

Minnesota's Public and Private Nuisance Laws

This information brief describes Minnesota laws that provide remedies to combat offensive or injurious conditions or activities that are a “nuisance” to the surrounding community. A condition or activity may be either a “public nuisance” or a “private nuisance” depending on the scope of the problems caused by the nuisance and on whether it is challenged by a public agency or a private individual.

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A “nuisance” is an activity that, in one way or another, affects the right of an individual to enjoy the use of a specified property.

Generally speaking, the law recognizes two distinct types of nuisance. A “**public nuisance**” is an activity (or a failure to act in some cases) that unreasonably interferes or obstructs a right that is conferred on the general public, such as the enjoyment of a public park or other public space. A public nuisance may also exist where there is a condition that is dangerous generally to members of the public (such as a health hazard) or is in some way offensive to accepted community standards (such as loud music late at night).

A “**private nuisance**” is one that affects an individual’s right to enjoyment of some property or activity, but does not necessarily affect the community as a whole. For example, a large tree overhanging a neighbor’s yard may be a private nuisance where it affects the neighbor’s enjoyment and use of her backyard.

Various sections of Minnesota law provide a remedy to address both public and private nuisances, although a more comprehensive treatment is given to public nuisances. The first two sections of this publication address activities considered to be a public nuisance, while the final section briefly addresses private nuisances.

State Public Nuisance Law

The key element of Minnesota’s statutory public nuisance law is a civil process through which the creation or continuation of common public nuisance activities can be prevented. This process is described below.

The law also includes special provisions for particular types of public nuisance, including gang activity and nuisances affecting the public health, and for particular types of damage, such as graffiti. These provisions are also described below.

General Public Nuisance Activity

What types of activity are considered a public nuisance?

In general, Minnesota’s public nuisance law defines “nuisance activity” to include either one behavioral incident or two separate behavioral incidents committed within a building¹ within the previous 12 months.

One incident of any of the following activities is sufficient to constitute a public nuisance:

- ▶ prostitution or prostitution-related activity

¹ “Building” includes both residences and any commercial structure maintained for business activities involving human occupation. The term also includes the land surrounding the structure. [Minn. Stat. § 617.80](#), subd. 2.

- ▶ unlawful activity involving controlled substances (drugs)
- ▶ unlawful use of a dangerous weapon²

Alternatively, *two or more incidents* involving any one or a combination of the following activities constitute a public nuisance:

- ▶ gambling or gambling-related activity
- ▶ unlicensed sales of alcoholic beverages
- ▶ unlawful furnishing of alcoholic beverages to a person under age 21
- ▶ maintaining or permitting a condition that unreasonably annoys, injures, or endangers the safety, health, morals, or repose of any considerable number of members of the public
- ▶ engaging in any other activity declared by law to be a public nuisance
- ▶ the violation by any commercial enterprise of a local nuisance ordinance or regulation³
- ▶ permitting real property to be used to maintain a public nuisance, or renting the property knowing it will be used to maintain a public nuisance, by whoever maintains control of the property

Where within a building must the nuisance activity occur?

Nuisance activity is considered to have occurred within the building if it takes place in any portion of it or on the surrounding property. If the building is a multiunit building, usually only the unit where the activity occurs comes within the scope of the nuisance civil action. However, tenants are responsible for nuisance activity they or their guests commit inside or outside the tenant's unit, and the building owner⁴ is responsible for nuisance acts committed by the owner or persons under the owner's control anywhere in the building.⁵

² "Dangerous weapon" includes any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm. [Minn. Stat. § 609.02](#), subd. 6.

³ [Minn. Stat. § 617.81](#), subd. 2.

⁴ "Owner" is the person whose name is on the property tax record for the building. [Minn. Stat. § 617.80](#), subd. 7.

⁵ [Minn. Stat. § 617.81](#), subd. 2.

Who may bring an action in court to stop a nuisance activity from continuing?

The law specifies that only a prosecuting attorney may bring an action in court to stop nuisance activity from occurring. A “prosecuting attorney” means either a city attorney, county attorney, or the state attorney general.⁶

If a prosecuting attorney has reason to believe a nuisance exists in any building in a neighborhood, he or she may bring a civil action in district court to put an end to the nuisance activity. Before filing the action, the prosecuting attorney must send a written notice by personal service or certified mail to the owner of the property and all other known interested parties.⁷ The written notice must:

- ▶ specify the type of nuisance being maintained or permitted;
- ▶ summarize the evidence, including the dates on which nuisance-related activities are alleged to have occurred;
- ▶ inform the recipient that failure to abate the conduct or otherwise resolve the matter within 30 days may result in the filing of a nuisance action in court and that the court action may result in an injunction closing the building for one year or, in the case of a tenant, cancellation of the lease; and
- ▶ inform the owner of the option of canceling the offending tenant’s lease in a separate court action and, thereby, avoid a nuisance action.⁸

How can the owner avoid the filing of a nuisance action?

