

RESOLUTION # 06-2011

RESOLUTION TO ADOPT RESOLUTION #06-2011, NUISANCE ABATEMENT PROCEDURES, AS PROVIDED FOR IN SECTION 505.87 OHIO REVISED CODE

- Whereas,** the State of Ohio has enacted legislation to permit townships to provide for the abatement, control, or removal of nuisances; and
- Whereas,** the Clay Township Board of Trustees believe that it is in the best interest of Clay Township to amend its procedures, in accordance with O.R.C. Section 505.87, to abate, control, or remove nuisances in Clay Township; and
- Whereas,** following the adoption of Resolution #06-2011, O.R.C. Section 505.87 has been adopted; and

Now, Therefore, Be It Resolved, by the Clay Township Board of Trustees to enact the following amended nuisance abatement policy and procedures, as follows, effective immediately:

NUISANCE ABATEMENT

- I. **Policy Statement** - It is the policy of Clay Township to encourage property owners to voluntarily maintain their property in a nuisance free condition. When the Board of Trustees determines that a property owner(s)' maintenance of vegetation, garbage, refuse or other debris constitutes a nuisance, the Board of Trustees may take appropriate action to abate the nuisance.

- II. **Definitions:**

Nuisance: A nuisance condition may be determined to exist if vegetation, garbage, refuse or other debris is kept in such a manner that causes damage, annoyance, inconvenience, blight, and/or affects the health, safety and welfare of adjacent residents or properties.

- III. **Procedures:**
 - A. Upon information that a nuisance condition exists, the Board of Trustees will make cause to inspect the property. If the Board of Trustees finds a possible nuisance condition to exist, notice to the owner(s) of such property and all lien holders of record shall be made to attend a public hearing, where the Board of Trustees will determine if the property owner(s)' maintenance of vegetation, garbage, refuse or other debris constitutes a nuisance. Notification of said public hearing will be made in the following manner:

1. By certified mail and regular mail and by posting the notice on the principal structure on the land. Said posted notice shall then be photographed with a camera capable of recording the date of the photograph on it. (The posting is optional)

2. If the owner(s) address is unknown and cannot be reasonably obtained, it shall be sufficient to publish the notice once in a newspaper of general circulation in the Township.

3. Identification of the owner(s) and lien holder(s) of a particular parcel shall be determined by public records, as same are kept in the regular course of business, by the Montgomery County Auditor's Office and the Montgomery County Recorder's Office.

B. The notice of public hearing shall contain:

1. The date, time and location of the public hearing;
2. The location of property containing the alleged nuisance;
3. A description of the alleged nuisance;
4. That the property owner(s) may appear at said hearing and present evidence and/or witnesses on his/her behalf; and
5. That the property owner (s) may be represented by an attorney at said hearing;
6. That if the Board of Trustees determines that the property owner(s)' maintenance of vegetation, garbage, refuse or other debris constitutes a nuisance, the Board will cause said nuisance to be abated or removed as provided below.

C. If the Board of Trustees determines at the public hearing, based upon the evidence presented therein, that a nuisance exists, the Board of Trustees shall notify the property owner(s) and any holders of liens of record upon the land, that:

1. That the Board of Trustees has determined, after public hearing, that a nuisance exists on the property; and
2. The property owner(s) is ordered to abate, control or remove the vegetation, garbage, refuse or debris; and
3. If such vegetation, garbage, refuse, or other debris is not abated, controlled, or removed within seven (7) days of notification, the Board of Trustees will provide for the abatement, control, or removal of the nuisance, and any expenses incurred by the Board of Trustees in performing that task will be entered upon the tax duplicate and will be a lien upon the land from the date of entry.

4. That the property owner or the lien holders may, within the seven day period after notification, enter into an agreement with the Board of Trustees providing for either the property owner (s) or the Board to perform the abatement, control, or removal.

