state regulations on open burning.

RELEVANT LINKS:

State v. Chicago, M. & St. P. Ry. Co., 114 Minn. 122, 130 N.W. 545 (Minn. 1911).

However, these stoves produce a low temperature burn and typically have very short smokestacks, emitting a tremendous amount of smoke at or near ground level. The Minnesota Supreme Court determined that excessive smoke can be a public nuisance when it invades a residence or place of occupation. Many cities have adopted ordinances regulating the use of solid fuel burners.

G. Animals

See *Lead v. Inch,* 116 Minn. 467, 134 N.W. 218 (Minn. 1912).

Communities use a variety of measures to regulate animal nuisance problems within their jurisdictions. As cities have become more densely populated and the variety and number of pets have changed (i.e., pot-bellied pigs, poultry, apiaries), the need to regulate has increased. Animals, pets or otherwise, and their owners can negatively impact a community in many ways, including:

Minn. Stat. § 347.04.

- Excessive barking, howling, whining, or other noise problems.
- Injuring or inflicting great bodily harm.
- Running at-large.
- Keeping of farm or other wild/non-domesticated animals.
- Having too many animals at one location.
- Creating bad odors.
- Having and possibly spreading disease.
- Causing significant property damage.
- Leaving animal waste on public or private property.

Holt v. City of Sauk Rapids, 559 N.W.2d 444 (Minn. Ct. App. 1997).
See Part IX – B – *Notice-due process*.

As a result of these and other justifications, animal and pet regulations have been found to be a proper exercise of a city's police powers. Although due process is critical whenever private property is entered or personal property is removed, extra care should be followed to ensure that an owner's rights are provided when animals are impounded.

H. Water

Minn. Stat. § 429.021.

See Part XI – *Special assessments*.

Minnesota cities have used their authority to abate various water-related nuisances such as draining and filling of swamps, marshes, and ponds on public or private property. Subject to compliance with DNR regulations, cities are authorized to undertake and finance such public improvements, at least partially, through the special assessment process.

I. Building and property conditions

See Part IV – A – *Public nuisances*.

Many problems arise when private buildings and their surrounding properties are not properly maintained.

RELEVANT LINKS:

Minn. Stat. § 617.80.
Minn. Stat. § 617.81.

Cates v. Rose Bros., 182 Minn. 494, 234 N.W. 681 (1931).

Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*.

Fortunately, state statutes provide significant authority to impose criminal penalties on individuals who maintain properties that constitute a public nuisance, as well as a process to abate such conditions when they do occur. In landlord-tenant situations, both tenant and owner may be held responsible for nuisance acts occurring on the property.

In addition, cities can enforce building and/or property "maintenance" codes, providing an additional local regulatory option. A typical property regulation may address outdoor storage, including what may be stored outside, how much/many items may be stored on the property, how long something may be stored outside, and different standards for front and back yards.

While important everywhere, communities interested in renewal and redevelopment often make the elimination of nuisances a higher priority and seek various methods—including criminal prosecutions, active inspections, or abatement procedures—to achieve optimal results. This can be of particular importance when economic conditions result in an increased number of vacant and/or foreclosed properties.

J. Hazardous and vacant properties

Minn. Stat. §§ 463.15-26.

Ukkonen v. City of Minneapolis, 280 Minn. 494, 160 N.W.2d 249 (Minn. 1968).

The Hazardous and Substandard Buildings Act provides the procedure cities may use to address hazardous buildings and dangerous excavations within their communities. A "hazardous building" is "any building which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety and health."

Minn. Stat. § 463.17.

Cities typically first notify the owner of record to request the voluntary repair or removal of the hazardous condition or structure. If the owner is unwilling to repair, or if repair or removal is impractical, a city may choose to take one of the following actions:

Minn. Stat. § 463.151.

- Upon the consent in writing of all owners of record, tenants, and all lien holders of record, the city itself may remove or raze any hazardous building or remove or correct any hazardous condition, assessing the costs incurred against the property.

Minn. Stat. ch. 117.

- Acquire the hazardous building(s) or property through the exercise of the city's eminent domain authority.

Minn. Stat. § 463.16.

- Order the owner to correct or remove the condition or raze the building.

Minn. Stat. § 463.161. Minn. Stat. § 463.21.

- Obtain a court judgment and the city itself can correct or remove the hazardous condition, assessing the costs incurred against the real property.

RELEVANT LINKS:

See LMC information memo, *Dangerous Properties*.

When ordering the owner to correct or remove any hazardous conditions, specific statutory procedures must be followed, including enforcement through judicial action. Any attempt to order correction must proceed through the guidance and assistance of the city attorney.

