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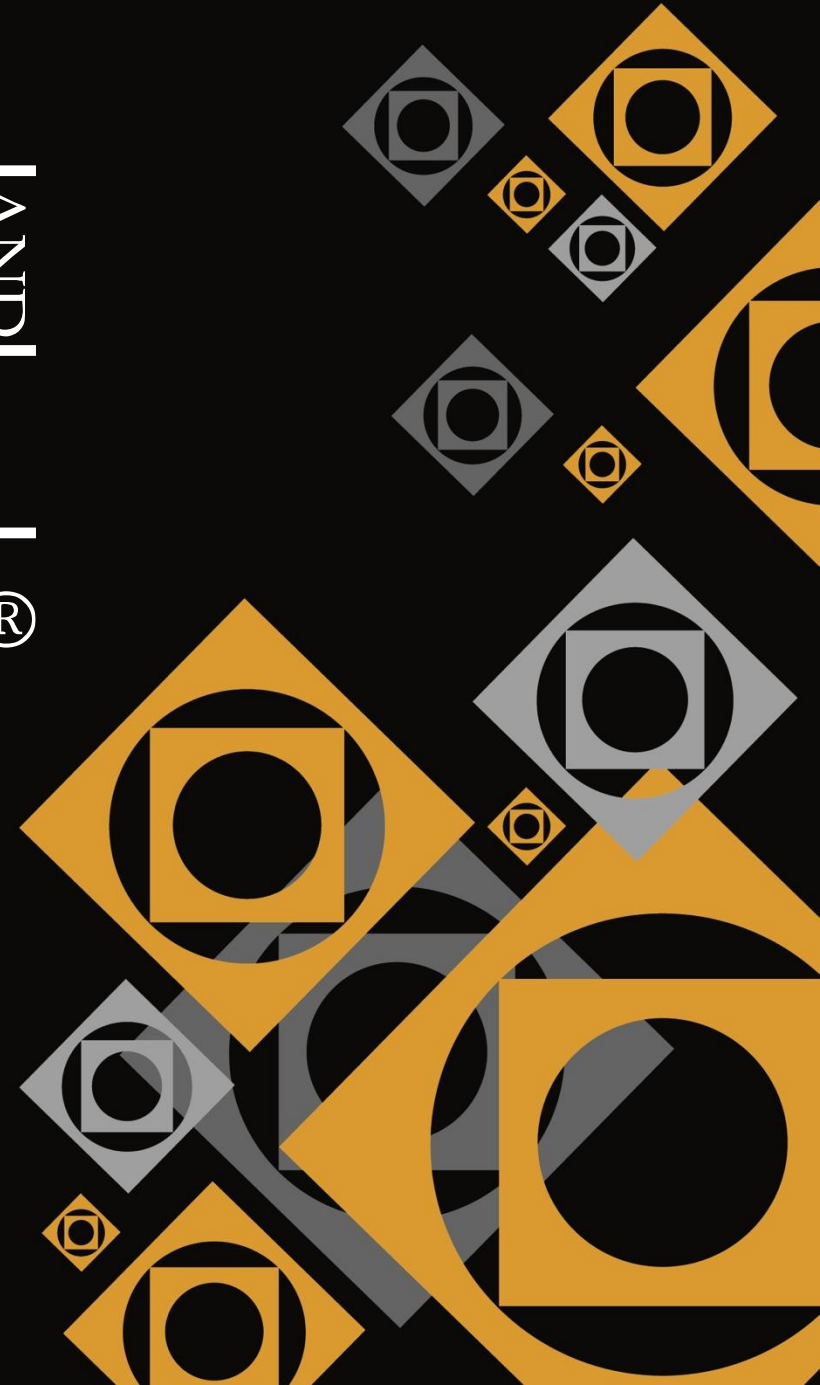
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937-223-1130

