

Nuisance Abatement
A New Strategy For An Old Problem

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Introduction

Criminal nuisance properties place a strain on law enforcement agencies and local government resources. These properties drastically affect property values in an area causing low community morale, which decreases the overall quality of life for the citizens of a community. The traditional law enforcement response is of a reactive nature, to respond to each complaint after it occurs. This often leads to officers responding to the same location repeatedly for the same type of complaint. When arrests are made in these instances, and with the never-ending jail overcrowding issue, the suspect will often be released to return to the same address starting the complaint process again. This cycle will cause the residents of the area to become frustrated with the police for not doing anything and cause the officers themselves to become frustrated with the system, which can lead to low morale and added stress.

Throughout this paper I will discuss, from my personal experiences, how implementing a Nuisance Abatement program can help to eliminate these nuisance properties by using existing laws and local government powers.

Forming Partnerships

The first step to implementing a successful Nuisance Abatement program is to develop a comprehensive strategy that combines all available government powers working together to solve the problem. The powers given to municipalities through local government regulations as set out in Arkansas Code (2006), when applied correctly, can effectively address nuisance properties.

Most municipalities have multiple departments that deal with different aspects of local regulations. These could include; Police, Fire, Zoning, Code Enforcement, Licensing, Sanitation, Housing Authority, Animal Control, City Attorney, etc. The usual approach is for each department to handle their respective duties independent of each other. This is a typical bureaucratic approach that doesn't promote a system of sharing information between departments, working together or the sharing of common goals.

Properties that are used for criminal operations are nuisances to neighbors, law enforcement and the various departments of a municipality as well. More often than not the complaint the Police Department is receiving about suspicious activity is also being made to Sanitation for unsightly trash, Animal Control for vicious dogs, Code Enforcement for structure problems or the Fire Department for un-permitted burning.

Using a nuisance abatement approach, the police have the major role in addressing nuisance properties, but must also commit in forming partnerships or task forces with each department of the local government. This must be a continuing commitment from all departments within a municipality to focus on a single goal, which is to take back the neighborhoods and maintain a decent quality of life for the citizens. More simply put, government doing its job by enforcing existing laws.

Law enforcement should also create partnerships and good working relationships with landlords, property managers and property management companies. This could include training, sample lease agreements, background checks for tenant applicants, and

assisting with security recommendations. Another strong partnership to create is with community and neighborhood groups to determine the concerns and needs that directly influence the quality of life of the citizens. Good partnerships as these are important for locating nuisance properties and can also increase the public trust and respect of the department.

Identifying Nuisance Properties

A common nuisance is defined by Arkansas Code 14-54-1502 (2006) as conduct within a municipality which unreasonably interferes with the use and enjoyment of lands of another, including conduct on property which disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property.

Law enforcement has access to numerous records systems to gain information on reported nuisance activity. Arrest reports, incident reports, intelligence reports and field interview reports are a few of the records that have always been available to law enforcement. By forming partnerships with other municipal departments, private sector businesses and community groups, law enforcement can obtain additional documentation needed to prove a nuisance exists. Examples of these can include; fire reports, zoning violations, debris and overgrown lot violations, housing authority violations, health and safety code violations to name a few.

To ensure enough evidence exists to identify a nuisance property, it is important that community groups, citizens and law enforcement understand the importance of reporting and documenting all violations of the law.

Once a nuisance property is identified and the nature of the nuisance determined (i.e. criminal activity or health and safety code violations) a determination is made as to the best abatement procedure. In making this determination several factors should be considered.

- Is the nuisance property leased, rented or owner occupied?
- Is the nuisance property residential or commercial?
- Has the owner been notified of the nuisance?
- In the case of rented or leased property, does the owner condone the activity or is he involved in the activity?
- Does the nuisance pose immediate safety concerns for inhabitants, neighbors or other citizens?
- Can the property be safely rehabilitated?