If the owner either abates (ends) the nuisance activity or enters into an abatement plan with the prosecuting attorney within 30 days of receiving the written notice, the prosecutor may not file the nuisance action with the court. However, if the owner fails to act within this time period or fails to comply with the abatement plan, the prosecuting attorney may file the nuisance action.⁹

What procedures must the prosecuting attorney follow when filing a nuisance action?

The prosecuting attorney must first file a petition seeking a temporary injunction to abate the nuisance. The court then must hold a “show cause” hearing and provide the respondents an opportunity to be heard on the allegations contained in the petition. If the court finds that there is reason to believe nuisance activity has occurred, it must issue the temporary injunction describing the conduct enjoined. After the temporary injunction is issued, the court must issue a

⁶ [Minn. Stat. § 617.80](#), subd. 9.

⁷ “Interested parties” include any known lessee or tenant, any known agent of the owner, lessee, or tenant, and any other person who maintains or permits a nuisance and is known to the prosecuting attorney. [Minn. Stat. § 617.80](#), subd. 8.

⁸ This notice provision was added for the purpose of resolving nuisance problems without court involvement, where possible. [Minn. Stat. § 617.81](#), subd. 4.

⁹ [Minn. Stat. § 617.82](#).

permanent injunction and an order of abatement if it finds, by clear and convincing evidence, that a nuisance exists.¹⁰

What is the effect of an order of abatement?

The effect of the order of abatement is to close the building or a portion of it for up to one year. The abatement order must be posted conspicuously on the building so as to inform the building occupants and the public of the order's contents. In addition to closing the building, the abatement order may order the removal of moveable property used to conduct or maintain the nuisance and may order the sale of any property owned by a respondent who was notified of or appeared in the nuisance action.

Instead of closing the building, the court may appoint a receiver to oversee use of the building during the abatement period. Net proceeds of any rents collected during the receivership are paid to the treasury of the local government unit.¹¹

How can an owner avoid an abatement order?

The law provides three ways for building owners to avoid the issuance or enforcement of an abatement order.

- ▶ **Abatement.** The owner may enter into an abatement plan with the prosecuting attorney. The owner may also independently abate the nuisance without entering into a formal plan for abatement. The nuisance activity must be abated, or the plan entered into, within 30 days of receipt of notice from the prosecuting attorney to prevent the issuance or enforcement of an order.¹²
- ▶ **Motion to cancel lease.** Second, if the nuisance activity was conducted by a tenant in the building, the owner may file a motion in court to cancel the tenant's lease.¹³ The owner may conduct the eviction action directly or assign that right to the prosecuting attorney. In that proceeding, the court shall order the tenant evicted if it finds that the tenant was responsible for the nuisance activity. Moreover, the court may not issue or enforce an abatement order against the building unless it further finds that the tenant was acting in conjunction with or under the control of the owner.
- ▶ **Bond.** Third, the court may release the building from the abatement order if: (1) the owner pays the costs of the nuisance action; (2) the owner posts a bond in an amount determined by the court, up to \$50,000, conditioned on the abatement of the nuisance for one year; and (3) the court is satisfied the owner is acting in good faith. The

¹⁰ [Minn. Stat. §§ 617.82; 617.83](#). "Clear and convincing evidence" means that it is "highly probable" or "reasonably certain" that a nuisance exists.

¹¹ [Minn. Stat. §§ 617.83; 617.84](#).

¹² [Minn. Stat. § 617.82](#).

¹³ [Minn. Stat. § 617.85](#). The law provides that the maintaining or conducting of nuisance activity is grounds for cancellation of the lease and eviction even if the lease document itself is silent on this point.

injunction against further nuisance activity continues in full force, however, and the law directs that the owner forfeits \$1,000 of the bond for each day that the owner knowingly violates the abatement order.¹⁴

What is the penalty for violating an injunction or abatement order?

The law states that any violation of a temporary or permanent injunction or abatement order issued under the nuisance law shall be treated as contempt of court.¹⁵

Can a person who engages in a public nuisance be prosecuted for a crime?