Presenters

Jerry McDonald

Deztany Johnson



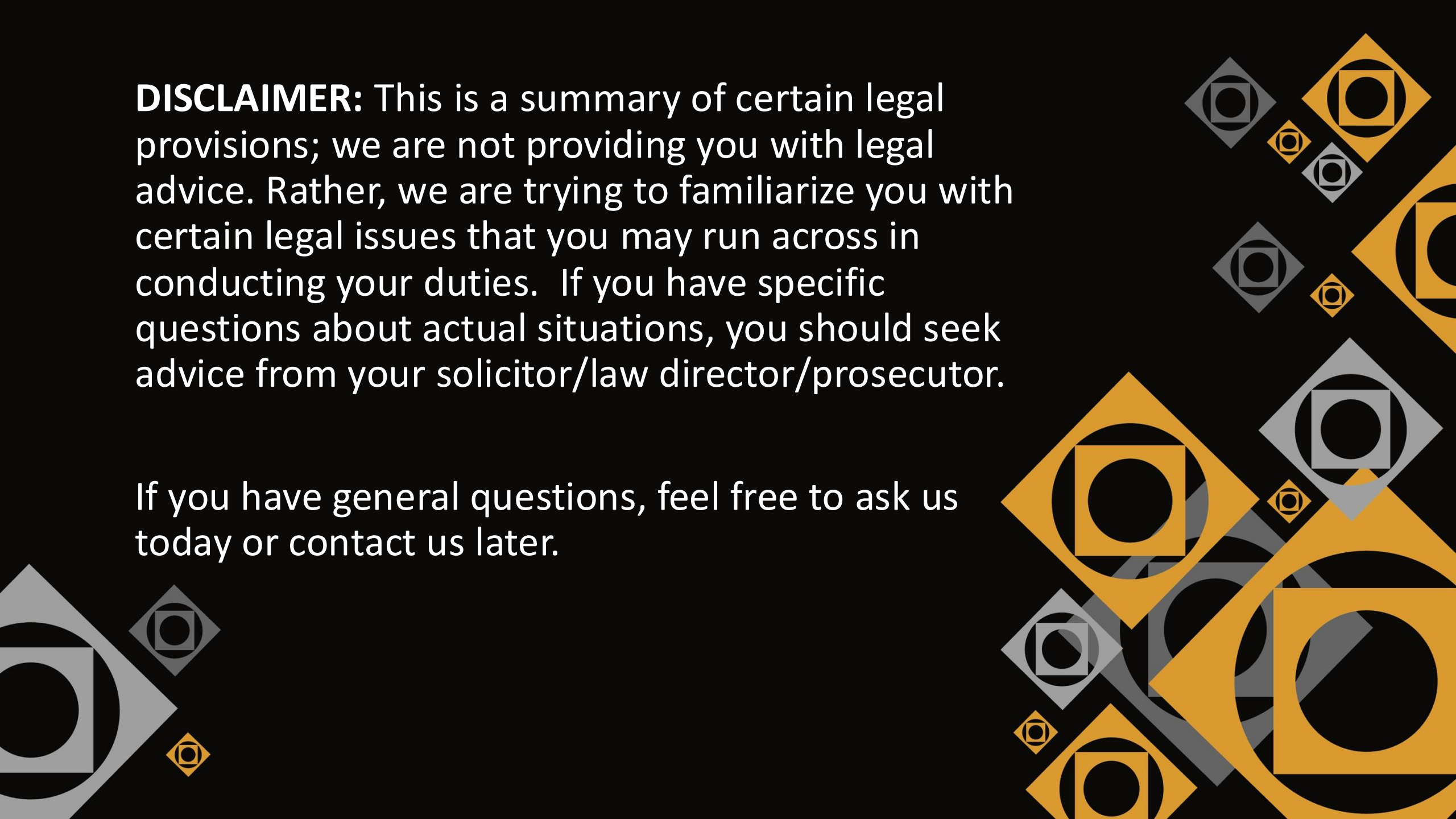
Nuisance Properties & Enforcement

- **Giving Eye Sores a Black Eye**



DISCLAIMER: This is a summary of certain legal provisions; we are not providing you with legal advice. Rather, we are trying to familiarize you with certain legal issues that you may run across in conducting your duties. If you have specific questions about actual situations, you should seek advice from your solicitor/law director/prosecutor.

If you have general questions, feel free to ask us today or contact us later.



What is a Nuisance?

If you are wondering if it's a nuisance...it probably is

- A nuisance is any condition or activity that interferes with public health, safety, peace, or comfort.
- Legal definitions vary but often include properties that are unsafe, unsanitary, or crime-associated.
- Key criteria often involve structural decay, health hazards, accumulation of trash, or repeated criminal activity.
- Encompasses both physical conditions (blight) and ongoing activities (criminal enterprises).



ORC 3767.01(c)(1) "Nuisance" means any of the following..
That which is defined and declared by statutes to be a nuisance"

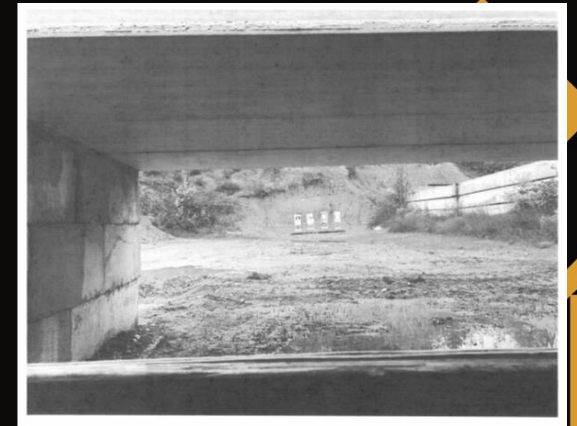
Why Nuisances Matter

- Lower neighborhood property values and deter legitimate investment.
- Encourage criminal activity and pose significant fire and health risks (e.g., pest infestation, structural collapse, accumulation of hazardous materials).
- Impact community morale, reduce quality of life, and strain municipal/township resources.
- Can lead to increased calls for police, fire, code enforcement, and public health services.



Categories of Public Nuisances

- Criminal Nuisances: Properties used for illegal drugs, prostitution, gang activity, gambling, or other criminal enterprises.
- Common Law Nuisance: unreasonable interference with a common right. (e.g. right to safety as basis for marketing dangerous weapons) interference with rights as opposed to property
- Statutory Nuisances: Dilapidated structures, excessive debris, unsanitary conditions, pest infestations, fire risks (e.g., overgrown vegetation, chemical storage), improper waste disposal, pollution, or other conditions harmful to the environment.
 - Code Violations: Property Maintenance Code, Building Code, Fire Code, Zoning Code.
 - Aesthetic Violations: (Neighbor complaint) watch out for constitutional law issues



Categories of Public Nuisances



Key Statutes & Legal Framework

- Ohio Revised Code 3767.01: Defines general public nuisances and provides a basis for action for certain buildings and certain activities.
- ORC 3767.41: Criminal Nuisances. A powerful tool specifically for residential, non-owner-occupied properties used for illegal activity. Allows for court-ordered closure and receivership.
- ORC 505.87: Township authority to clean up, secure, or demolish unsafe structures on private property after notice and hearing.
- ORC 505.86: Township authority to abate public nuisances, including overgrown vegetation and accumulation of trash.
- Local Ordinances: Many municipalities and limited home rule townships have their own ordinances that further define and address nuisance properties, often providing more specific criteria.
- Municipalities: ORC 715.44 provides a municipal corporation may abate any nuisance. In addition, they have broader enforcement powers due to home rule authority and more comprehensive city charters.
- Townships: (other than limited home rule townships) Powers are typically more limited and explicitly granted by state statutes (e.g., ORC 505, ORC 519).