Minn. Stat. § 463.251.
City of Wells v. Swehla, No. C3-00-319, (Minn. Ct. App. 2000) (unpublished opinion).

Vacant properties can also be a detriment to a community's health, safety, and general welfare. Unoccupied, unsecured properties can quickly become the breeding ground for rodents, trash, and criminal activities. Cities can order vacant or unoccupied structures to be secured against trespass and provide for the emergency securing of a building when health and safety concerns require. A number of cities have adopted local regulations related to vacant structures.

K. Consumption of police services

Some cities have adopted ordinances declaring excessive use of police services to be a public nuisance. Under these regulations, the costs of excessive police services are pushed back onto those individuals whose nuisance activities resulted in repeat police responses (and additional costs) to one location. Cities adopting such measures must be careful not to impede an individual's right to seek police or other emergency assistance when needed.

Minn. Stat. § 504B.205.

L. Miscellaneous

Minn. Stat. § 609.74.

This list of nuisance activities is not intended to be definitive. Cities, either specifically within a general nuisance ordinance or elsewhere within the city code, regulate or prohibit harmful, indecent or offensive conduct. As a few final examples, cities regularly enforce city ordinances concerning:

- Noxious smells or odors.
- Graffiti.
- Animated signage.
- Excessive or misdirected light.
- Glare.

A city may certainly find other acts or uses to be nuisances, and the list and type of activities may change over time. Before making such a declaration, seek the advice of the city attorney.

VI. Municipal regulations

Seiler, Bryan M., Note, Moving from "Broken Windows" to Healthy Neighborhood Policy: Reforming Urban Nuisance Law in Public and Private Sectors, 92 Minn. L. Rev. 883, 903 (2008).

There are various reasons why cities regulate nuisance activities or conditions. When a city does become involved, it needs to be sure that it has the general authority to act and complies with any statutory or ordinance requirements. Cities need to limit their actions to public, not private, nuisances.

RELEVANT LINKS:

A. Authority

Minn. Stat. § 412.221, subd. 23.
Handbook, *The Home Rule Charter City*.

Minn. Stat. § 410.33.

In addition to the criminal penalty and abatement measures provided in state statutes, cities also have the general authority to handle nuisance issues though the adoption of local measures. For statutory cities, the city council has specifically been provided the power to, by ordinance, define nuisances and provide for their prevention or abatement. Most home rule charter cities have similar authority through a charter provision providing either a similar grant of power, or the general authority to provide for the community's safety, health, and welfare. In the absence of any specific charter provision, charter cities may also exercise the powers of a statutory city.

State v. Lloyd A. Fry Roofing Co., 310 Minn. 535, 246 N.W.2d 692 (Minn. 1976).
Claesgens v. Animal Rescue League of Hennepin County, 173 Minn. 61, 216 N.W. 535 (1927).

There are limits to this local authority. City actions will be invalidated if this authority is exercised in an arbitrary or unreasonable manner or if pre-empted by state or federal laws.

B. Nuisance ordinances

Handbook, *Meetings, Motions, Resolutions, and Ordinances*.

A city may best be able to control public nuisances through the adoption of a nuisance ordinance (or collection of city ordinances) that defines and classifies nuisances, provides for their abatement, and establishes penalties for noncompliance. Because city ordinances have the force and effect of law, their form and content are important, as well as the procedures for adoption.

Minn. Stat. § 412.221, subd. 32.
St. Paul v. Gilfillan, 36 Minn. 298, 31 N.W. 49 (Minn. 1886). *Cf .City of St. Paul v. Haugbro,* 93 Minn. 59, 100 N.W. 470 (Minn. 1904).

An ordinance defining a particular activity as a public nuisance is presumably a valid exercise of a city's police powers. Not only have many cities adopted nuisance ordinances, but many rely on their local ordinances more than state statutes. However, ordinances may only regulate public nuisances and may not declare something a public nuisance that would otherwise be considered a private nuisance, relatively harmless, or simply not a nuisance at all.

Press v. City of Minneapolis, 553 N.W.2d 80 (Minn. Ct. App. 1996).
State v. Becker, 351 N.W.2d 923 (Minn. 1984).

Ordinance language is critical for city efforts to be effective. City ordinances often mirror the provisions provided in state law, but often include specific acts or omissions to provide local officials direction in enforcing nuisance violations. A common problem is not properly defining terms or using terms too vague or broad to be enforceable. Conversely, an ordinance may be drafted in a way that is too limiting to encompass all intended violations. The ordinance should clearly provide the enforcement procedure and how it will be interpreted and applied. The primary purpose of nuisance regulations is usually to encourage compliance, not necessarily to punish offenders.