5. Said notice, containing the abatement order as described in Section C(1-4) above, shall be sent to the property owner(s) *by certified mail and regular mail, or notice shall be given to the property owner by posting the notice on the principal structure on the land. Said posted notice shall then be photographed with a camera capable of recording the date of the photograph on it. Said notice, containing the abatement order as described in Section D above, shall be sent to the lien holder(s) by certified mail.* If the address of the property owner(s) is unknown and cannot be reasonably obtained, the Board of Trustees will publish the notice once in a newspaper of general circulation in the Township.

(****Note... Lien holders of record get certified mail, no matter what. With owners, however, at this stage in the proceeding you can post the property*** or send certified mail to the owner...Remember, you can always give more notice than required, but not less)

6. If, within seven (7) days after notice is given, the property owner(s) fails to abate, control or remove the vegetation, garbage, refuse and other debris, or if the property owner(s) fails to enter into an agreement with the Board of Trustees to provide for abatement of the nuisance, the Board of Trustees shall make available funds and take all necessary actions to abate the nuisance. All expenses incurred in abating the nuisance shall be approved by the Board of Trustees and paid from the general fund.

D. *If the Board of Trustees determines at the public hearing, based upon the evidence presented therein, that a nuisance exists on the property at issue, and if the Board of Trustees had previously determined, within the previous twelve consecutive month period, (calculated from the date of the public hearings) that the same owner's maintenance of vegetation, garbage, refuse or other debris on the same land had constituted a nuisance, the Board of Trustees shall notify, in writing, the property owner(s) and any holders of liens of record upon the land, that:*

1. *That the Board of Trustees has determined, after public hearing, that a nuisance exists on the property and that that the same owner's maintenance of vegetation, garbage, refuse or other debris on the same land had been determined by the Board, within the previous 12 month period, to constitute a nuisance;*

2. *The property owner(s) is ordered to abate, control or remove the vegetation, garbage, refuse or debris; and*

3. *If such vegetation, garbage, refuse, or other debris is not abated, controlled, or removed within four (4) days of notification, the Board of Trustees will provide for the abatement, control, or removal of the nuisance, and any expenses incurred by the Board of Trustees in performing that task will be entered upon the tax duplicate and will be a lien upon the land from the date of entry.*

4. *That the property owner or the lien holders may, within the four day period after notification, enter into an agreement with the Board of Trustees providing for either the property owner (s) or the Board to perform the abatement, control, or removal.*

5. *Said written notice, containing the abatement order as described in Section D(1-4) above, shall be sent to the property owner(s) and all lien holders by first class mail. Alternatively, the Board of Township Trustees can notify the owner by posting the notice on the principal structure on the land. Said posted notice shall then be photographed with a camera capable of recording the date of the photograph on it. Failure of delivery of said notice shall not invalidate any action to abate taken by the Board of Trustees or its agents or employees. If the address of the property owner(s) is unknown and cannot be reasonably obtained, the Board of Trustees will post the notice on the township's internet web site for four consecutive days.*

6. *If, within four (4) days after notice is given, the property owner(s) fails to abate, control or remove the vegetation, garbage, refuse and other debris, or if the property owner(s) fails to enter into an agreement with the Board of Trustees to provide for abatement of the nuisance, the Board of Trustees shall make available funds and take all necessary actions to abate the nuisance. All expenses incurred in abating the nuisance shall be approved by the Board of Trustees and paid from the general fund.*

E. Upon having the nuisance abated, the Board of Trustees shall prepare, and the Clerk shall submit, a written report to the Montgomery County Auditor. The report shall include a statement of the Board of Trustees' actions under this Resolution and Ohio Revised Code Section 505.87, as well as a statement of all expenses incurred in providing for the abatement, control or removal of any vegetation, garbage, refuse or debris, including the Board's charges for its services, notification, the amount paid for labor, materials and equipment along with a proper description of the property.

Steve Denlinger, Trustee President

Steve Denlinger

Don Auckerman, Trustee

Don Auckerman

Lon Chambers, Trustee

Lon Chambers

Holly Buchanan, Fiscal Officer
Passed: 9/7/2011

ABATEMENT OF DANGEROUS PROPERTIES

A. Policy Statement:

It is the policy of Clay Township to encourage property owners to remove, repair, or secure any insecure, unsafe, defective or dangerous buildings or other structures. In cases where the property owner(s) fail to remove, repair, or secure any dangerous buildings or structures, the township may take action to remove, repair or secure those building structures or dangerous property. In adopting this Resolution, Clay Township is providing the procedure in which to invoke the provisions of Ohio Revised Code § 505.86.

