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by

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Nuisance Abatement: Fighting Crime With Local Government Regulations and Powers



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The impact criminal nuisance properties have on local government resources, property values, and community morale is devastating. The primary purpose of this article is to discuss how local governments can develop and implement comprehensive strategies to help relieve and revive neighborhoods suffering from criminal nuisance properties. The secondary purpose is to identify legal issues that can arise when government officials exercise their power to abate these nuisances. The comprehensive approach discussed involves utilizing a variety of local government powers.

THE NEED FOR ALTERNATIVE APPROACHES TO FIGHT CRIME

Traditionally, local governments have almost relied entirely on their law enforcement officials as the sole means of addressing criminal nuisance properties and resulting neighborhood decay that occurs too often. This single-handed approach has proven to be ineffective. From 1980 to 2000, the number of individuals under correctional supervision -- prison, jail, parole, or probation -- in the United States

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increased 258%[2] while our population has grown just 21%[3]. As is often cited, the United States makes up only 5% of the world's population but 25% of the world's prison population. Despite the explosion of incarcerated individuals, neighborhoods have not reaped improvements from this approach. Clearly, today's challenges to abate nuisance properties cannot be solved by using yesterday's strategies. As Albert Einstein once said, "the significant problems we face cannot be solved at the same level of thinking we were at when we created them."

When a property is used as a base for street level criminal operations, it is typically a nuisance, not only to neighbors and law enforcement, but to other government agencies as well. As a consequence, it is logical to not only address the criminal aspects, but the underlying circumstances that nurture repeat criminal activity. Some of the conditions that must be dealt with include deteriorating neighborhoods with sub-standard housing conditions, poor property management, repeat violations of zoning and housing codes, return of criminals to the nuisance property, issuance of government licenses to businesses and individuals with known histories of operating nuisance property, and the failure of governments to file civil nuisance abatement lawsuits. By employing a comprehensive approach, criminal activity will decrease, a variety of government regulations will be enforced, and the quality of life for neighbors will be improved -- a benefit for all parties involved.

A COMPREHENSIVE STRATEGY

The best method of solving almost any problem is to take a comprehensive strategy. Comprehensive approaches not only mitigate the symptoms of the problem but

[2] U.S. Department of Justice, Bureau of Justice Statistics, August 25, 2002 *available at <http:/www.ojp.usdoj.gove/bjs/glance/tables/corr2tab.htm>*, (last visited March 18, 2003.)
[3] U.S. Census Bureau, Statistical Abstract of the United States, (2001).

also resolve the circumstances that create the problem. Nuisance abatement is no different. Using civil tools as a means of abating nuisance properties is a field local governments are just beginning to explore. Today's police departments must find new and innovative methods of dealing with properties that are havens of criminal activity. Utilizing a comprehensive strategy that combines all available government powers is an effective new means of crime prevention and abating nuisance properties.

Municipalities have broad powers through local government regulation. Taking advantage of these powers through a comprehensive strategy can effectively address nuisance properties. When creating a nuisance abatement program, local governments must ask two fundamental questions: (1) What powers are granted to the municipalities pursuant to state law that can be used to address nuisance properties directly or indirectly? (2) What local or state agencies have the authority to exercise this power? Once a determination is made as to what agencies have the authority to implement and enforce the needed governmental regulations and powers, municipalities can develop a nuisance abatement strategy tailored to its needs and resources. A multi-agency taskforce may now be formed.

CREATING A NUISANCE ABATEMENT STRATEGY

Although different cities have given a variety of names to their nuisance abatement programs,[4] their strategies recognize the importance of the comprehensive

[4] Harvard University, Innovation in Government Program Awarded in 1995, *available at* <*http://*www.innovations.harvard.edu/winners/ceny95.htm>, (last visited March 22, 2003 -The City of New York was awarded for its Civil Enforcement Initiative (CEI) by using civil litigation to improve neighborhoods by stopping prostitution, closing crack houses & unlicensed clubs.); City of Houston, Texas, Houston Police Online, *available at* <*http://www.ci.houston.tx.us/departme/police/operation_renaissance.htm*> (last visited Mar. 22, 2003 - Houston implemented Operation Renaissance by collaborating police efforts with other city departments, other government agencies); State of Texas, Office of the Attorney General,

approach. Nuisance abatement strategies -- at some level or another -- use resources outside the traditional single-handed law enforcement approach. An effective nuisance abatement strategy must involve the resources of a multi-agency taskforce within local and state governments.