Drafting Local Ordinances/Resolutions

- **Subjective Criteria: Based on general blight, vacancy, or perceived negative impact on the neighborhood.**
 - “Whenever the premises are a deteriorating and blighting influence on nearby properties by reason of continued vacancy and a lack of reasonable or adequate maintenance of structures and grounds.”
 - “Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.”
- **Objective Criteria: Based on specific measurable thresholds such as structural damage percentage, number of code violations, or time a property has been vacant.**
 - “Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.”
 - “Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.”
- **Hybrid Criteria: Often combine subjective concerns with objective, measurable standards for clarity and enforceability.**
 - Whenever the building or structure, or any portion thereof, because of: Dilapidation, deterioration or decay; Faulty construction; The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; The deterioration, decay or inadequacy of its foundation; or Any other cause is likely to partially or completely collapse, fall, become detached or dislodged, or to collapse and thereby injure persons or damage property.
 - Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is apparently abandoned for a period in excess of six months to constitute such building or portion thereof an attractive nuisance.

Local Laws Should Express The Stated Purpose



Purposes. There exists in the City structures used for human habitation and otherwise, which are, or may become in the future, substandard with respect to structure, equipment or maintenance, that constitute or may constitute in the future a menace to the health, safety, morals, welfare and reasonable comfort of the citizens. The City Council believes that the existence of such substandard conditions can, if not remedied, create slum and blighted areas requiring large-scale clearance. In the absence of corrective measures, such areas can experience a deterioration of social values, a curtailment of investment and tax revenue, and an impairment of economic values. This chapter is to protect the public health, safety and welfare in all existing structures, residential and nonresidential, and on all existing premises by clearly defining what constitutes a nuisance property; establish means whereby the City, under its police powers, may remove or abate or cause the removal or abatement of nuisances after notice and opportunity to be heard and to cure and assessing for the cost thereof in an effort to improve the overall quality of life issues in neighborhoods throughout the City.

Existing Remedies. The provisions in this Code shall not be construed to abolish or impair existing remedies of the City or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe, and unsanitary. This chapter shall not be deemed to be a limitation or restriction on the authority of any department, division, official, or employee of the City, but shall be deemed as an enlargement of any authority existing by virtue of the statutes of this state or any ordinance enacted by the City.

Local Laws Should Clearly Define The Public Nuisance

A Public Nuisance is:

- (1) Whenever the premises are a deteriorating and blighting influence on nearby properties by reason of continued vacancy and a lack of reasonable or adequate of structures and grounds.
- (2) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is apparently abandoned for a period in excess of six months, to constitute such building or portion thereof an attractive nuisance.
- (3) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or as defined by statute.
- (4) Whenever any building or structure is determined to be a fire hazard.
- (5) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness, disease or injury.
- (6) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City or of any law or ordinance of this state or City relating to the condition, location, or construction of buildings or structures.
- (7) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:
 - A. An attractive nuisance to children;
 - B. A harbor for vagrants, criminals or immoral persons; or as to
 - C. Enable persons to resort thereto for the purpose of committing unlawful acts.
- (8) Whenever the building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(8) Whenever the building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(9) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

(10) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(11) Whenever the building or structure, or any portion thereof, because of:

- A. Dilapidation, deterioration or decay;
- B. Faulty construction;
- C. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
- D. The deterioration, decay or inadequacy of its foundation; or
- E. Any other cause; is likely to partially or completely collapse, fall, become detached or dislodged, or to collapse and thereby injure persons or damage property.

(12) Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds than is reasonably safe.

(13) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

(14) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

(15) Whenever the walking surface of any aisle, passageway, stairway or other element of a means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(16) Whenever household property typically associated with indoor use, such as furniture, and appliances, are stored outside and whenever there is a residential stockpiling of household property, goods or merchandise in storage bins or boxes when such items are stored outside and remain outside on the property for longer than thirty consecutive days. Stockpiling as used in this section shall mean ten or more storage bins or boxes.



Local Law Retroactivity

State v. Skilwies, 1999 Ohio App. LEXIS 20, (Ohio Ct. App. 2d Dist. Montgomery County 1999). Defendant had been parking his dump truck on his property. Plaintiff (City of Riverside) passed an ordinance declaring the unrestricted parking of commercial vehicles and heavy equipment in residential areas a public nuisance. A complaint was filed against defendant and he was found guilty of violating the City Zoning Ordinance.

Defendant appealed the judgment and it was reversed.

The court held that because the ordinance was primarily aimed at aesthetic ends and not substantially related to abating an actual nuisance, it could not be enforced retroactively against defendant's prior legal nonconforming use, which was protected by the federal and state due process clauses, U.S. Const. § 1, art. XIV, and Oh Const. § 16, art. I.

