

CHAPTER 1357
Nuisances

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CROSS REFERENCES

- Nuisances - see Ohio R.C. Ch. 3767
- Junk vehicles - see TRAF. Ch. 353

1357.01 SCOPE.

- (a) The provisions of this chapter shall govern those items that are considered nuisances as defined in Section 1343.02
- (b) This section is intended to protect the health, safety, and welfare in all existing residential and nonresidential structures, premises by:
 - (1) Establishing the minimum requirements for securing, mitigating, abating, and lessening the impact of structures and premises declared a public nuisance
 - (2) Fixing the responsibility for securing, mitigating, abating and lessening the impact on owners, operators, and occupants of structures and premises declared a public nuisance, and
 - (3) Providing for administration, enforcement, and penalties.

(Ord. 13-05. Passed 4-18-05.)

1357.02 INTENT.

This section shall be construed liberally and justly to insure the public health, safety, and general welfare. (Ord. 13-05. Passed 4-18-05.)

1357.03 OTHER REGULATIONS.

The provision of this section shall not be construed to prevent the enforcement of other ordinances or regulations which prescribe standards other than are provided herein.

(Ord. 13-05. Passed 4-18-05.)

1357.04 OTHER REMEDIES.

This section shall not be deemed to abolish or impair existing remedies of the City or its officer or agencies relating to the removal or demolition of any buildings deemed dangerous, unsafe, or unsanitary. (Ord. 13-05. Passed 4-18-05.)

1357.05 SAVING CLAUSE.

If any section, subsection, paragraph, sentence, clause, or phrase of this section shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Section which

shall continue in full force and effect, and, the provisions of this code are declared severable. (Ord. 13-05. Passed 4-18-05.)

1357.06 PROCEDURE FOR SECURING AN OPEN STRUCTURE.

(a) The Building Program Manager may immediately secure a vacant structure whenever it is found open to entry at doors, window, or other points accessible to the general public. The Building Program Manager shall be authorized at any time to enter on the premises. And the owner shall permit entry to secure the structure in order to lessen the severity of the public nuisance. In securing such structure, the Building Program Manager may call on any department, division, bureau of the city, or by private contract for whatever assistance may be necessary to secure such structure. Photographs of the structure shall be taken prior to securing it, and those photographs shall be filed with the Building Department.

(b) Either before, or as soon as practicable after the securing of a vacant structure, the Building Program Manager shall serve a written notice on the owner in the manner provided in Section 1357.08. The notice shall inform the owner of:

(1) The date on which the structure was found open to entry and of the securing of the structure,

(2) The cost incurred in securing the structure and that the city will recover such costs in the manner prescribed by Section 1357.12, and

(3) The right to appeal the said notice to the Property Maintenance Appeals Board by making a written demand to the Building Program Manager within 15 days after receipt of the notice.

(c) The Property Maintenance Appeals Board may:

(1) Sustain the action of the Building Program Manager; or

(2) Find that the action taken to secure the structure was unconstitutional, illegal, arbitrary, capricious, or unreasonable.

(d) If the Property Maintenance Appeals Board does not sustain the action of the Building Program Manager, the costs incurred in securing the structure shall be paid from city funds specifically authorized by the City for such purpose.

(Ord. 13-05. Passed 4-18-05.)

1357.07 PROCEDURE FOR ABATEMENT OF A PUBLIC NUISANCE.

(a) Whenever the Building Program Manager suspects the existence of a public nuisance in the city as defined in Section 1343.02, or a designee shall promptly inspect the premises on which the public nuisance is suspected to exist. Should the Building Program Manager find that a public nuisance does exist it shall be the duty of the Building Program Manager or a designee to photograph such public nuisance, and to file in the City Building Department the inspector's photographs and the written report of the findings. The Building Program Manager shall notify the owner stating the findings with respect to the existence of a public nuisance and stating that unless the owner(s) thereof abate the public nuisance by rehabilitation or by removal of the building, structure or nuisance, the city will abate the nuisance at the owner's expense. The Building Program Manager may also order the owner to take such measures as are reasonably necessary to lessen the severity of the public nuisance. If the owner fails or refuses to comply with such order, the city may abate or lessen the public nuisance's severity through rehabilitation, repair, or removal of the building, structure, or nuisances at the owner's expense. Abatement by the owner shall, on the issuance of a special building permit or a special wrecking permit, start within 15 days after service of the notice and shall be complete within the time prescribed in Section 1357.09 or such additional time as the Building Program Manager may deem necessary to complete the abatement.