Considering these factors will guide you in choosing the abatement action best suited to correct the nuisance activity and better the overall living conditions of the community.

Abatement Types

Self-Abatement of Nuisance Properties

Self-Abatement is usually the simplest abatement process. Allowing the property owner to correct the problem within a specific time frame. This starts with notifying the property owner of the reported nuisance and supplying documentation showing the reasons and type of nuisance believed to be occurring at the property. Assist the property owner by making recommendations for solutions to the problem. These recommendations could be as simple as providing information on eviction procedures for problem tenants to as extreme as demolition for abandoned properties with no rehabilitation potential.

Periodic follow-ups and inspections should be conducted during the self-abatement process to assure the problems are being corrected. Any un-foreseen obstacles found by the property owner that would lead to extension of the time frame should be dealt with to the satisfaction of law enforcement and the municipality. Always be open to new concepts or ideas while maintaining the goal of correcting the nuisance is to create a safer community. It is important that the property owner understands that if self-abatement fails the municipality will proceed with legal action.

Trash And Debris Ordinances

Most municipalities have ordinances that regulate trash and debris on property. Assuring these regulations are enforced is an important part of the overall nuisance abatement strategy. Removing trash, abandoned vehicles and the cutting of grass and overgrown foliage on a property can greatly improve a property's appearance making it

less appealing for criminal activity. This can lead to a more attractive neighborhood and rewarding the citizens with a sense of community pride.

Building And Zoning Codes

Larger cities have the authority to adopt building codes and zoning codes. Almost 20,000 jurisdictions in 48 states use one or more of the international codes according to the International Code Council's 2006 annual report (2006). Building codes can regulate construction methods, materials used, building types and the repair of buildings as established in Arkansas Code 14-56-201 (2006). Zoning codes can establish three separate zones in a city for manufacturing, businesses other than manufacturing, and residences as established in Arkansas Code 14-56-301 (2006). Enforcement of these regulations will reduce the number of sub-standard or dilapidated buildings in a community that are often havens for criminal activity.

“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” Justice Douglas for the majority in *Berman v. Parker* (1954).

Condemnation

The ultimate power a municipality may use is the power of condemnation. Cities of the first and second class shall have the power to order the removal or razing of, or to

remove or raze, any buildings or houses that in the opinion of the council have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare and shall provide, by ordinance, the manner of removing and making these removals as prescribed in Arkansas Code 14-56-203 (2006). Condemnation is a tremendous tool when used to abate nuisances, but because of its severity should only be used in the worst cases.

Miscellaneous Regulations

There are numerous other regulations a municipality can employ to reduce nuisance properties and revitalize neighborhoods. Business license restrictions, such as the type of business that be conducted or hours of operation. Restrictive covenants, such as those in subdivisions, that describes the type of structure that can be built. Community Development Block Grant forgivable loans with deed restrictions on types of activities that are allowed. Housing authorities with rental assistance and section eight housing have established regulations governing the eligibility of tenants and the number of persons that can be present on their property. Even most mortgage documents now contain nuisance provisions that allow for foreclosure if violated. The important thing to remember is to be open to new concepts and ideas when searching for solutions on nuisance properties.

Civil Lawsuits

The use of Civil Lawsuits and Temporary Restraining Orders in the abatement of a nuisance can remove the persons causing the nuisance from the property and close the property from being reoccupied. This type of abatement works especially well when

dealing with properties associated with drug and gang crime. By filing a Civil Lawsuit with a Temporary Restraining Order against the owner of the property and the occupants you are able to evict the occupants from the property at once. The property is then secured with no entry allowed pending a Court decision on the matter.

There are three Arkansas Statutes most commonly used in the filing of an order of abatement on nuisance properties. Arkansas Code 5-74-109 (2006) relates to the use of criminal gangs and organizations committing a continuing series of violations. This statute declares a common nuisance at any premises, building or any place that is used to facilitate the commission of a continuing series of three or more violations of Arkansas law. This is a civil lawsuit that may be filed by the Prosecuting Attorney, City Attorney or a citizen. An order of abatement under this statute can provide closure of the building or property and the availability to recover costs incurred for the abatement process up to \$5,000.00.

