



Technical Brief

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Cleaning Private Property

Dilapidated and menace properties are an issue that every municipality in Mississippi has to address. State law provides a process for municipalities to clean up these properties. This technical brief will explain some of the required steps. Please note that this brief will not cover every issue that may arise in the clean up process nor explain every legal aspect. It is vital that a municipality consult its city attorney before and during the clean up process.

Most municipalities will clean up private property in accordance with Mississippi Code Annotated § 21-19-11. Under this statute municipalities may do things such as cutting grass and weeds, filling cisterns, removing rubbish, and draining cesspools and standing water.

The Hearing

The municipal governing authority must hold a hearing to determine if the property is a menace property. Two weeks before the hearings a notice that meets the requirement of the statute must be mailed to the property owner, posted on the property, and posted at city hall or somewhere in the municipality where notices are normally posted.

The hearing is conducted by the board of aldermen/council to determine whether the property is a menace to the public health, safety, and welfare of the community. Be sure that the minutes of the hearing include extensive documentation and photos that support the decision, the attempts at notice, a copy of the notice, and a finding that the property owner was given proper notice. The board's/council's decision can be appealed within 10 days of the meeting.

The Cleanup

Permission to enter the property is not needed. The work done must be consistent with the resolution adjudicating that the property needs cleaning. The work cannot improve, restore, or landscape the property. A municipality is also not allowed to board-up windows and doors to secure abandoned structures. The work may be done by a third party, but proper bid procedures must be followed in some instances.

Seven days' notice is required for each re-entry and it must be posted on the property and at city hall or somewhere in the municipality where notices are normally posted. The municipality may re-enter the property twelve times within a twenty-four month period for



maintenance type work such as cutting grass and weeds, removing rubbish, removing personal property, and removing other debris. If more substantial work needs to be done, such as removing dilapidated buildings, removing dilapidated fences, and removing outside toilets, the municipality may re-enter the property six times within a twelve month period.

Collecting the Cost of the Cleanup

The total of the cost includes actual costs of the work done, administrative costs, penalty imposed, and legal costs. There is a statutory limit on cost which the greater of \$20,000 per calendar year or fair market value of the property subsequent to cleaning. The limitation refers only to the cost of cleaning and does not include any penalty. The penalty is the greater of not to exceed \$1,500 or not to exceed 50% of the actual cost of the cleanup. Penalty may be assessed each time the municipality re-enters the property. The municipality must adjudicate the cost of cleaning the property at a meeting and at that time assess the penalty. Note that penalties shall not be assessed against the State. Collecting the costs can be done through civil suit, assessment lien/tax sale, or lien amnesty.

Expedited Procedure

The statute does allow an expedited procedure. Municipalities with a population of 1,500 or more are authorized to appoint one of their employees as a hearing officer to determine if a property of less than one acre is a threat to health, safety, and welfare. The municipality must notify the property owner of record by mail seven days in advance of cleaning the property, as well as post the notice in two public places. The expense of cleaning the property is limited to no more than \$250 per cleaning, plus an administrative fee of no more than \$50 per cleaning, and a penalty may be imposed of \$100 or 100% of the actual cleaning costs, whichever is more. The total aggregate actual cost of cleaning the property may not exceed \$1,000 per year. The municipality is authorized to re-enter the property for a period of two years without any further hearing or action as long as proper notice procedures are followed.

The clean up process can be rather lengthy. The above information discusses only a brief overview of some of the main steps. It is important to fully understand everything the law requires to protect both property owners and municipalities. Consult your city attorney every step of the way. MML also has an educational webinar available for viewing that explains the process and environmental concerns to be aware of. Registration to view this webinar is available in the CMO Education section of the MML website at www.mmlonline.com.