The court held that the zoning law in question did not bear a substantial enough relationship to an actual nuisance to permit the law's retrospective application against a preexisting use. The court found that because the subject ordinance mainly addressed aesthetics, and bore no substantial relationship abating a public nuisance, it was subject to state and federal due process requirements.

Documenting a Nuisance Property

- Take dated, high-quality photos and videos showing dangerous conditions, decay, debris, or specific violations.
- Maintain a detailed log of all complaints received, inspections conducted, and attempted contacts with property owners/occupants.
- Document code violations (building, health, fire), evidence of criminal activity (911 call summaries, police reports), and relevant neighbor statements.
- Secure property records, title searches, and ownership information meticulously.
- Ensure documentation is organized and readily accessible for legal proceedings.



Enforcement Steps & Legal Remedies

- Initial Inspection & Assessment: Verify the alleged nuisance conditions.
- Issue Notice to Correct: Inform the owner of violations, cite applicable code sections, and specify a reasonable deadline for abatement.
- Allow Opportunity for Compliance: Provide reasonable time for the owner to make repairs or clear the property.
- If No Response: Escalate enforcement through legal channels.
- Legal Remedies: Pursue court actions such as injunctions, fines, receivership, liens, or demolition orders.



DECLARATION OF A NUISANCE AND ABATEMENT OF NUISANCE ARE TWO SEPARATE ITEMS

1. Prove a nuisance exists
2. Prove the choice of abatement you seek is necessary

Enforcement Steps & Legal Remedies

Disabled person not taking care of property may be an ADA issue.

Reasonable Accommodations

Always counter-offer if not acceptable

Keep interactive process going

Federal subsidized housing a public nuisance, there are federal standards to consider See: 24 C.F.R. 5.703



Using a Court-Appointed Receiver

- A receiver is an impartial party appointed by the court to manage, repair, and potentially sell a nuisance property.
- Typically used when owners are absent, deceased, unwilling, or unfit to manage the property effectively.
- The receiver can access rents, collect funds from liens, and utilize them for property rehabilitation or necessary security measures.
- Provides a mechanism to abate nuisances and return properties to productive use, even with uncooperative owners.



Visual Examples of Nuisance Properties

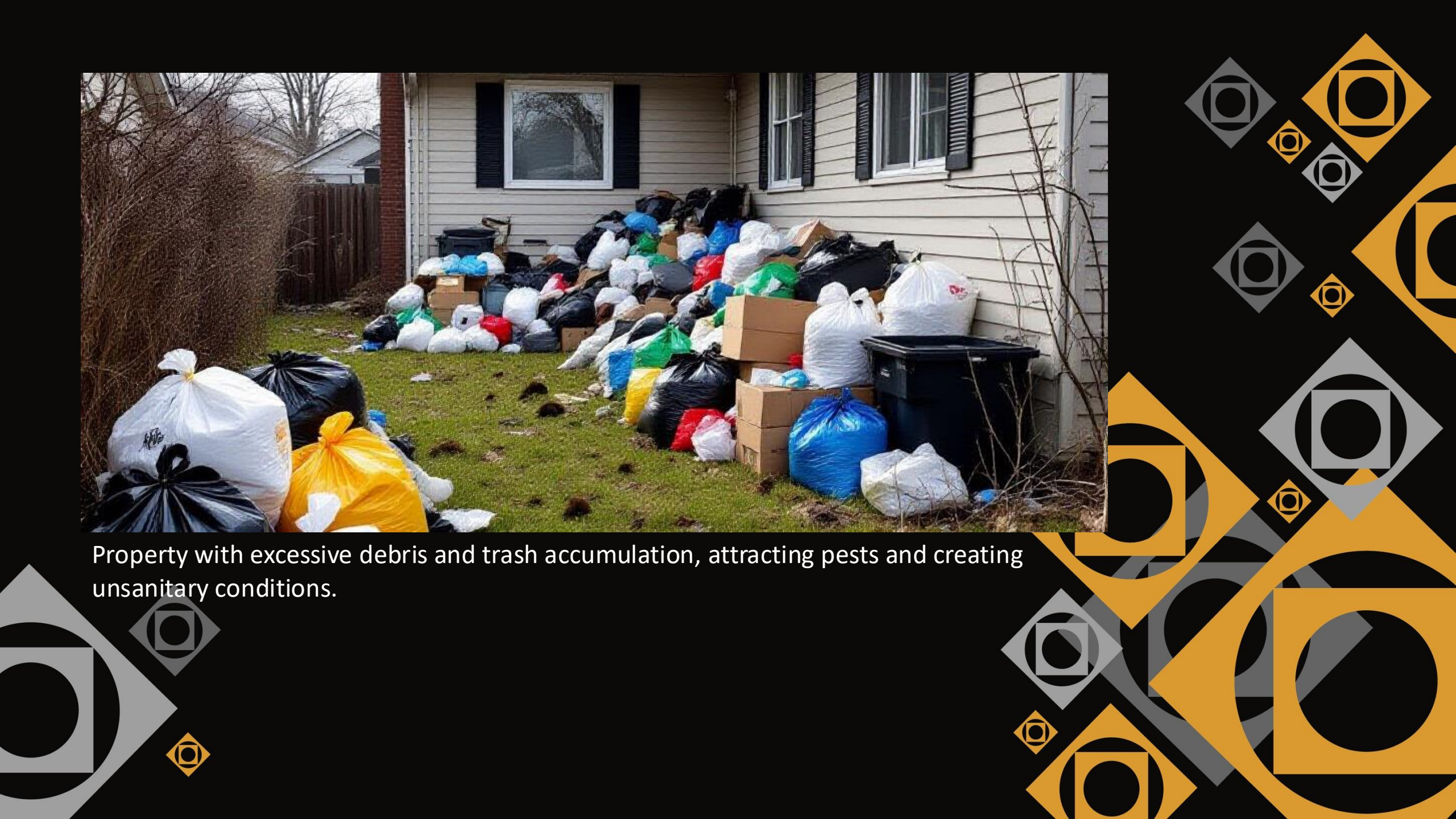




Dilapidated structure with overgrown vegetation, posing a safety hazard.