B. Definitions – For the purposes of this resolution, the following terms shall have the meanings ascribed to them below:

1. **Dangerous Property** – Any building or structure that has been found to be insecure, unsafe, structurally defective, and/or unfit for human habitation.
2. **Emergency** – Any condition where there is an imminent threat to the public health, safety or welfare.
3. **Enforcement Official** – The Clay Township Zoning Administrator or any such person authorized and designated as an enforcement official hereunder by the Clay Township Board of Trustees.
4. **Total Costs** – Means any costs incurred due to the use of employees, materials, or equipment of the township, any costs arising out of contract for labor, materials, or equipment, and costs of service of the notice or publication as required in this resolution.

C. Procedure:

1. **Inspections** – Upon information that a structure or property is insecure, unsafe, structurally defective, and/or unfit for human habitation, the enforcement official shall cause an inspection of the structure or property to be made. The following departments and agencies are authorized to make inspections pursuant to this resolution to determine if a dangerous property exists:
 - a. The Brookville Fire Department;
 - b. The Phillisburg Fire Department;
 - c. The Verona Fire Department
 - d. The Montgomery County Department of Building Regulations;
 - e. The Montgomery County Combined Health District; and
 - f. Any other authority responsible under Chapter 3781 of the Ohio Revised Code.

2. **Public Hearing** – If the inspection results in the agency or department's determination that a building or structure is insecure, unsafe, structurally defective, and/or unfit for human habitation, the enforcement official may, after the appropriate time for the property owner(s) to appeal the Agency or Department's decision has passed, set the matter for public hearing before the Board of the Clay Township Trustees.

The purpose of said public hearing is to determine whether or not to abate the dangerous property conditions in the event that the property owner(s) or lien holders fail to do so. At said public hearing, the Board shall receive evidence of the agency or department's findings as well as take evidence from the property owners and any and all interested parties. The Board will also decide the manner in which it will abate the dangerous property condition, whether by repairing and/or securing the dangerous building or structure, or by removing the dangerous building or structure. After said public hearing, the Board will memorialize its determination by way of Resolution.

3. **Notification of Public Hearing** -Notice of said public hearing before the Board shall be made in the following manner:
 - a. By certified mail or regular mail with certification of mailing to the property owner(s) and all lien holders of record; and/or
 - b. Posting notice on the property in question; or
 - c. Hand delivering the notice to owner(s) or lien holders.
 - d. If the property owner(s)' address is unknown and cannot be reasonably obtained, it shall be sufficient to publish the notice once in a newspaper of general circulation in the Township.
4. **Content of the Notice** - The notice of the public hearing before the Board shall contain:
 - i. The date, time and location of the public hearing;
 - ii. The location of property containing the alleged dangerous building or structure;
 - iii. A description of the dangerous building or structure and that it has been declared insecure, unsafe, structurally defective or unfit for human habitation;
 - iv. That the property owner(s) and lien holder(s) should be prepared to present evidence and/or witnesses on their behalf;
 - v. That the property owner(s) and lien holders may be represented by legal counsel at said hearing;
 - vi. That the Board of Trustees, at the public hearing, may resolve to repair, secure, and/or remove the dangerous property if the property owner(s) and/or lien holders fail to do so;

- vii. That should the Board of Trustees resolve, at the public hearing to repair, secure or remove the dangerous property, the property owner(s) or lien holders of record will have thirty (30) days from the date the notice was given, or the date the notice was published in a newspaper of general circulation in Perry Township, to remove, repair or secure the dangerous property as indicated in the notice, or to have entered into an agreement with the township to have the dangerous property removed, repaired or secured;
- viii. That if the property owner(s) or lien holders fail to remove, repair or secure the dangerous property, or to have entered into an agreement with the township, it shall be just cause for the Board to cause such dangerous property to be removed, repaired, or secured upon expiration of the thirty (30) days from the date of the notice. The property owner shall be billed the actual costs of the repair or removal, plus the cost of the service of the notices described herein. If the property owner does not pay said costs, the Township's costs shall be placed on the property tax duplicate and lien placed on the property from the date of entry.
- ix. A copy of this Resolution shall be sent with the Notice of Public Hearing described herein.