Under a nuisance abatement approach, law enforcement must continue to play the major role in addressing nuisance properties. Additionally, law enforcement must form partnerships that create multi-agency task forces. These partnerships often include code enforcement officials, fire marshals, city planners and zoning compliance officers, 911 communication centers, business and alcohol licensing officials, and government attorneys with the authority to file nuisance abatement lawsuits. In addition to a multi-agency taskforce, partnerships with the private sector play a critical role. Specifically, it is critical to have a positive working relationship with landlords, property management companies, and neighborhood groups. These groups bring vital interests, information, and unique abilities to the table allowing them to be an effective partner in a nuisance abatement strategy.

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available at <http://www.oag.state.tx.us/newspubs/opeds/199904nuisance.htm> (last visited Mar. 22, 2003 - Attorney General uses the Strategic Nuisance Abatement Program (SNAP) to stop crime.); City of Albequergque, New Mexico, Establishes "Clean Team", *available at <http://www.cabq.gov/hot/legal.html>*, (last visited Mar. 22, 2003 - Albuquerque, establishes a Community Enforcement Abatement Division in City Legal Department.); City of Denver, Colorado, Patrol Division, *available at <http://www.denvergov.org/Patrol_Division/template21630.asp>*, (last visited Mar. 21, 2003 - Denver created a Public Nuisance Abatement Unit); City of Pasadena, California, City Prosecutor, *available at <http://www.ci.pasadena.ca.us/cityprosecutor/nap.asp>*, (Pasadena established a Nuisance Abatement Program (NAP) to solve neighborhood crime. Team representatives include city prosecutor's office, neighborhood connections, the police department, and a community based non-profit.); City of Portland, Oregon, Police Bureau, *available at <http://www.portlandpolicebureau.com/dvddrughouse.html>*, (last visited Mar. 25, 2003 - Portland adopts a Chronic Nuisance Abatement Ordinance to address nuisance properties); City of Chattanooga, Tennessee, Police Department, *available at <http://www.chattanooga.gov/police/Commands/Uniform/CivilEnforcement.htm>*, (last visited March 25, 2003 - Chattanooga establishes a Civil Enforcement Unit to fight crime.)

IDENTIFYING NUISANCE PROPERTIES

The definition of a nuisance varies from state to state.[5] No matter what the particular definition a local government follows by law, numerous resources are available to report nuisance activity. Likewise, public record systems are already available to document these reports. These systems include records of 911 and communication centers, police arrest and incident reports, fire incident reports, complaints from neighbors, zoning violations, and health and safety code violations.[6] In order to assure that sufficient evidence is available to prove that a nuisance exists, it is critical that neighborhood groups understand the importance of reporting all violations of the law. Similarly, it is critical for multi-agency taskforce to document all conduct constituting a violation of the law. The need for good documentation illustrates the necessity to form both public and private partnerships. Through partnerships, all interested parties will be able to better understand the important role that each person plays in the nuisance abatement investigation process.

Once a nuisance property has been identified, it is vital to determine how it can best be abated. Because each situation is unique, a variety of methods must be available under a comprehensive strategy. Below is a discussion of tools generally available to eradicate criminal nuisance properties.

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[5] *See*, Ala. Code § 6-5-120; Cali. Health & Safety Code § 11570 *et. seq*.; Fla. Stat. Ann. § 893.138; Iowa Code § 657.2; Mo. Rev. Stat. § 82.1025, 67.402; Ohio Rev. Code Ann. § 3762.02; and Tex. Health & Safety Code Ann. § 343.002 *et.seq*.

[6] In order to assure that sufficient evidence is available to prove that a nuisance exists, it is critical that neighborhood groups understand the importance of reporting of both criminal acts and ordinance violations. Likewise, it is critical that government officials document violations with reports. The need for good documentation illustrates the need to have partnerships which include interested parties who understand the important role that they play in providing information necessary to abate properties.

SELF-ABATMENT OF NUISANCES

Before taking steps to abate a nuisance property through government action, the best solution is self-abatement. The process of self-abatement begins by notifying property owners that a nuisance exists. This notice should include the reasons why a nuisance is believed to exist and provide the owner with available solutions to abate the problem. While notices to abate should include a pledge of support and assistance from the municipality, it should, however, be made clear that the owner's failure to take steps to self-abate will result in legal action by the city.

The success of self-abatement is critical to the success of a comprehensive strategy.[7] The best method of promoting self-abatement is the establishment of partnerships with landowners, landlords and property management companies. Through this foundation, a relationship can be built allowing all parties to understand the mutual benefits of nuisance abatement. After all, local governments and neighbors are not the only beneficiaries. Landlords, professional management companies, and commercial property owners can reap substantial advantages as well.[8] Through partnership, other benefits can be realized. In addition to sharing information and ideas, a relationship can be used to devise creative ways of preventing properties from developing into a nuisance in the first place. Examples include the development of model tenant screening

[7] Clearly, it is much more efficient on limited government resources to have problems abated by the property owner than it is for government to bear the costs of abatement. The cost of abatement can be drawn out in the form of lengthy litigation.