RELEVANT LINKS:

VII. Remedies

Lorshbough v. Township of Buzzle, 258 N.W.2d 96 (Minn. 1977). *Pelican Lake Property Owners Ass'n v. County of Crow Wing,* Nos. C5-98-1549, C3-98-1940 (Minn. Ct. App. Aug. 17, 1999) (unpublished decision). *Schultz v. Frank,* No. C1-00-285 (Minn. Ct. App. Aug 1, 2000) (unpublished decision).

Cities have choices in how they will remedy nuisance conditions and enforce their nuisance ordinances. Adopting an ordinance may create a duty to take some reasonable steps to enforce it on behalf of the general public. Most cities will use a combination of methods, depending upon their resources and the seriousness of the offense. Whatever methods are used, it is a good practice to have a policy guiding when a particular method will be used. This will ensure that similar violations are treated equally.

A. Self-remedy

The most cost-effective way to remedy nuisance conditions is for the individual to correct the situation him- or herself with minimal city involvement. There are situations where someone is unaware that he or she is maintaining a nuisance and will correct the situation when so informed through a letter or a conversation.

Cities can also consider other potentially effective voluntary approaches for nuisance elimination. For example, many cities sponsor neighborhood cleanup days or city-wide recycling events. These activities: provide individuals the opportunity to dispose of many larger items; provide an opportunity for neighborhood residents to work together to address general maintenance issues; and may provide incentive for individuals to fix up their own property.

B. Criminal prosecutions

Minn. Stat. § 412.231.

Minn. Stat. § 609.02.

Most nuisance ordinances provide that violations will constitute a misdemeanor offense. A misdemeanor is a crime for which a sentence of not more than 90 days imprisonment or a fine of not more than $1,000 (or both) may be imposed.

Criminal prosecutions may take longer than other alternatives and require a higher burden of proof (beyond a reasonable doubt). However, a possible criminal conviction can provide a good incentive for the individual to bring his or her property into compliance.

As part of the criminal sentencing, some or all of the actual jail time or fines may be suspended (or stayed), so long as the nuisance condition is remedied within a particular period of time.

C. Civil actions

When the city has reasonable grounds to believe a nuisance exists, it may bring a civil action in district court to end that activity.

RELEVANT LINKS:

See Part VII – F – *Abatement*.

Rather than seek criminal penalties, cities often pursue a civil remedy to achieve compliance with a city ordinance. Civil actions are generally faster, preferred by the courts, and provide the city the advantage of a lower burden of proof (preponderance of the evidence). Civil remedies can include injunctions or restraining orders. Subsequent violations of restraining orders can be enforced though contempt proceedings.

D. Administrative enforcement

Hannan v. City of Minneapolis, 623 N.W.2d 281 (Minn. Ct. App. 2001). *City of Ramsey v. Kiefer,* No. A08-1714 (Minn. Ct. App. Aug. 25, 2009) (unpublished decision).

Some cities have adopted administrative enforcement ordinances for dealing with nuisance conditions. An administrative process is a quasi, non-judicial alternative remedy. Under this system, property owners (or other types of alleged nuisance violators) are provided the opportunity to present their side before an administrative hearing officer (or panel) appointed by the city council. When violations are found, penalties typically follow a pre-established schedule: more nominal fees for a first violation with increased penalties for subsequent acts.

The advantage to establishing an administrative hearing procedure is that it is less formal, less costly, and potentially less intimidating than the court system. The accused is given a chance to come into compliance, with all monies collected retained by the city, not distributed through the state court system.

Cities should be aware that both the state auditor and the state attorney general have questioned whether cities have authority to enact these local processes. Accordingly, cities contemplating such an ordinance should work closely with their city attorney.

E. Licensing

Handbook, *City Licensing*.
Handbook, *City Regulatory Functions*.

Minn. Stat. § 415.17.

Cities also address nuisance conditions through common regulatory means, such as city licenses, permits, and other forms of required registration. The use of licenses and permits offer cities an effective means to monitor compliance. The conditions included with the application process help ensure that an applicant complies with ordinance requirements before the license or permit is issued. If it is found at a later time that the license or permit holder is not in compliance, the city can suspend, revoke, or deny renewal of the license or permit, and potentially even close a business unless or until it is brought back into compliance.

Licensing practices can provide broad benefits to local communities by addressing direct and secondary impacts of particular activities. For instance, cities often regulate:

- The consumption and sale of alcohol.
- The conduct of adult businesses.
- The conduct of lawful gambling.