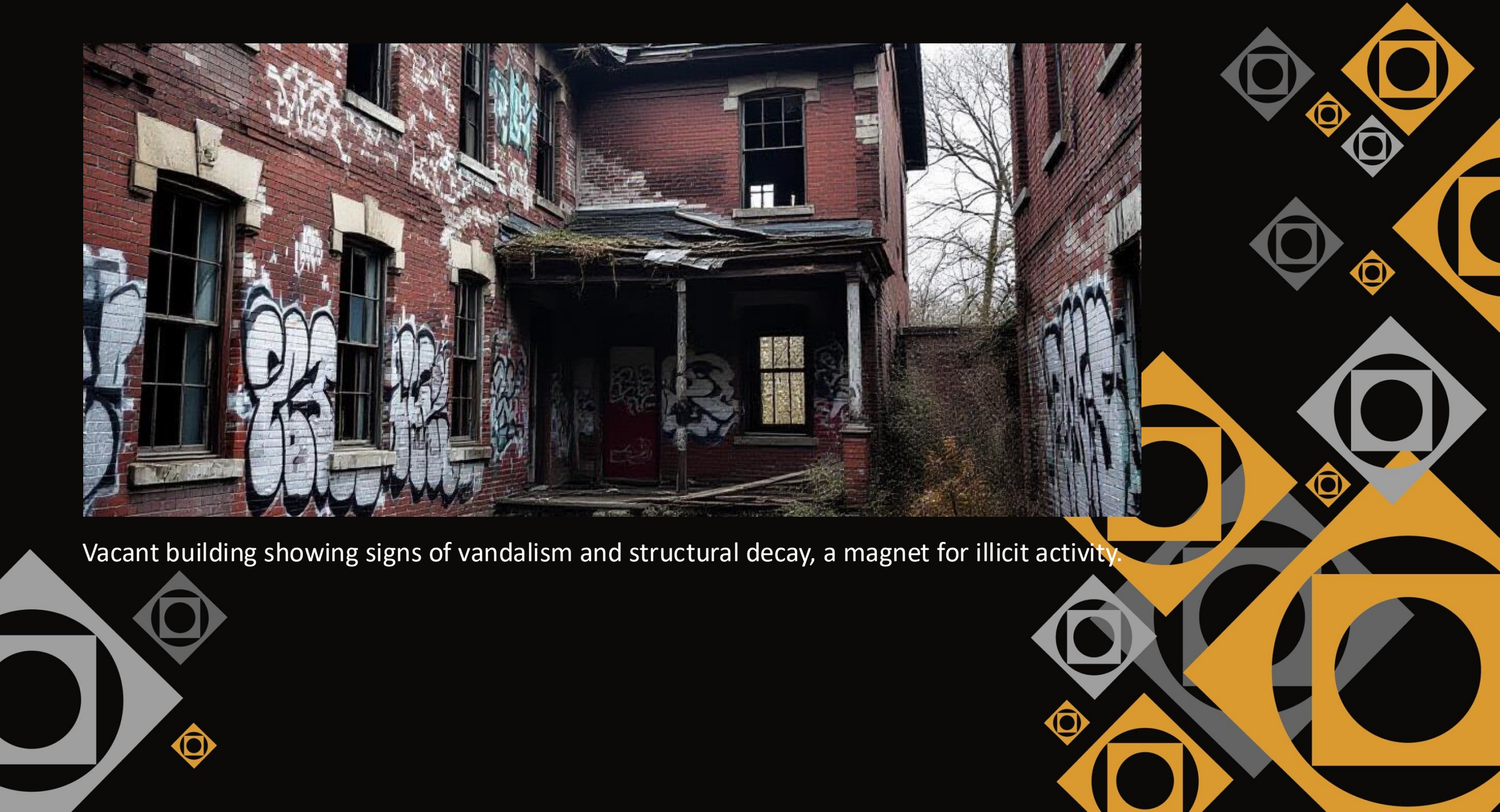


Property with excessive debris and trash accumulation, attracting pests and creating unsanitary conditions.





Vacant building showing signs of vandalism and structural decay, a magnet for illicit activity.



Choices

- **Criminal prosecution**

- Fines not abatement; typically in municipal court; clear and convincing standard

- **Civil action**

- Fine (\$300), abatement, cost of abatement, add to tax roll (REQUEST IT IN COMPLAINT). Common Pleas action; Preliminary/temporary restraining order. Permanent relief.