(b) Whenever the Building Program Manager determines the existence of a public nuisance as defined in Section 1343.02, the Building Program Manager or designee may serve a written notice on the owner and/or other responsible person, stating the findings with respect to the existence of

a public nuisance and ordering the owner and/or other responsible person, to abate the public nuisance within 15 days. Whenever the issues raised by the written notice and order have been finally determined, the Building Program Manager may request the assistance of the Department of Law in abating the public nuisance in the manner provided in Ohio R.C. Chapter 3767. If the owner and/or other responsible person fails or refuses to comply with the order to abate the public nuisance, the Building Program Manager may, in addition to proceeding as provided hereinabove, proceed against the owner for any violations of this chapter.

(c) The City may, at its option, elect to not utilize the procedure provided in this chapter, and proceed instead with the filing of an action in common pleas court in accordance with Ohio R.C. Chapter 3767. (Ord. 13-05. Passed 4-18-05.)

1357.08 SERVICE OF NOTICE.

(a) Written notice pursuant to Section 1357.07 shall be served on the owner and/or other responsible person:

- (1) Personally,
- (2) By certified mail addressed to the owner at the owner's last known place of residence as appearing in the records of the City of Trotwood, Ohio,
- (3) At the owner's tax mailing address as indicated on the county tax duplicate, or
- (4) By posting a copy of the notice in a conspicuous place on the structure or premises to which it relates.

(b) If notices mailed are returned unserved, then a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county.

(c) The Building Program Manager shall complete a certificate of service which shall set forth the name and address of the person served, the manner of service, and the date thereof. (Ord. 13-05. Passed 4-18-05.)

1357.09 RIGHT TO MAKE IMMEDIATE REPAIRS OR TO DEMOLISH.

(a) On being served notice of a public nuisance as defined in Section 1359.08, the owner may within 15 days after receipt of notice, apply in writing to the Building Program Manager for a special building permit to undertake the repairs or replacement of items found to constitute a public nuisance. Upon approval of the application, the Building Program Manager shall issue the special building permit.

(b) The owner shall furnish adequate plans and specifications as required by the Building Department, covering the repairs or replacements to the Building Program Manager within 15 days after receipt of notice or such additional time, not to exceed 90 days, as the Building Program Manager may deem necessary to complete plans and specifications.

(c) The Building Program Manager shall, on approval of the plans and specifications, issue a special building permit to the owner. The special building permit shall be valid for a period of 90 days and within that time the owner shall effect and complete the repairs or replacements. The Building Program Manager may grant an extension to the special building permit, in writing, if the owner shows reason or cause for the requested extension and the extension will more readily affect the repairs and/or replacements.

(d) Whenever permits are issued for repairs to the plumbing, electrical, heating and air conditioning, or similar systems in a nuisance structure, such permits shall be valid for a period of time not to exceed the unexpired term of the special building permit, or extension thereof, pursuant to subsection (c) of this section, notwithstanding any other provision of the this Code to the contrary. In the event the said permits are issued for work which exceeds that which is necessary for the abatement of the nuisance, and if the nuisance is abated within the time provided in subsection (c) of this section, then the said permits shall remain valid, subject to the terms, provisions and limitations of the Unified Building Code.

(e) On being served notice, the owner may within 15 days apply in writing or in person to the Building Program Manager for a special wrecking permit to abate the nuisance completely by demolition and removal of the structure. The special wrecking permit shall be valid for a period of 30 days, and within that time the owner shall completely demolish and remove the entire building including basement and foundation walls where practical, and including any accessory structures. The Building Program Manager may grant an extension to the special wrecking permit if the owner shows reason or cause for the requested extension.