RELEVANT LINKS:

- The operations of peddlers, solicitors, and transient merchants.
- The use of city streets and sidewalks.
- Land use and development.

See LMC information memo, *Zoning Guide for Cities*.

Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45 (Minn. 1969).

A land use tool known as a conditional use permit (CUP) is a good example of such a regulation. Conditional uses seek to strike a middle ground between the unchecked approval of a particular use and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic or nuisance features of the use) are met. If such conditions are not followed, the permit may be revoked.

City of Duluth v. Krupp, 46 Minn. 435, 49 N.W. 235 (Minn. 1891). *Orr v. City of Rochester,* 193 Minn. 371, 258 N.W. 569 (Minn. 1935).

An additional benefit with licensing or permitting systems is the collection of a fee. A proper license fee can include the law enforcement/city staff costs required to properly enforce the city regulations or address the other negative consequences that are likely to occur with that type of activity. Cities cannot set license fees so high as to prohibit such businesses (or activities) within the city altogether.

F. Abatement

Regardless of what level of priority is placed on regulating nuisance activities, situations will arise that demand city action. Who will act and how the situation is actually remedied depends upon the particulars involved.

1. Voluntary abatement—notice

See Part VII – A – *Self-remedy*.

In almost all cases, the city's first step in an abatement process is the request for a voluntary remedy of the nuisance condition. Again, convincing an individual to take care of his or her own problems is the most cost-effective way to address most public nuisances. If this does not occur, a clearly written notice is an important first step in providing due process, ensuring that the individual's property rights are protected if the city must abate the condition itself.

2. Injunctions

State v. Sportsmen's County Club, 214 Minn. 151, 7 N.W.2d 495 (Minn. 1943).

Since the criminal process can often times be slow and the results are uncertain, it may be necessary to seek injunctive relief to terminate or prevent a nuisance. Under its duty and authority to protect the rights of all of its citizens, a city can obtain injunctions to restrain public nuisances.

Minn. Stat. §§ 617.82-.83. See "Minnesota's Public and Private Nuisance Laws," Minnesota House Research (July 2015).

See Part VII – F – 3 – *Orders of abatement*.

The city attorney files a petition with the district court seeking a temporary injunction. The court will hold a "show cause" hearing to provide the alleged violator an opportunity to be heard on the allegations within the petition. If the judge believes that the condition has occurred, he or she will issue a temporary injunction, detailing the prohibited conduct or conditions. After a temporary injunction is issued, the court, after a further

RELEVANT LINKS:

Minn. Stat. § 617.86.

hearing, may issue a permanent injunction and order of abatement if it finds (by clear and convincing evidence) that a nuisance exists. Violation of temporary or permanent injunction is treated as contempt of court.

See *Public Nuisances*, LMC Model Ordinance.

When adopting a nuisance ordinance, it is important to include a provision providing that the city will seek a court injunction when no other adequate remedy exists.

3. Orders of abatement

For some nuisance conditions, an order preventing the condition from continuing will sufficiently end the problem conduct. Noise nuisances are a good example; when the noise is no longer allowed, the nuisance no longer exists. In others circumstances (such as the long grass and weeds), the nuisance will continue until steps are taken to eliminate the condition (the grass and weeds are cut). In those cases, an abatement order will provide the process for nuisance elimination.

a. Judicial Orders

Ames v. Cannon River Mfg. Co., 27 Minn. 245, 6 N.W. 787 (Minn. 1880).

When a city seeks relief through the courts, the judge's order will provide the process for abatement. It may provide the owner the opportunity to remedy the situation himself, as well as provide deadlines for when the city may remove the situation itself. The court is available to resolve any additional disputes that may arise during the process or impose additional penalties for not complying with the order.

Minn. Stat. § 617.82.
City of West St. Paul v. Krengel, 768 N.W.2d 352 (Minn. 2009).

The property owner may enter into an agreement with the city to avoid the issuance or enforcement of an abatement order. If the property owner fails to abate the public nuisance conditions, the city may again seek an injunction.

b. City orders

Many cities attempt to avoid the judicial process by including within their local ordinances the authority to abate nuisance conditions themselves. Mindful of property rights and the need to provide adequate due process, the city ordinance typically provides for:

- Property inspections (which may require obtaining the necessary warrants) and documentation of any nuisance condition or activity.
- Written notice of the finding of a violation of city ordinance provided to the owners or operators.
- An opportunity to contest the nuisance finding with the city council or selected neutral party.