[8] Abatement of nuisances creates benefits in several ways. Besides the obvious advantages to law enforcement and neighbors, the nuisance abatement process often assists landlords and non-resident property owners. The benefits include increases in property values and equity, and by making property more marketable to prospective tenants.

guidelines,[9] the exchange of public information,[10] and the availability of government programs and policies available to private property owners.[11] An example of an inexpensive and innovative idea is to systematically provide landlords and property managers with copies of police reports and call logs related to their properties. This plan alone can provide property owners with information to prevent properties from becoming nuisances. Further, through these partnerships, cities can work with landlords and property owners to create property management training sessions to improve the private sector's ability to effectively manage property.[12]

If self-abatement fails in a particular case, despite the establishment of relationships with landlords and property managers, it becomes imperative that municipalities take the action. The powers available to local governments to abate nuisance are numerous. Below is a discussion of numerous avenues available to use if self-abatement fails to produce results.

LOCAL GOVERNMENT REGULATIONS AND POWERS

The Power of Condemnation Without Compensation.

The most dramatic power available to local governments to abate a nuisance is the ability to order demolition of properties without compensation. McQuillin has summarized this power by stating that:

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[9] The Department of Housing and Urban Development has established a guide for tenant screening that complies with the Federal Fair Housing Act. For a good resource on tenant screening go to www.landlord.com/qts_faqs_frame.htm.

[10] Local governments can provide property owners with documents pursuant to state freedom of information laws.

[11] The number of local government programs and assets available to property owners are numerous. These can range from providing applications for Community Development Block Grant (CDBG) funds to hiring off-duty law enforcement officers.

[12] It is crucial that landlords and property managers know how to effectively screen and properly evict tenants in order to prevent nuisance activity on properties. Property management training can provide landlords with the knowledge needed to make good property management decisions.

> Under certain circumstances and by virtue of the police power a state or municipal corporation may without compensation to the owner destroy private property. This may be done, generally speaking, in these situations: (1) where private property is inherently a public nuisance or injurious to the public welfare, health, safety or morality; (2) where private property, not inherently, but by reason of the manner of its use, which the owner cannot or will not correct, is a public nuisance or injurious to the public welfare, health, safety or morality; and (3) where private property is not a nuisance or injurious to the public in any way but its destruction is necessary to protect the public safety, health, morality or welfare.[13]

This precise issue was before the United States Supreme Court almost a half century ago in the case of *Berman v. Parker*.[14]

In *Berman*, a property owner challenged the District of Columbia Redevelopment Act of 1945. Under the Act, the owner's property was being condemned in order to remove substandard housing and blighted areas. The Court held that the Act did not amount to a taking that would require compensation under the Fifth Amendment. In his opinion, Justice Douglas skillfully summarized the need for this significant police power:

> Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.[15]

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[13] McQuillin Mun Corp at 24.23 (3rd Ed).

[14] 348. U.S. 26 (1954). For other cases recognizing this police power, see also, *Traylor v. City of Amarillo*, 492 F.2d 1156 (8th Cir. 1974); *Marysville v. Standard Oil Co.*, 27 F.2d 478 (8th Cir. 1928) *aff'd*, 278 U.S. 596 (1974) (holding that property may be destroyed via a city's police power in a manner that does not constitute a taking and does not deprive the owner of due process.)

[15] *Berman*, 348 U.S. at 32-33

More recently in *Lucas v. South Carolina Coastal Council*,[16] the Court has again acknowledged that government can avoid paying damages of a taking when government condemns property with its police power in order to protect the public.[17]

Based upon history and the broad power of municipalities to order the removal of nuisances through condemnation, the use of this power is a tremendous tool that can be utilized to abate nuisances. Obviously, due to the severe nature of this power, it is best used in the worst of cases.

Enforcing Zoning, Building, Housing & Fire Regulations and Trash Ordinances.

Most cities of any significant size have adopted zoning and building regulations. Additionally, the number of localities adopting minimal housing standards is ever increasing. The combined enforcement of these regulations contain significant tools that can be used to indirectly address criminal conduct at nuisance properties. A key element of a comprehensive nuisance abatement approach is to recognize this tool and put it to use. Therefore, the need for law enforcement to partner with municipal planners and inspectors is beneficial to a comprehensive approach.