(Ord. 13-05. Passed 4-18-05.)

1357.10 DUTY TO VACATE PREMISES.

(a) Within 15 Days after the City finally determines that a nuisance, as defined in Section 1343.02, exists:

- (1) All persons responsible therefore shall vacate the premises;
- (2) The owner(s) shall diligently evict all persons from the premises,

(b) After the last person vacates the premises, the owner shall keep such premises vacant for a period of 365 days, unless the owner and every person responsible who wishes to occupy the premises, each files a bond naming the City of Trotwood, Ohio as obligee, with sureties to be approved by the Building Program Manager. The bond shall be in the amount of the value of the property, as determined by the Building Program Manager. The Building Program Manager may base such determination on the of the total market value of the land and improvements, as shown on the Montgomery County auditor's current valuation record, or on the basis of any other reliable evidence. The bond shall be conditioned that such owner and other persons responsible for the nuisance will immediately abate such nuisance and prevent the same from being established or kept during the 365-day period. The bond shall be posted for a full 365 days. (Ord. 13-05. Passed 4- 18-05.)

1357.11 APPEAL HEARING OF PUBLIC NUISANCE STRUCTURES.

(a) The owner or other responsible person named on a nuisance notice may within 15 days after receipt of notice or within 15 days after any other Building Program Manager determination made pursuant to this chapter, demand in writing to the Building Program Manager for a hearing on any legal or factual issue relating to the nuisance notice, or any question set forth in Section 1357.11(d)(4), or on any Building Program Manager determination made pursuant to the authority granted by this chapter. The demand shall include the correct mailing address of the owner or person representing the owner. The hearing shall be scheduled within a reasonable time, not to exceed 30 days following receipt of the written demand.

(b) The hearing shall be conducted by the Property Maintenance Appeals Board.

(c) In an appeal pursuant to Section 1357.07(a) the Property Maintenance Appeals Board may vote to:

(1) Sustain the finding that a public nuisance exists on the property and order the abatement thereof by repair or replacement or removal of the items found to constitute a public nuisance, or order the abatement thereof by demolition; or

(2) Sustain the finding that a public nuisance exists on the property and order that the structure be secured and the premises maintained so as to lessen the severity of the public nuisance; or

(3) Continue the matter for a period not to exceed 45 days for further investigation and disposition; or

(4) Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter; or

(5) Reverse the finding that a public nuisance exists on the property and dismiss the case.

(d) In an appeal pursuant to Section 1307.07(b) the Property Maintenance Appeals Board may vote to:

- (1) Sustain the finding that a public nuisance exists on the property and order the abatement thereof.
 - (2) Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter.
 - (3) Reverse the finding that a public nuisance exists on the property and dismiss the case.
 - (4) Determine that the owner of the real property or personal property used in furtherance of the public nuisance was, in good faith, innocent of knowledge of the use of such property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof, and dismiss the case with respect to that owner.
- (e) The Property Maintenance Appeals Board shall mail a copy of the decision, with certificate of mailing, to the last known address of the owner, or person representing the owner, who demanded the hearing. It shall be the responsibility of the owner, or person representing the owner, to keep the secretary of the Property Maintenance Appeals Board apprised of his/her current mailing address. For the purpose of appeal pursuant to Ohio R.C. Chapter 2506, the final order shall be deemed to have been entered on the date on which the copy of the decision was mailed.

(Ord. 13-05. Passed 4-18-05.)