RELEVANT LINKS:

- Written notice of the date when the violation of city ordinance must be remedied; possible second written notice when the condition has not been corrected; notice of the court date if the city seeks a court order declaring the nuisance condition.
- City cleanup of the nuisance condition.
- When personal property is removed in the cleanup process, an inventory of all property collected; notice of where the property can be reclaimed; and the date by which it must be reclaimed, or it will be disposed of (sold or destroyed) by the city. Depending upon the property involved, there may be specific statutory procedures to follow.
- An inventory of all costs involved (i.e., cleanup and storage).
- A claim sent to the property owner for the total costs of abatement, as well as how costs will be collected, including possible certification and collection with property taxes.

See Part XI – *Special assessments*.

c. Tenants Remedies Act

Minn. Stat. §§ 504B.395-.471.
Minn. Stat. § 504B.381.

There is also limited authority for a city to intervene in landlord-tenant situations. A state, county, or local department or authority, charged with enforcing health, housing, or building maintenance codes has specific statutory authority to bring an action in district court and request a remedy (landlord ordered to remove condition) for violation of health, safety, housing, building, fire prevention, or housing maintenance codes on the tenant's behalf.

4. Summary/emergency abatement

Reed v. Board of Park Com'rs of City of Winona, 100 Minn. 167, 110 N.W. 1119 (Minn. 1907).

While cities typically must provide notice and a chance to respond to nuisance conditions, there are limited circumstances that may justify dispensing with standard procedures. There are situations so dangerous that require immediate repair or elimination, such as:

- Open wells.
- Abandoned machinery and appliances (i.e., "locking" refrigerators).
- Downed power lines.
- Fallen trees.
- Obstructed streets and sidewalks.
- Raw sewage.

Kelty v. City of Minneapolis, 157 Minn. 430, 196 N.W. 487 (Minn. 1923).

The power to summarily abate nuisances is limited, based upon actual necessity as defined and provided by ordinance. When summary action is necessary, city officials need to document the circumstances, preparing reports and taking photographs to support and defend their actions if necessary.

See Part IX – C – *Documentation*.

RELEVANT LINKS:

City of Minneapolis v. Meldahl, 607 N.W.2d 168 (Minn. Ct. App. 2000).
Minn. Stat. § 463.16.
See LMC information memo, *Dangerous Properties*.

5. Demolitions

State statutes, as well as some city ordinances, provide for the destruction of buildings, structures, or other nuisance situations. As a drastic, irreversible solution to nuisance conditions, demolitions should only be used as a last resort and after all statutory and procedural requirements are strictly followed. When repairs or alterations can be made to remedy a hazardous situation, repairs should generally be ordered, rather than destruction of the property.

VIII. Enforcement decisions

See Part VIII – C – *Inspection-based enforcement*

See Part VIII – B – *Complaint-based enforcement*.

There is no blueprint for effective nuisance enforcement. Each city responds to nuisance activities in its own manner, based upon city finances and staffing needs, as well as the community's interest or concerns. Some cities take a proactive approach to nuisance enforcement, sending officials out into neighborhoods, industrial parks, and business districts, actively looking for code violations. In others, the response is more reactive, relying more on complaints than active investigating. The approach that is ultimately used should be formally adopted by city policy. It should be specific enough to defend against claims of unequal treatment, yet with enough flexibility to allow for different circumstances that may arise.

A. Enforcement officers

Minn. Stat. § 412.231.

Cities need to decide who is responsible for enforcing their nuisance regulations. As ordinance violations are misdemeanor offenses, city law enforcement will certainly play a significant role. However, when regulating nuisances, cities can also rely on:

- City administration.
- Civilian code enforcement officers.
- Hearing officers.
- Building inspectors.
- Animal control officials.
- Public works, street, or sanitation department officials.
- State officials (MPCA, Building Codes & Standards, DNR).
- Private contractors.

A city's investment into nuisance code enforcement will vary, based upon city priorities, needs, and resources. It is important to consider these factors when drafting city ordinances or policies. Ordinances and policies that a city will not have the ability to enforce should not be adopted.

RELEVANT LINKS:

It may seem appealing to make nuisance enforcement the responsibility of a single person or department, so the city knows who is handling all nuisance issues. However, because of the variety of responsibilities and the particular expertise that is often needed for addressing different situations, it may not be practical.

Cities should consider training employees that are involved in nuisance enforcement. This type of training can include:

- How city ordinances are interpreted.
- Proper inspection methods.
- Private property rights.
- Administrative search warrants.
- Appropriate citizen interactions.
- Any other relevant information.