Zoning and building ordinances have a variety of regulations that are effective in reducing crime. These regulations include limitations on the number of buildings per lot, the occupant density of buildings (including the number of people per square foot), and the types of uses allowed in a zone. A property is more likely to be susceptible to activity if it has a high-density population. Therefore, enforcement of regulations that decrease the population density on nuisance property can help address criminal conduct.

[16] 505 U.S. 1003 (1992),
[17] 505 U.S. at 1020-1030.

For example, a house built and zoned for single-family use is best equipped to create a quiet neighborhood environment. However, if the property is illegally converted to multi-family use in violation of zoning, building, and housing regulations, it is only logical that the increased number of residents within the structure will increase chances of criminal conduct. Under a comprehensive nuisance abatement approach, requiring properties to comply with density and use regulations will help to create the environment intended by the regulations.[18]

Applying this concept to commercial institutions can also be effective. A wide variety of regulations can help address commercial nuisance properties. From the traditional fire marshal's limitation on the number of occupants in buildings to the enforcement of zoning laws, these non-traditional police powers can be successful when used as a part of a comprehensive strategy. Often when a business begins to change its operation from its original purpose to that of a nuisance its use has been altered. An example would be a business that is established for social purposes but changes over time to become a place of large gatherings with drug and alcohol activity. Under a comprehensive strategy, nuisance activity can be abated not just with police officers responding to calls, but by correcting violations ranging from zoning, business license, and alcohol violations to fire code violations.

In addition to zoning, building, and fire code regulations, housing standards can be used to address nuisance properties in serious disrepair. More than 2,500 city, county, and state governments have adopted model codes developed by the Southern Building

[18] Often nuisance activity is located on older properties. Therefore, the issue of whether or not the property is grand-fathered as a non-conforming use can arise. However, the abandonment of a non-conforming use over a certain period of time can cause loss of the non-conforming status.

Code Congress International (SBCCI).[19] Under SBCCI's housing code, residential units that pose a serious risk to health and safety can be closed after providing notice.[20] Therefore, a property with frequent criminal activities can be shut down quickly if it is in serious disrepair and poses health and safety risks to its occupants and the public.[21]

Finally, cities may abate nuisances by enforcing ordinances that regulate trash and unsightly debris. This part of the abatement strategy is akin to the "grime breeds crime" and "broken window" theories of neighborhood revitalization. Cleaning up trash and debris of nuisance properties is an important part of the abatement process. From the removal of every day trash and abandoned vehicles to the cutting of grass and weeds, a property's improved appearance can create a more attractive neighborhood that leads to community pride.

The Use of Civil Lawsuits: Evictions, Abatement, and Seizures.

A major problem associated with nuisance properties is the return of criminals to the property. This problem is exasperated with today's problem of jail overcrowding. Three different legal tools can be used to avoid the return of criminals – civil evictions, nuisance abatement lawsuits, and seizures.

The use of evictions as a means of abating nuisances is a very effective method of prohibiting repeat criminal activity. This method of abatement can be widely used in the self-abatement process through partnerships with landlords and property management companies. When private rental contracts have nuisance, drug, or criminal activity

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[19] Southern Building Code Congress International, *available at* http://www.sbcci.org, (last visited Mar. 21, 2003.)

[20] Southern Building Code Congress International, Standard Housing Code, at § 309 (1994 edition).

[21] It should be noted that if law enforcement activity leads to the discovery of housing code violations, a warrant should be sought before an inspection is conducted, if consent cannot be obtained. *See, Camara v. San Francisco*, 837 U.S. 541 (1967).

termination clauses, the contract can serve as a tremendous tool in abating nuisance activity. Additionally, state legislatures can create a cause of action authorizing evictions for criminal activity pursuant to the state's police powers.[22]

Last year, the United States Supreme Court addressed the validity of using evictions as a method of controlling drug activity on and off federally assisted low-income housing in *Department of Housing and Urban Development v. Rucker*.[23] In *Rucker*, public housing tenants filed a lawsuit naming the Department of Housing and Urban Development (HUD) and the Oakland Housing Authority (OHA) that challenged the application and constitutionality of the Anti-Drug Abuse Act. A section of the Act states that each "public housing agency shall utilize leases . . . provid[ing] that . . . any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, or any member of the tenant's household, or any guest or other person under the tenant's control, shall cause for termination of tenancy."[24]