5. **Notice of Intention to Repair, Secure or Remove Dangerous Properties** – Should the Board resolve, after public hearing, to either repair, secure or remove a dangerous property in the event that the property owner fails to do so, the Board shall cause a notice of said intention to be sent, by certified mail, to the owner(s) of record of the property and to all holders of legal or equitable liens of record upon the property. If the owner(s) address is unknown and cannot reasonably be obtained, then the Board shall publish the notice once in a newspaper of general circulation in the township.

6. **The Notice of Intention shall contain the following:**

- a. The location of the dangerous property.
- b. A general description of the type of dangerous property to which the notice applies.
- c. That the dangerous property has been inspected and found to be insecure, unsafe, structurally defective, and/or unfit for human habitation, and the specifics that make the dangerous property insecure, unsafe, structurally defective, and/or unfit for human habitation.
- d. That the Board of Township Trustees, in the particular case have resolved to either repair, secure, or remove the dangerous property in the event the owner fails to do so, and that the property owner(s)

and/ or lien holders of record have thirty (30) days from receipt of the notice, or the publishing of said notice, to remove, repair or secure the dangerous property as indicated in the notice, or to have entered into an agreement with the township to have the dangerous property removed, repaired or secured, or to file an appeal of the Board's resolution as provided in Ohio Revised Code Chapters 2505 and 2506.

- e. That if the property owner(s) or lien holders fail to remove, repair or secure the dangerous property, or to have entered into an agreement with the township, it shall be just cause for the Board to cause such dangerous property to be removed, repaired, or secured upon expiration of the thirty (30) days from the date of the notice. The property owner shall be billed the actual costs of the repair or removal, plus the cost of the service of the notices described herein. If the property owner does not pay said costs, the Township's costs shall be placed on the property tax duplicate and lien placed on the property from the date of entry.

D. **Statement of Costs** – Upon having a dangerous property removed, repaired or secured, the enforcement official shall prepare and submit a statement to the property owner. The statement shall include an itemized listing of all costs incurred to remove, repair or secure the dangerous property, along with the following information:

- a. That the property owner(s) have thirty (30) days from receipt of the statement to pay all costs contained therein.
- b. Failure of the property owner(s) to make full payment within the thirty (30) days of receipt of the statement shall be cause for the township to have such costs placed upon the tax duplicate for the property as provided for, and in the manner prescribed by Ohio Revised Code § 505.86(C)(1), or the township may commence a civil action to recover the total costs from the property owner(s), or the township accept insurance funds, as set forth in Ohio Revised Code § 505.86(D) as provided for in divisions (C) and (D) of Ohio Revised Code § 3929.86.

E. **Emergency** – If the inspection results in the agency or department's determination that a building or structure is insecure, unsafe, structurally defective, and/or unfit for human habitation and said agency or department believes that an emergency situation exists, the enforcement official may set the matter for public hearing before the Board in order to determine whether emergency corrections of the hazardous conditions is warranted. A special meeting may be convened in such a situation and will be conducted as soon as practicable.

The notice of the public hearing to determine the necessity for emergency corrections shall be given to the property owner(s) and/ or lien holders of record as provided in Section (C)(3) of this Resolution. The Notice of said public

hearing to determine if emergency corrections are warranted shall conform with the requirements of Section (C)(4) of this Resolution, except that said notice shall state that if the Board finds that an emergency situation exists and if the Board resolves to perform emergency corrections, notice of the Board's intention to perform the emergency corrections may be given other than by certified mail and emergency corrections can be taken by the Board without first giving thirty days notice.

Stephen S. Denlinger

Holly Buchanan