When changes are made to city ordinances or enforcement policies, city officials should always be advised and instructed on how those changes impact present practices. Cities also need to provide their city employees with the tools and resources necessary to enforce their ordinances. For example, if the city cuts long grass and weeds in the summer, or shovels sidewalks in the winter, it's going to need (at the least) a lawn mower and a shovel.

B. Complaint-based enforcement

Many cities enforce their nuisance ordinances only when they receive complaints from the public. A complaint-driven city policy may provide:

- Logging all complaints received, with date of received complaint and location of nuisance.
- Processing complaints to the appropriate city official or department.
- Inspection of the alleged violation.
- If a nuisance condition exists, notice to property owner or offender.
- Administrative, civil, or criminal actions to obtain compliance.
- A follow-up letter to complainant, indicating abatement, impending prosecution, or confirmation that no violation was found.

A complaint-driven approach to nuisance enforcement can be less taxing on city resources. However, it may allow nuisance conditions to exist for longer periods of time, creating a more complex situation and costly remedy. Additionally, delayed enforcement may cause a negative impact on the community, lowering property values and impacting community vitality.

RELEVANT LINKS:

Minn. Stat. § 13.44, subd. 1.
LMC information memo, *Data Practices: Analyze, Classify & Respond.*

Cities should also remember that the identity of individuals who register complaints with their city concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data under the Minnesota Government Data Practices Act.

C. Inspection-based enforcement

If a city wants to take a more proactive approach and minimize the impact of nuisances, it can establish an active inspection program to seek out potential violations and require compliance with city regulations. Inspection programs are quite common and most likely are already being used for:

See LMC Information Memo, *Sanitary Sewer Toolkit*.

See LMC information memo, *Liquor Licensing and Regulation*.

- City street and sidewalk conditions.
- City water and sewer systems.
- Liquor and other licensed commercial establishments.
- Rental housing.

A nuisance inspection program sends city officials into the community to locate nuisance violations. When conducting inspections, city staff:

- Collect and record all relevant facts and data, including the name of the alleged violator, location, and nature of the violation, photograph conditions and record their observations on the conditions.
- Analyze all the information to determine if a nuisance condition exists.
- Document conclusions and recommend a course of action.
- Provide owner or offender notice of condition and expected course of correction and/or consequences.

City budgets and human resources will determine how proactive a city can be in actively investigating nuisance concerns in addition to responding to complaints. Active inspection programs should operate in accordance with an adopted policy, something that prioritizes active inspections based on community needs and city resources.

IX. Particular concerns

There are certain issues that commonly arise when cities adopt and enforce nuisance regulations.

A. Private property

U.S. Const. amend. IV. U.S. Const. amend XIV.

Katz v. U.S., 389 U.S. 347, 88 S. Ct. 507 (1967).

Enforcement measures often lead city inspectors to nuisance conditions on private property, whether it is residential, industrial, commercial, or otherwise. Entry onto private property for licensing, nuisance, or hazardous building purposes is subject to the same requirements as any

RELEVANT LINKS:

Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684 (1961).

other government intrusion onto private property. The Fourth and Fourteenth Amendments to the U.S. Constitution prohibit unreasonable searches and seizures. Individuals have a reasonable expectation of privacy on their property. Care must be taken to ensure that the city does not violate the property owner's right to be free from unreasonable searches. To enter onto private property, government officials normally must either have the owner's permission, or have first obtained a search warrant.

1. Plain view

Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S. Ct. 1819 (1986).
Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861, 94 S. Ct. 2114 (1974).

When a city official is able to observe a violation from a public street, sidewalk, or neighboring property (provided that neighboring property owner granted permission to be there), a person can be charged with an ordinance violation. The observation must provide the official all the information necessary to conclude that the nuisance condition exists. Common examples of nuisances that can exist and be classified as such from a plain view can include diseased trees, noxious weeds, long grass, the accumulation of junk, and noise.

Horton v. California, 496 U.S. 128, 110 S. Ct. 2301 (1990).

The U.S. Supreme Court has held that when a criminal act or violation is within plain view, there is no violation of the Fourth Amendment, and seizure may be permissible without first obtaining a warrant. However, if the nuisance condition is not serious enough to warrant immediate abatement, officials should provide notice to the offender of the condition and an opportunity for self-remedy.

2. Consent to enter

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041 (1973).

Consent searches are important tools for local officials as an individual's consent will legitimize investigations that would otherwise be invalid under Fourth Amendment provisions. Consent searches can be reasonable and avoid the need to obtain an administrative search warrant, especially in conditions when an alleged nuisance violation cannot be identified by plain view, or when circumstances need to be abated by local officials.

Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727 (1967). *U.S. v. J. B. Kramer Grocery Co.*, 418 F.2d 987 (8th Cir. 1969). *Carlin v. Comm'r of Pub. Safety,* 413 N.W.2d 249 (Minn. Ct. App. 1987).

Consent may be given by the owner or tenant of the property, or by an individual in control of the premises. Consent must be given voluntarily. Courts have upheld consent searches when individuals provide a "welcoming action" such as waving instead of providing a verbal response. An individual does not have to be told they have a right to refuse entry, but an inspector cannot insist entering or other acts of coercion if entry is denied. When possible, obtain a written consent prior to entering private property.

RELEVANT LINKS:

U.S. v. Dunn, 480 U.S. 294, 107 S. Ct. 1134 (1987). *Search Warrant of Columbia Heights v. Rozman,* 586 N.W.2d 273 (Minn. Ct. App. 1998). LMC information memo, *Administrative Search Warrants.*

3. Search warrants

If the city does not have consent from the property owner or tenant, it must obtain an administrative search warrant before entering the property. The warrant process protects an individual's privacy against arbitrary invasions by the government. Steps taken to preserve privacy are relevant when considering entry issues.

Evidence collected in violation of the Fourth Amendment may be excluded, making it difficult to obtain a conviction or other desired result. Violations of constitutional rights could subject the city to penalties as well.

Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727 (1967).

To obtain an administrative search warrant, the city must show probable cause why its request to enter private property is justified. The application for a warrant must describe the city's inspection program and establish how the particular inspection requested falls within the scope of the ordinance.

City officials should assume an administrative warrant will be required to enter a premises for purposes of inspection or investigation unless:

- An emergency exists—an imminent threat to the public's safety, health, or general welfare.
- An appropriate person has granted consent to enter.
- The place to be inspected is heavily regulated, such a liquor stores, firearms dealers, junkyards, etc.
- Inspection is required as part of city licensing.

B. Notice—due process

In non-emergency situations, a property owner and tenants must be provided notice of alleged ordinance violations and the opportunity to remedy the condition before the city can exercise police powers and abate the nuisance condition itself. This notice should provide:

- The nature of the violation and the city ordinance in violation.
- The necessary remedy for the condition.
- The date by which it must be corrected, or the city will abate itself.
- The right to request a hearing and the date the request must be made by.
- A description of the penalties if the condition is not corrected.
- Notice that costs incurred may be assessed against the property.

Minn. Stat. § 617.81, subd. 4.

This effectively mirrors the procedural requirements for the abatement procedures provided in the state statutes.

RELEVANT LINKS:

Minn. Stat. § 617.81, subd. 4.

The city should provide a reasonable period of time for the individual to correct the nuisance condition. For example, the state statutory option provides 30 days before an abatement action is filed. Reasonable time is subjective, depending upon the type and severity of the violation. Too much time may frustrate efforts to prosecute conditions of noncompliance. For example, if the condition really was a detriment to the general public's health, safety, and welfare, why was it allowed it to remain for such a long time?

Village of Zumbrota v. Johnson, 280 Minn. 390, 161 N.W.2d 626 (1968).

When the identity of the person maintaining a nuisance condition is known, notice should be provided by personal service or service by mail (posting notice on the property may also be sufficient). If the person is unknown, publication can be sufficient, but the city's diligence in determining identity or residency may come into question.

City of Golden Valley v. Wiebesick, 899 N.W.2d 152 (Minn. 2017).

City administrative search warrant procedures must include notice to tenants, not just to landlords. This notice must include an opportunity to be heard in court. If the city, applying for the warrant does not disclose it, "the district court may also inquire into the extent of police presence, if any, planned for the inspection and the appropriateness of that presence. Typically, absent a threat of danger, the police will not be participating in the inspection within the premises." A warrant is likely not needed if the situation on the property is an emergency or a "compelling need."

C. Documentation

Borchardt v. City of North Mankato (Minn. Ct. App. Oct. 4, 2021) (unpublished opinion).

State v. Haase, No. C4-00-1463, (Minn. Ct. App. Apr. 10, 2001 (unpublished decision).

A determination that a nuisance exists must be supported by evidence, not just neighborhood opinion. City officials need to document and maintain records of their nuisance abatement activities. Staff notes, photographs, video recordings, and copies of notices will all help the city demonstrate that a nuisance condition existed. Adequate records will assist city staff in refreshing their recollections when testifying—perhaps more important in larger cities with many nuisance conditions occurring at any one time. Consider what equipment would be helpful (such as a digital camera) for documenting enforcement activities.

X. Consequences

The decision to adopt and enforce ordinances will lead to various consequences, some positive, some negative. Cities should consider the potential, perhaps likely, impacts when they consider their options.