- **Administrative Action.**

- Property Maintenance/Housing Board)

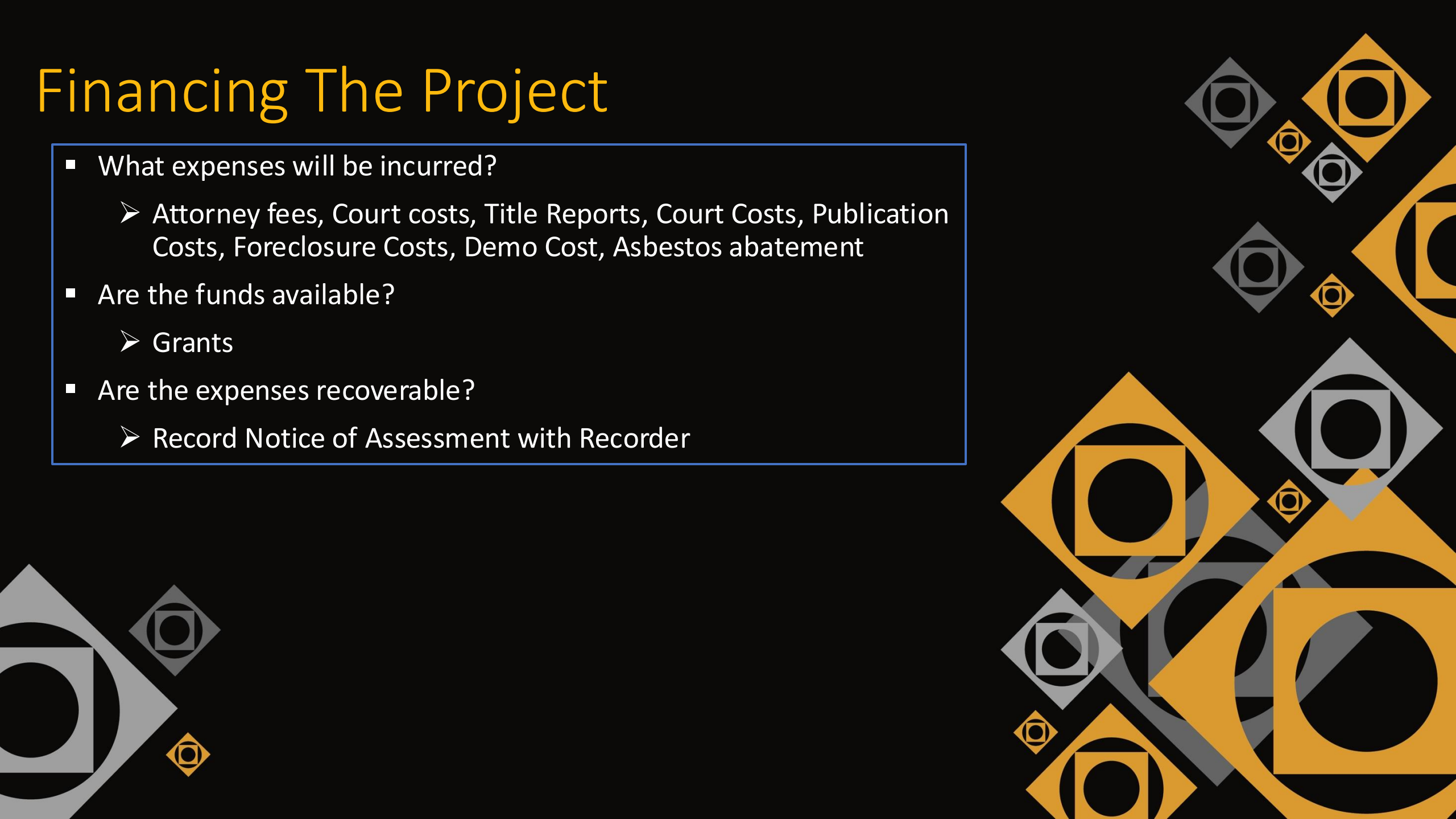
- **Work out with Owner**

- Flexibility, Abatement Plan



Financing The Project

- What expenses will be incurred?
 - Attorney fees, Court costs, Title Reports, Court Costs, Publication Costs, Foreclosure Costs, Demo Cost, Asbestos abatement
- Are the funds available?
 - Grants
- Are the expenses recoverable?
 - Record Notice of Assessment with Recorder



Building a Strong Case for Enforcement

- Leverage Multiple Codes: Combine violations from building maintenance codes, fire codes, health codes, and zoning ordinances.
- Gather Diverse Evidence: Collect neighbor statements, police incident reports, fire department data, property maintenance records, and utility company information.
- Visual Evidence is Crucial: Always photograph and video record violations. High-quality images of structural damage, debris, and hazardous conditions are invaluable.
- Establish Pattern of Neglect: Show a history of complaints and lack of owner response to demonstrate persistent issues.

Fire Code & Building Code. Ohio law provides clear statutory authority for violations of these codes as public nuisances.

Ohio Revised Code § 3767.41 defines “public nuisance” to include any building that “constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable”. This statutory definition directly encompasses fire safety violations that create dangerous conditions.

Ohio Revised Code § 3781.11 declares that any building constructed or repaired “not in accordance with the statutes of this state or with the rules of the board” of building standards “is a public nuisance” (R.C. § 3781.11)[2].

Super 8 Hotel

2016: Problems with hotels: excessive calls, property maintenance. Police set up quarterly meeting with operators.

2018: Certain Hotel Operators not attending meetings.