1357.12 ABATEMENT OF NUISANCE BY THE CITY.

(a) The Building Program Manager shall have authority to demolish, remove the structure, or take other such actions appropriate to abate or lessen the severity of the public nuisance should the nuisance, as defined in Section 1357.02, continue past the time stated in the notice, special building permit, special wrecking permit, extension granted by the Building Program Manager, or such additional time granted by the Nuisance Board. In abating such nuisance, the Building Program Manger may call upon any department, division, or bureau of the city for whatever assistance necessary to abate such public nuisance. The Building Program Manager may also privately contract for services to take such other action as may be deemed appropriate to abate or lessen the severity of the public nuisance. The cost of the contract will be paid for from city funds specifically authorized by the Building Program Manger to be used for that purpose. Should the nuisance structure or premises catch fire between the time it is declared a nuisance and is fully abated, the cost of abating or lessening the severity of the public nuisance shall include the reasonable city expenses incurred by the Fire Department. The City shall recover the cost of abating or lessening the severity of such public nuisance in the manner provided in subsection (b) hereof.

(b) The City shall recover the cost of abating, lessening the severity of such public nuisance, or of such other action taken by the city pursuant to this chapter in the following manner:

(1) The City shall bill the owner(s) directly by certified mail for the cost of abating or lessening the severity of such public nuisance. The owner(s) shall pay the bill within 60 days after receipt of.

(2) If the bill is not paid within 60 days, the city may collect the cost by any of the following methods:

A. The city may levy as an assessment and recover in accordance with Ohio R.C. 715.261 the cost of abating or lessening the severity of such public nuisance.

B. The city may bring a civil action to recover the cost from the owner, as provided in Ohio R.C. 715.261.

(Ord. 13-05. Passed 4-18-05.)

1357.13 ADOPTION OF PROCEDURES IN OHIO R.C. 3929.86(C) AND (D).

This section incorporates, adopts by reference, and makes part of this chapter with the same force and effect as though set out in full herein, the procedures contained in Ohio R.C. 3929.86(C)

and (D) relating to recovery of costs incurred by the city in repairing, removing, or securing fire damaged buildings or other structures.

(Ord. 13-05. Passed 4-18-05.)

1357.14 ILLEGAL OCCUPANCY OF A PUBLIC NUISANCE.

(a) No owner or other person shall occupy, let, permit to be occupied, or let by another for occupancy any structure declared by the city as a public nuisance without first applying for and obtaining the written consent of the Building Program Manager. The Building Program Manager shall consent when:

(1) All violations of all applicable housing, building, and other health and safety codes of the City of Trotwood and the State of Ohio have been corrected,

(2) When any injunctions obtained against use or occupancy have been dissolved and,

(3) When all parties have complied with all applicable requirements of 1357.01 (duty to vacate premises).

(b) In the event of a violation of subsection (a) hereof by the owner, the City shall include the cost of relocating the tenants by the city as a cost of abating or lessening the severity of a public nuisance. The City shall recover such costs in the manner provided by Section 1359.12. (Ord. 13-05. Passed 4-18-05.)

1357.15 UNAUTHORIZED ENTRY UPON NUISANCE PREMISES.

(a) Unless the owner(s) has upon their person a written authorization granted by the Building Program Manager, they shall not enter in or be present upon any building or premises posted with a notice identifying the building or premises as a public nuisance.

(b) It shall be an affirmative defense to a violation of this Section that the person was the owner, or was authorized by the owner to be present on the said premises, and that one of the persons present had the required written authorization on his/her person at the time.

(c) The officers, agents, and employees of the City, State, or Federal government, or any political subdivision or of any public utility are exempt from the requirement of this section while in the course of their employment.

(d) Written authorization, as provided in this section, shall be issued by the Building Program Manager to any person who provides documentation, on its face, that such a person is either an owner of the premises or is authorized by the owner to be present, or to any person who applies and pays for any permit to do work on the premises.

(e) Written authorization, as provided in this section, shall not be issued in connection with any property which has been declared a public nuisance as provided, unless all parties have complied with the vacate provision.

(Ord. 13-05. Passed 4-18-05.)

1357.99 PENALTY.

A violation of the requirements of Sections 1357.10(b), 1357.14, 1357.15 shall constitute a misdemeanor of the third degree, punishable as provided in Section 501.99 and each day such violation continues shall constitute a separate offense.

(Ord. 13-05. Passed 4-18-05.)