
**GOVERNMENT LAWYERS DIVISION/ADMINISTRATIVE & LOCAL
GOVERNMENT SECTION**

**Current Issues in Land Use Law
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TIPS ON ENFORCING NUISANCE ORDINANCES

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1. Preparing Your Client for Prosecuting a Nuisance Ordinance Case

- a. Be sure the municipality wants to get involved. Nuisance ordinance cases are rarely resolved quickly and easily:
 - i. Opposing parties are frequently *pro se* and are often difficult to work with.
 - ii. The nuisance changes and evolves over time. The municipality will have to continually monitor the property.
 - iii. Eliminating the nuisance does not mean it won't come back.
 - iv. Securing the defendant's compliance with court orders can be difficult.
 - v. The municipality should not expect to recover all the money awarded to it.
- b. Determine whether to seek relief under the municipality's nuisance ordinance or whether to seek a raze order.
 - i. If a structure is so dangerous, unsafe, unsanitary, or otherwise unfit for human habitation and unreasonable to repair, the municipality may prefer to issue a raze order under Wis. Stat. § 66.0413.

- c. Decide which nuisance ordinance violations to prosecute.
 - i. Many times a municipality knows of multiple nuisance properties. A frequent response by defendants is that another resident's property is in worse condition and that resident should be prosecuted instead. But a municipality has discretion whether to enforce a nuisance ordinance at all, and it has discretion to decide whether to enforce against all violators or just those that present the greatest problem.
 - ii. "[T]here is no obligation on the part of municipal officials to prosecute all cases in which an individual commits a violation of the municipal ordinance code. This is true notwithstanding . . . that the violation is open and notorious. To hold otherwise would be tantamount to divesting a municipality of the discretion necessary for effective and efficient law enforcement." *Vretenar v. Hebron*, 144 Wis.2d 655, 718 (1988).
 - iii. With limited budgets, municipalities cannot always afford to prosecute every violation. They must prioritize.
- d. Be sure to exhaust the procedures required by the nuisance ordinance.
 - i. Nuisance ordinances often require the municipality to provide the owner with prior notice and an opportunity to correct the violation before the municipality can initiate a lawsuit.

2. Tips for Prosecuting a Nuisance Ordinance Violation

- a. Take pictures. Photographs illustrate the conditions on the property far better than stating that the property "contains junked, wrecked, or abandoned equipment" or other ordinance language to that effect. And take pictures frequently. Nuisances tend to change and evolve over time, and the municipality bears the burden of proving the existence and duration of violations.
- b. Try to win on summary judgment. A court can find the existence of a nuisance on summary judgment if the defendant fails to submit evidentiary materials that place into dispute what the municipality's photographs show. *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 2001 WI App 148, ¶48.
 - i. Defendants will sometimes submit affidavits in opposition of summary judgment stating that their property contains no "junked, wrecked, or

abandoned equipment” or whatever the applicable ordinance language says. Use *Town of Rhine v. Bizzel*, 2008 WI 76 and *Ottman v. Town of Primrose* to oppose this practice. Respectively, those cases hold that the ordinance’s definition of “nuisance” prevails over the common law definition and that a municipality’s interpretation of its own ordinance will be upheld if it is reasonable.

1. Try to convince the court that the defendant’s affidavit is simply an attempt to create a semantic debate about whether the nuisance items are, in fact, “junked,” “wrecked,” or “abandoned.” The municipality’s interpretation of those terms is presumptively correct, and the interpretation of those terms is an issue of law.
- c. Seek minimum daily forfeitures. Under *Village of Sister Bay v. Hockers*, 106 Wis.2d 474 (1982), if the court finds that a defendant violated a municipal ordinance, the court must order forfeitures of not less than the minimum daily amount set forth in the ordinance for each day that a violation occurred.
 - d. Remember that other ordinances may be implicated by the nuisance. Some municipalities have separate ordinances regulating storage of junked vehicles. And many zoning ordinances limit junk yards to certain districts. Other ordinances may provide the municipality with different enforcement options and additional remedies.
 - e. Defeat takings claims. A person has no property right in maintaining a nuisance; therefore, no taking occurs when a nuisance is eliminated. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992).
 - f. In addition to forfeitures, seek injunctions prohibiting future violations, abatement orders, permission for the municipality to abate if the owner does not (with an accompanying warrant to abate nuisance).
 - g. Get as specific a judgment as possible. Problems will arise if the judgment simply requires the defendant to eliminate “all violations” or “remove all items on the property in violation of the nuisance ordinance.” This language does not identify which items must be removed.
 - i. When possible, instead of trying to identify all items to be removed, identify those items that can remain, and seek a judgment requiring everything else to be removed.

3. Settling Nuisance Ordinance Cases

- a. Conduct a site inspection prior to settling. The municipal board or a municipal official should request access to the property to view the conditions on it and confirm the nuisance has been eliminated. Take photographs during the site inspection.
 - i. If a quorum of a municipal governing body (e.g., town board) will be conducting the site inspection, be sure it complies with the Open Meetings Law.
- b. The resident might remedy most, but not all, of the violation. The municipality will have to decide how clean is clean enough. Weigh the benefits of requiring additional cleanup against its costs.
- c. Structure settlement payment terms to encourage additional cleanup.
- d. Follow up site inspections may be appropriate depending on structure of settlement.

4. Enforcing Nuisance Ordinance Judgments

- a. Draft proposed judgments carefully. If the judgment includes an abatement order, be specific as to what must be removed, preferably by identifying what can stay and ordering everything else removed.
- b. Use of contempt. If a defendant is ordered to eliminate violations, he or she can be held in contempt for failing to comply. The municipality may have to decide whether it wants to move for a contempt order. If it does, seek an order that gives the defendant additional time to clean the property. The goal is to convince the defendant to clean the property, not to put him or her in jail.
- c. Abatement by sheriff. Seek a judgment that includes an order that if the municipality shows by affidavit that the defendant failed to remove the nuisance, the court will issue a Warrant to Abate Nuisance directing the sheriff to remove the nuisance and allowing the municipality to specially charge the property for any of its costs incurred in the abatement. Caution: You may have to wait years before recovering your costs of abatement.