2019: Legislation passed dealing with nuisances (eye on hotel operations)

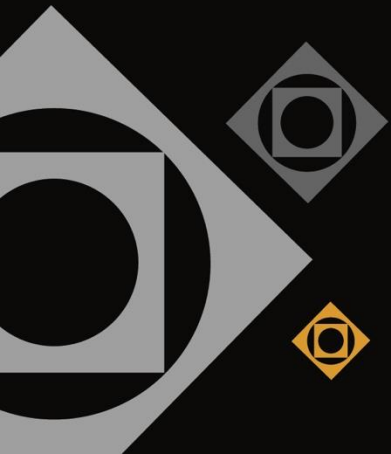
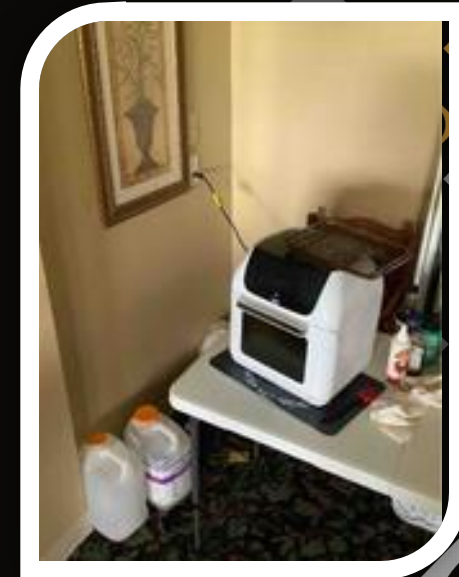
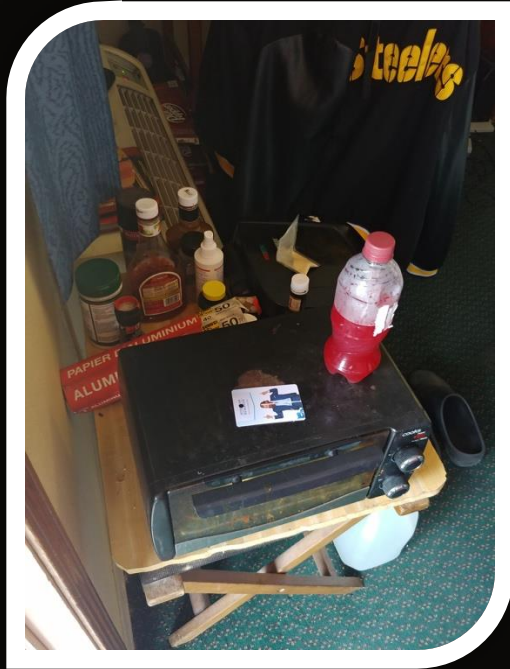
Ordinance 19-27 creates Chapter 1484 VCC “nuisance properties”

Ordinance 19-28 creates section 642.20 VCC “criminal activity as a nuisance”

2021: Legislation requiring hotels to register with City and obtain operating permit. Permit can be denied if hotel has been found to be a nuisance.



Super 8 – Inspection Photos







Super 8 Hotel D-Day

BY THE CLERK OF THE COURT OF HAMILTON COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO, CITY OF VANDALIA,
DIRECTOR OF LAW ENFORCEMENT
333 James E. Robinson Memorial Drive
Vandalia, Ohio 45377

Plaintiff,

vs.

SE PIER 8 HOTEL,
390 East National Road
Vandalia, Ohio 45377

and

VANDALIA HOSPITALITY, INC.
c/o SUPER 8 HOTELS
390 East National Road
Vandalia, Ohio 45377

and

CREDIT BANK
c/o DENNIS C. BRIDGER
390 East National Road
Vandalia, Ohio 45377

and

STACHOWSKI TRUSTS ON
SE PIER 8 HOTEL,
390 East National Road
Vandalia, Ohio 45377

Defendants.

CASE NO. _____
JUDGE _____
FILED _____

VANDALIA COMPLAINT FORM
FURNISH THIS TO: CLERK
CIVIL DIVISION

Filed To: MICHAEL P. JOY
MICHAEL P. JOY
MICHAEL P. JOY
MICHAEL P. JOY

Supplemental Defendant

Vandalia
small city. big opportunity

333 James E. Robinson Memorial Drive
Vandalia, OH 45377
419.239.2891
419.239.2897

August 19, 2022

Via HAND DELIVERY

NAVED CHRYSLER
Vandalia Shopping, Va.
Super 8 Hotel
390 E. National Rd.
Vandalia, OH 45377

**RE: REVOCATION OF HOTEL/MOTEL PERMIT
SUPER 8**

No Claims.

The undersigned hereby certifies that the described premises were issued for the Super 8 Hotel at 390 E. National Road, Vandalia Ohio effective January 1, 2022 to license #2022000079 and was used in violation of the provisions of the permit, specifically, the permit was used for a **RETAIL STORE**.

The revocation is for the following reason:

(1) The licensee has disobeyed orders from the City of Vandalia that have not been corrected as required under Vandalia Ordinance 21-27 entitled as follows:
2017 Ohio Fire Code 901.7 below to keep the protection systems in service.
2017 Ohio Fire Code 901.4.1.10.4.3 Continuity of operation of fire to maintain the protection system non-functional and retroactively disabled under alarm.
2017 Ohio Fire Code 901.2.180.4 Continuity of operation of defined fire alarm signaling and/or not working properly.