A. Positives

A well-written and enforced city nuisance program may be the best option a community has in maintaining a high quality of life.

RELEVANT LINKS:

Nuisance conditions can greatly impact a community's general livability. Cities can also avoid greater long-term costs when conditions are addressed in their infancy.

"Broken Windows" The Atlantic Online, (March 1982).

In addition to the obvious criminal or social concerns nuisances can cause, many theorists contend that nuisance conditions themselves breed more and more nuisance activities. With their "broken windows" theory, James Q. Wilson and George Keiling proposed that if nuisances are allowed to go uncorrected, individuals are empowered to cause more nuisances, nurturing an environment in which criminals can thrive on apathy and neglect.

In short, the enforcement of ordinances and the abatement of nuisances have been credited with:

- Increased property values and community pride.
- Lower crime rates and less gang-related activities.
- Creating a more attractive destination to visitors, potential residents, and potential businesses.

B. Negatives

Handbook, *Liability*.

There are ongoing responsibilities with enforcing nuisance ordinances. While cities are afforded some degree of deference in regard to city policies, the lack of clarity surrounding nuisance activities can create its own problems particularly where:

- Officials are not properly trained in nuisance enforcement.
- Differences in philosophies exist.
- A nuisance is declared, but no nuisance actually exists.
- City officials have consistently failed to enforce an ordinance.
- Selective or discriminatory enforcement occurs.
- City officials undertake unreasonable or illegal searches.
- Inappropriate or unwarranted abatement actions occur.

There is a large area of conduct where there may be a reasonable difference in opinion as to whether something really is a public nuisance. In addition, there are conflicting opinions on how valid "broken windows" or similar theories are in demonstrating how minor nuisances grow into larger concerns.

See Part XI – *Special assessments*.

Regardless of the long-term savings, nuisance enforcement costs money. A city will need to budget for the costs of city employees, inspections, hearings, and the actual abatement of nuisance and hazardous conditions. While there are mechanisms to recover abatement/enforcement costs, many governments simply do not have the funds to make code enforcement a priority.

RELEVANT LINKS:

XI. Special assessments

In addition to the other means available for a city to recoup the nuisance-related costs, a city may use special assessments to recover its costs.

See LMC information memo, *Special Assessment Toolkit*.

Minn. Const. art. X § 1.

Minn. Stat. § 429.061.

Special assessments are a charge imposed on properties for a particular improvement that benefits the owners of those selected properties. The authority to use special assessments originates in the Minnesota Constitution. Cities and other governmental entities have the authority "to levy and collect assessments for local improvements upon property benefited thereby." Generally, cities use assessments to finance a variety of public improvements but may also use them to collect unpaid service charges. Statutory or charter procedures and notice requirements must be followed.

Minn. Stat. § 429.101, subd. 1.

Cities may, through city ordinance, require that property owners perform certain property-related services. If the city performs the services, it may assess the property benefited for all or any part of the cost of:

- Snow, ice, or rubbish removal from sidewalks.
- Weed elimination from streets or private property.
- The removal or elimination of public health or safety hazards from private property.
- The installation or repair of water service lines, street sprinkling, or other dust treatment of streets.
- The trimming and care of trees and the removal of unsound trees from any street.
- The treatment and removal of insect-infested or diseased trees on private property.
- The repair of sidewalks and alleys.
- Inspections relating to municipal housing maintenance code violations.
- Recovering delinquent vacant building program registration fees.

Minn. Stat. § 429.101, subd. 2.

Singer v. City of Minneapolis, 586 N.W.2d 804 (Minn. Ct. App. 1988).

Generally, special assessments levied may be payable in a single installment or by up to 10 equal annual payments. The exception is for special assessments made under an energy improvements financing program which may be repayable in up to 20 equal installments. The city must pass an ordinance to make this authority effective. The special assessment statute can also apply to home rule charter cities in absence of a specific charter or ordinance provision governing assessment procedures within that jurisdiction.

Minn. Stat. § 429.101, subd. 1.

Assuming the city has adopted a special assessment ordinance and the condition fits under the state statute, costs may be recoverable through the assessment process.

RELEVANT LINKS:

XII. Conclusion

Cities have broad authority to define, penalize, and abate public nuisance activities and conditions. City authority is not limitless, however. Cities do not have the power to intervene over private nuisances, nor may they declare conditions to be nuisances that in fact are not. Local authority must not be used arbitrarily, but city officials must be prepared to enforce whatever provisions are adopted. While there are ways to recoup enforcement and abatement expenses, effective nuisance regulations require funding and the use of city personnel.