

DAYTON'S USE NUISANCE ABATEMENT PROGRAM

Factoids and Frequently Asked Questions

What is Use Nuisance?

- Dayton's Use Nuisance Abatement Program is a legal process by which a structure can be declared a nuisance by virtue of evidence of certain illegal activity.
- The illegal activity consists of crimes in the following categories:
 - Drugs
 - Gambling
 - Prostitution
 - Illegal Liquor Sales
- A property can be referred into the Use Nuisance Abatement Program only by the Police, who serve legal notice on the residents or occupants of a structure upon discovery of illegal activity.
- The owner of the property is served with a legal notice by certified mail.
- An appeal may be filed by anyone served with such a notice within 15 calendar days. Once an appeal is filed, a hearing is scheduled within 30 days.

What is the Use Nuisance Appeals Process?

- Anyone receiving a notice of Use Nuisance can register an appeal. The Use Nuisance Appeals Board is comprised of five representatives; two Building Services representatives, one Fire Department representative, one Police Department representative and a Planning Department representative. An Assistant City of Dayton Attorney presides over the Board and its hearings. The Board makes the decision at the hearing as to what action should be taken.
- A Police detective presents the case to the Use Nuisance Appeals Board. The detective presents the case from file notes, arrest reports and information about the case received from the investigating officers.
- The Board must determine three things. First, is this a public nuisance? Second, did the appellant have the knowledge of the illegal activity? Third,

what should be done about the nuisance?

- Possible decisions of the Board include:
 - Ordering only the guilty resident(s) off the premises immediately and allowing the other residents to remain in the property;
 - Ordering all the residents to leave the premises immediately;
 - Giving residents a specified number of days they can remain in the premises before being subject to arrest;
 - Giving a 365-day probationary vacate order, which means resident can remain in the premises but are subject to immediate removal if there is another occurrence within the 365 days; and finally, but not often:
 - Ordering the property completely vacated and not habitable for 365 days. This usually only happens when a landlord is not cooperative.

- The Use Nuisance Appeals Board makes a final, appealable decision and that order is created and kept on file in the City of Dayton One-Stop Center, located at 371 West Second Street, Dayton, OH. A landlord may receive a copy of the decision order upon request.

- It sometimes happens that no one is ordered off the property by the Use Nuisance Appeals Board. *But a landlord, of his or her own accord, may evict the tenants as a result of learning of the tenants' illegal activities.*

Legal Grounds

- Dayton's Use Nuisance Abatement Program is predicated on two established RCGO ordinances, both of which have been upheld in the Montgomery County (OH) Common Pleas Court. Those ordinances are:

Sec. 152.12. - Illegal occupancy of a public nuisance.

(A) No owner or other person shall occupy or let or permit to be occupied or let by another for occupancy any structure that has been declared by the Superintendent of Neighborhood Development to be a public nuisance without first applying for and obtaining the written consent of the Superintendent. Consent shall be given when all violations of all applicable housing, building and other health and safety codes of the City of Dayton and the State of Ohio have been corrected, when any injunctions obtained against use or occupancy have been dissolved, and when all parties have complied with all applicable requirements of § 152.061.

(B) In the event of a violation of subsection (A) by the owner, the cost of the relocation of tenants by the city shall be included as a cost of abating or lessening the severity of the public nuisance, and shall be recovered in the manner provided in § 152.08

(Ord. 28336, passed 7-24-91)

Sec. 152.12.1. - Unauthorized entry upon nuisance premises.

(A) No owner or other person shall enter or be present in or on any building or premises that has been posted with a notice identifying the said building or premises to be a public nuisance, without first obtaining authorization in writing from the Superintendent of Neighborhood Development and having such written authorization on his/her person at the time.

(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, shall be exempt from the requirements of this section while in the course of their employment.

(D) Written authorization, as provided in this section, shall be issued by the Superintendent of Neighborhood Development to any person who provides documentation which, on its face, indicates that such person is either an owner of the premises or is authorized by the owner to be present, or to any person who makes application 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 in § 152.04(B), unless all parties have complied with all applicable requirements of § 152.061.

(F) The issuance of an authorization provided herein shall not be construed to create a privilege, as that term is used in R.C. §§ 2911.21 or 133.05, nor shall this section be deemed to have any affect whatsoever on the interpretations or application of those sections.

(Ord. 28336, passed 7-24-91)

How can citizens help?

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- Drug activity and vice crimes such as gambling, prostitution and illegal liquor sales drive property crimes and violent crimes and contribute to the erosion of the quality of life in our neighborhoods.
- Citizens can help by contacting the Department of Police with observed violations or suspicions so that an investigation can be made and, ultimately, legal orders issued by the Police. Nuisance Abatement cannot occur until this happens. Citizens are encouraged to call the Dayton Police Department Drug Hotline at 333-DRUG (3784) with information about this type of activity.

Disclaimer

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- The names that appear on this web page are names of individuals who have been served with notices of Use Nuisance and have not appealed or been granted permission to be at any of the locations indicated.