Minnesota law does provide a criminal penalty for activities that constitute a public nuisance. A misdemeanor charge may be brought against a person who:

- ▶ maintains or permits a condition that unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public;
- ▶ interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or
- ▶ is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.¹⁶

Only a county attorney, city attorney, or the attorney general may prosecute a person for this crime. In order to be convicted of the crime of public nuisance, the prosecuting attorney must prove the defendant's guilt beyond a reasonable doubt.¹⁷

Proving criminal liability for a public nuisance is more difficult than proving a public nuisance for purposes of obtaining a civil order for abatement of the activity, as described above. It is within the discretion of the prosecuting authority to determine whether criminal charges are appropriate in a particular case.

¹⁴ [Minn. Stat. § 617.87.](#)

¹⁵ [Minn. Stat. § 617.86.](#)

¹⁶ [Minn. Stat. § 609.74.](#) In addition to the activities described in this publication, there are many other provisions declaring certain activities to be a public nuisance. These other provisions are best described as "miscellaneous" and appear in various chapters of statute based upon the general subject matter of the activity at issue. Most of these provisions, and those included in this publication, may be enforced using the misdemeanor criminal penalty described here.

¹⁷ "Beyond a reasonable doubt" means that a defendant may only be convicted if there is no reasonable possibility, based on the evidence, that he or she is not guilty of the crime.

Gang Nuisance Activity

In 2007, a new law was enacted to address public nuisances occurring as a result of gang activity. The law establishes a process separate from the general public nuisance abatement process described above as a means to remedy the problem.

What constitutes a gang nuisance?

The law declares two types of gang-related public nuisance:

- ▶ a criminal gang that continuously or regularly engages in gang activity
- ▶ the continuous or regular use of a place by a lessee or tenant to engage in or allow gang activity, if the gang activity is knowingly permitted by the owner or other person responsible for maintaining that particular place¹⁸

The law defines “continuously or regularly” to mean three separate incidents or occurrences within a 12-month period.¹⁹

“Gang activity” includes an extensive list of offenses, including those for which a mandatory minimum sentence is required (in general, the most serious criminal offenses that physically harm a victim),²⁰ plus first- or second-degree criminal damage to property, trespass, and disorderly conduct.²¹

A “place” for purposes of the law includes a commercial or residential structure, including the land surrounding the structure that is under the control of the structure’s owners and vacant parcels of land that are under the control of an owner or person responsible for maintaining the land. If necessary, the definition permits “place” to be narrowed to a specific location in the structure (such as an apartment, office, garage, etc.).²²

¹⁸ [Minn. Stat. § 617.92](#).

¹⁹ [Minn. Stat. § 617.91](#), subd. 2.

²⁰ Relevant crimes include: “murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; criminal sexual conduct under the circumstances described in sections [609.342](#), subdivision 1, clauses (a) to (f); [609.343](#), subdivision 1, clauses (a) to (f); and [609.344](#), subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; drive-by shooting under section [609.66](#), subdivision 1e; harassment and stalking under section [609.749](#), subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section [609.165](#), subdivision 1b, or [624.713](#), subdivision 1, clause (b), a felony violation of [chapter 152](#); or any attempt to commit any of these offenses.” [Minn Stat. § 609.11](#), subd. 9.

²¹ [Minn. Stat. § 617.91](#), subd. 4.

²² [Minn. Stat. § 609.11](#), subd. 5.

Who may bring an action to prevent or abate gang activity that is a public nuisance?

Like the more general public nuisance statute, a city or county attorney, or the attorney general, has the authority to bring a civil action in court to stop the nuisance gang activity from occurring.

The suit may be brought against a specific person who engages in the activity (or against a group of persons).²³ A suit may also be filed against an owner or person responsible for maintaining the particular place at which the gang nuisance is alleged to have occurred, if that person knowingly permitted the activity to occur.²⁴ The owner or responsible person may offer evidence in their defense to prove that an attempt was made to prevent the gang activity from occurring at the location.²⁵

What are the penalties if a court finds that the gang activity does constitute a public nuisance?

If the court finds by the preponderance of the evidence²⁶ that a criminal gang constitutes a nuisance, the court may issue an order prohibiting the individual defendant(s) from engaging in gang activity and imposing other reasonable requirements to prevent future gang activity. In imposing other reasonable requirements, the court is required to balance the need for public safety with the defendant's constitutional rights.²⁷

The court may also impose reasonable requirements to prevent further use of a place for gang activity, including cancellation of an applicable lease if necessary.²⁸

A person who violates a court order related to nuisance gang activity is subject to a fine for contempt ranging between \$1,000 and \$10,000. If a person knowingly violates the order, the person is guilty of a misdemeanor offense. Attorney's fees may also be awarded to the prevailing party.²⁹

Graffiti

While not technically defined to be a nuisance in Minnesota statute, a building or other property that is "tagged" with graffiti can cause damage and may be considered an eyesore by neighbors

²³ [Minn. Stat. § 617.93.](#)

²⁴ [Id.](#)

²⁵ [Minn. Stat. § 617.97.](#)

²⁶ The "preponderance of the evidence" standard means that, on the whole, there is more evidence in favor of there being nuisance gang activity than not.