As a result of the Anti-Drug Abuse Act, implementation of HUD regulations, and their leases, the plaintiffs in *Rucker* were evicted for drug activity of which they were not participants. Chief Justice Rehnquist, writing for the unanimous Court,[25] rejected the tenant's interpretation of the Act and their arguments that the Act violated the due process clause of the Fourteenth Amendment. The Chief Justice added that "it is reasonable for Congress to permit no-fault evictions in order to 'provide public and other federally

[22] See, Arizona Code § 33-168 (allows landlords to evict tenants for criminal activity) and Ark. Code Ann.§ 18-16-501 *et seq.* (creates a cause of action that allows prosecuting attorneys, city attorneys, and landlords to seek writs of eviction for criminal conduct.)
[23] 535 U.S. 125 (2002).
[24] 42 U.S.C. § 1437d(l)(6).
[25] Justice Breyer took no part in the consideration or decision.

assisted low-income housing that is decent, safe, and free from illegal drugs.'"[26]

Through a comprehensive nuisance abatement strategy, the power of eviction can be a great asset in abating properties. This power can be used through a three-prong approach – pursuant to private leases, the Anti-Drug Abuse Act, and state law.

In addition to the power of eviction, nuisance abatement and seizure lawsuits provide local officials a significant mechanism to address properties. Many states have adopted legislation enabling government entities to file abatement lawsuits to deal with criminal activity upon properties.[27] The concept of nuisance abatement through courts provides officials the option to seek relief through equitable means. The potential relief available can include the closure of the property and monetary damages.

Likewise, the power to seize property that constitutes a nuisance is remarkable as illustrated in *Bennis v. Michigan.*[28] In *Bennis,* Tina Bennis, jointly owned a vehicle with her husband. Unknowing to Tina, her husband engaged in sexual activity with a prostitute for which he was arrested and convicted. Following his conviction, the prosecuting attorney filed a civil complaint to have the vehicle abated as a nuisance and sold at an auction pursuant to Michigan law.[29] The prosecutor succeeded and Tina appealed eventually reaching the United States Supreme Court. On appeal, the Supreme Court, in a 5 to 4 decision, upheld the abatement despite the fact that Tina was an innocent and unwitting party to the criminal conduct.

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[26] 535 U.S. at 130, (quoting, 42 U.S.C. 11901(1)(1994 ed.))
[27] For examples look at, Ala. Code § 6-5-155, Ark. Code Ann. § 5-74-109, § 14-54-1501 *et seq*., § 16-105-401 *et. seq*., Fla. Stat. Ann. 893.138, Iowa Code § 657.2, N.M. Stat. Ann. § 30-8-8, Ohio Rev. Code Ann. § 3762.02, and Tex. Code Ann. § 125.021.
[28] 517 U.S. 1163 (1996).
[29] Mich. Comp. Laws § 750.338b (1979).

The ability of governmental units to seize property used in criminal conduct goes beyond vehicles. Both federal and state laws allow for a wide variety of property to be seized through forfeiture proceedings. The types of properties that may be seized and forfeited pursuant to federal law include aircraft, vehicles, and interests in real property.[30] Accordingly, the implementation of seizure and forfeiture proceedings is a useful way to abate nuisances.

State & Federal Agencies, Mortgages, and Government Licensing

In addition to local government resources, many other tools exist. Everyone from state and federal agencies to mortgage holders can be a part of the abatement process. Federal and state agencies have tremendous power to address properties that are a nuisance. From audits by the Internal Revenue Service to the revocation of alcohol beverage licenses, these powers can stop the conduct creating the nuisance.

Likewise, municipalities may revoke business licenses if businesses are operated in an unlawful manner. "Generally, municipal corporations that have issued licenses or permits have power and discretion to revoke them for good cause, either under express or necessarily implied power. Indeed, municipal power to revoke a license or permit has been stated to be a necessary consequence of the power to grant it."[31] This power includes the power to place conditions on permits as well.[32]

Finally, when notifying mortgage holders for due process considerations, banks and lending institutions can become partners in the abatement process. Many mortgage documents contain a nuisance clause. As a result, when mortgage holders are notified of

[30] 21 USCA § 881.
[31] McQuillin Mun Corp at 26.80, (3rd Ed).
[32] *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, (2001) (Holding that the city had good cause to take adverse action against a convenience store that was the base for criminal activity. Allowed for conditions but not closure.)

nuisance activity by local authorities, the company can become of great assistance to the process by exercising its right to foreclose in order to protect its interest.

CONCLUSION

The new challenges facing municipalities in the 21st Century require new approaches to nuisance abatement. A comprehensive nuisance abatement strategy can be effective when forming public and private partnerships that utilize a variety of legal tools with regard to due process considerations. By working together, municipalities can bring about positive changes and relief to communities adversely impacted by nuisance properties.