Arkansas Code 14-54-1502 (2006) relates to common nuisances pertaining to health and safety code violations. This statute declares that a common nuisance shall include any three separate district court convictions of health and safety code violations with respect to any one lot or parcel of property within a one-year period or one such conviction if the offense constitutes an imminent threat to the health, safety or welfare of any citizen. This is a civil lawsuit, but may only be filed by the City Attorney or a citizen. An order of abatement under this statute can provide closure of the building or property and availability to recover costs incurred for the abatement process up to \$5,000.00.

Arkansas Code 16-105-402 (2006) relates to common nuisances pertaining to drugs. This statute declares a common nuisance that is detrimental to the public morals for any store, shop, warehouse, dwelling house, building, boat, airplane or any place that is used for the purpose of unlawfully selling, storing, keeping, manufacturing, using or giving away any controlled substance, precursor or analog that is specified in state statute 5-64-101. This is a civil lawsuit that may be filed by the Prosecuting Attorney, City Attorney or a citizen. An order of abatement under this statute can provide closure of the building or property and a civil penalty of up to \$5,000.00.

The examples below show how nuisance abatement can help in returning a sense of pride to the community. Figure 1 depicts a residence on Belding St. in Hot Springs, Arkansas that had been the target of numerous search warrants for drug crimes prior to forming a nuisance abatement unit. Figure 2 depicts the same residence showing the results of a successful nuisance abatement lawsuit. The occupants were evicted and the activity was halted. The settlement between the Police Department, the City and the property owner resulted in the property being sold, rehabilitated and returned to decent housing.

Fig. 1
Criminal Nuisance
property on Belding
St. in Hot Springs, AR



Fig. 2
Same property on
Belding St. after
successful nuisance
abatement lawsuit
and rehabilitation.



The Hot Springs Nuisance Abatement Program began in late 2004. To date, it has opened 103 cases filed 22 lawsuits with Temporary Restraining Orders and evicted over 150 occupants directly or indirectly. The success of the program has resulted in the closure of nuisance businesses, the demolition of 4 nuisance houses and the rehabilitation of 7 nuisance residences.

Another available abatement statute is found in Arkansas Code 5-64-803 (2006), which is commonly referred to as the Head Shop law. This statute declares a common or public nuisance of a place where drug devices are manufactured, sold, stored, possessed, given away or furnished. This statute also specifies that conveyances or vehicles of any kind be classified as places under the meaning of this statute. The Prosecuting Attorney

or a citizen of the county or municipality where the nuisance is located files this action as an injunction.

One special consideration for cities of the first and second class in Arkansas is the passage of Act 1190 of 2003 that allows for the creation of criminal nuisance abatement boards. These boards have the power to issue orders of abatement of nuisances, which may include the closure of the property. This is a five member quasi-judicial board created by the city. Violations of orders of the board and continuation of nuisances may be fined \$250.00 per day.

Criminal Charges

When dealing with nuisance properties associated with repeated criminal gang and drug activity specifically, it may be possible to impose felony criminal charges against the occupants. Arkansas Code 5-74-105 (2006) makes it a class B felony to use another person's property to facilitate in any way the violation of a predicate criminal offense without the owner's knowledge.

Conclusion

Law enforcement continually faces new and more demanding challenges every year in protecting our citizens against crime. State law and local regulations provide numerous tools for law enforcement and local governments to combat nuisance properties, but only when they are enforced. Developing and implementing a nuisance abatement program and working together with other municipal departments and private

agencies can provide the necessary information for proper implementation of the tools, which can reduce crime associated with nuisance properties while revitalizing older neighborhoods and giving the citizens a better overall quality of life.

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