August 15, 2022

Attest: Terry Whitwood and Cheryl Howard Attest, General Managers
KC & KC INC.
Super 8 by Wyndham
390 E National Rd
Vandalia, Ohio 45377

**RE: WFC National Rd - Super 8
NOTICE OF VIOLATION AND UNSAFE CONDITIONS
ORDER TO EVACUATE PREMISES**

Property Owner/Manager:

YOU ARE ORDERED TO IMMEDIATELY EVACUATE THE PREMISES AND CORRECT THE FIRE PROTECTION, LIFE SAFETY AND STRUCTURAL COMPONENTS OF THE BUILDING IN ACCORDANCE WITH THE 2017 OHIO FIRE CODE RULE 901.2.180.4 MINIMUM CONDITIONS OF OCCUPANCY, RULE 901.7 SYSTEMS OUT OF SERVICE AND ITEMS LISTED ON THE INSPECTION REPORTS.

UNLESS THE VIOLATIONS HAVE BEEN CORRECTED, THE VACATED PROPERTY SHALL COMPLY WITH THE 2017 OHIO FIRE CODE RULE 201.

On January 29, 2019 Vandalia Fire Inspectors conducted an inspection of your transient stay (Hotel/SPC) facility as part of their normal course of duties. At that time, it was discovered and reported with inspection reports and photographs that multiple sleeping units were being rented for more than the 30 consecutive nights established on the state license (long-term living conditions also observed). Fire protection equipment was not functioning properly, emergency lighting was not functioning properly, "hot-tubbed" and owners were being used inside sleeping rooms, electrical violations were discovered throughout and an overall condition of poor housekeeping and disorder of the building systems was observed.

Again on October 8, 2019, June 22, 2021, November 30, 2022, December 10, 2021, June 6, 2022 and on August 15, 2022 the same violations were observed as well as written reports provided to General Managers. Along with the original violations, additional disorder and non-functional status of the fire protection and life safety systems was observed during these re-inspections.

During the period of 2019 to present, it was also discovered that the building fire pump and sprinkler/irrigation systems were not functioning properly. Vandalia Fire and Building Officials along with the State Fire Marshal's Office provided an opportunity to correct correction issues, setup meetings, and work with the building owners/managers on responsible solutions to the problems with the fire protection equipment failing conditions. Once permits were issued and approved, the work began in early 2022 however, that system has failed to be completed, leaving the building with non-functional and unapproved fire protection systems for the occupied building with other mechanical and structural damage.

Super 8 – All is Well

ELECTRONICALLY FILED
COURT OF COMMON PLEAS
Tuesday, August 15, 2023 2:11:07 PM
CASE NUMBER: 2022 CV 03700 Docket ID: 938895107
Mike Foley
CLERK OF COURTS MONTGOMERY COUNTY OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
GENERAL DIVISION

STATE EX. REL CITY OF VANDALIA, DIRECTOR OF LAW GERALD MCDONALD	:	CASE NO. 2022 CV 3700
	:	JUDGE RICHARD S. SKELTON
<i>Plaintiff / Counterclaim Defendant,</i>	:	
v.	:	CONSENT AGREEMENT AND JUDGMENT ENTRY
SUPER 8 MOTEL, <i>et al.</i> ,	:	
<i>Defendants / Counterclaim Plaintiffs.</i>	:	

Whereas, on or about August 19, 2022, the CITY OF VANDALIA (the "City") initiated this action (the "Litigation") against VANDALIA HOSPITALITY, INC. DBA SUPER 8 MOTEL ("Motel") (collectively, the "Parties"), alleging that the property commonly known as 550 East National Road, Vandalia, Ohio 45377 (the "Property") constituted a public nuisance under R.C. 3767.01(C)(1); and

Whereas, the City named CIVISTA BANK as a potentially interested party in the Litigation by reason of mortgages filed with the Montgomery County, Ohio Recorder as Instrument Nos. 2018-00056628 and 2018-00056627 (the "Mortgages"); and

Whereas, the Motel filed Counterclaims against the City denying it was operating a public nuisance and alleging, *inter alia*, that the City had effectuated a complete and/or partial regulatory taking under 42 U.S.C. 1983 and otherwise committed due process violations by obtaining a procedurally improper *ex parte* "padlocking" order in the Litigation; and

Whereas, since the filing of the City's Complaint and the Motel's Counterclaims, the City and the Motel have engaged in a cooperative effort develop a plan of action for the Motel to abate the nuisances alleged by the City (collectively, the "Alleged Nuisance") through various improvements and/or upgrades to the Property; and

Whereas, the Motel has abated and/or is in the process of abating the Alleged Nuisance at the Property through improvements and/or upgrades, and agrees to comply with the City's Safety and Security Requirements listed herein upon reopening the motel located at the Property for business; and



FAQs & Common Mistakes to Avoid

- Mistake: Rushing demolition without a proper court order or adequate notice and hearing opportunities for the owner.
- Mistake: Failing to properly identify ALL owners and interested parties (lienholders, mortgagees, etc.) before issuing notices or filing lawsuits.
- Mistake: Not complying strictly with all notice requirements and hearing procedures mandated by statute or ordinance. This can invalidate your case and lead to delays.
- FAQ: What if the owner is out of state or deceased? Procedures for service of process and estate notification must be meticulously followed.
- FAQ: Can we just board up the property? Often, yes, but notice and due process are usually required first, depending on the severity and local ordinances.



Junk Vehicles

- Junk Motor Vehicles: Ohio Revised Code 505.173 to determine if the vehicle meets the definition of a “junk motor vehicle”. The criteria we follow is:
 - Three model years old, or older;
 - Apparently inoperable;
 - Extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission.
- (pursuant to Ohio Revised Code 505.871).
- MUNICIPAL COUNTERPART?????



Questions & Comments Welcome

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