²⁷ [Minn. Stat. § 617.94.](#)

²⁸ [Id.](#)

²⁹ [Minn. Stat. § 617.95.](#)

and members of the public. A civil remedy is provided in statute to address graffiti-related problems.³⁰

The owner of public or private property may bring an action in court to recover damages related to graffiti.³¹ Unlike the public nuisance laws, this provision allows the owner of the property to bring the action; the involvement of a city or county attorney or the attorney general is not required.

If successful, the owner may recover either three times the cost of restoring the property or the court may order the defendant to perform the actual work required for restoration. The court may also award attorney's fees to the property owner. If the graffiti was placed on the property by a minor individual, the damages may be recovered from the parent of that minor.³² In most cases, the liability of the parent may not exceed \$1,000.³³

Local Public Nuisance Laws

General Ordinances and Regulation

Most local units of government have the authority to define and abate nuisances by means of local ordinance. In the case of home rule charter cities, this authority may be derived from the city charter. Statutory cities and towns have specific authority under state law to define and abate nuisances.³⁴ Although state law does not state as explicitly for counties as it does for cities the county's general authority to define and provide for the prevention and abatement of nuisances, it does, in effect, authorize them to do so.³⁵

Under Minnesota case law, city ordinances may only regulate public nuisances and may only declare a condition to be a nuisance if the condition has been so recognized by the courts.³⁶ Many conditions have been declared to be nuisances by the courts, including the accumulation of filth, noise, dogs, and offensive odors.³⁷

³⁰ For purposes of the law, graffiti is defined as "unauthorized markings of paint, dye, or other similar substance that have been placed on real or personal property such as buildings, fences, transportation equipment, or other structures, or the unauthorized etching or scratching of the surfaces of such real or personal property, any of which markings, scratchings, or etchings are visible from premises open to the public." [Minn. Stat. § 617.90](#), subd. 1.

³¹ [Minn. Stat. § 617.90](#), subd. 2.

³² *Id.*

³³ [Minn. Stat. § 540.18](#).

³⁴ *See e.g.* [Minn. Stat. §§ 412.221](#), subds. 23 and 24 (statutory cities); [368.01](#), subd. 15 (urban towns); and [365.10](#), subd. 17 (other towns).

³⁵ The combination of specific statutes authorizing counties to address nuisances appears to amount to a general authority. In particular, see [Minn. Stat. § 145A.05](#) (public health) and [§ 394.21](#) (zoning).

³⁶ *St. Paul v. Gilfillan*, 36 Minn. 298, 31 N.W. 49 (1886).

³⁷ *See* 14A Dunnell *Minn. Digest* Nuisances.

Local governments also may approach nuisance problems from a regulatory perspective, through the use of licensing fees. When a type of activity or business (such as an adult entertainment business) has the potential to deteriorate into a nuisance condition, the local government may choose to set the license fee for the activity at a high enough level to discourage a large number of license applicants. The courts historically have given local governments wide latitude to establish high licensing fees for these nuisance-prone businesses, at least with respect to activities that the local government could choose to prohibit instead of regulate.³⁸

Nuisance Affecting the Public Health

The governing body of every city and county in the state is required to either undertake the responsibilities of a board of public health or establish such a board independently. Among the required duties of a board of public health is the removal and abatement of public health nuisances.³⁹

In undertaking its duties, a board of public health is required to order the owner or occupant of property that is either a public health nuisance, source of filth, or a cause of sickness to remove or abate the threat within a time established by the board, not to exceed 10 days. Notice must be properly served on the owner, occupant, or agent of the property before the board may take further action.⁴⁰

If the owner, occupant, or agent of the property does not comply with the board's order, the board (or its own agent) is required to remove the threat.⁴¹ The board may seek an injunction in court against any nuisance or other activity that adversely affects the public health.⁴²

An individual who deliberately hinders a member of a board of public health from the performance of the member's duties is guilty of a misdemeanor offense.⁴³ Similarly, any

³⁸ Jeanette Behr, Rachel Carlson, and Susan Naughton, *Handbook for Minnesota Cities*, 11th ed. (St. Paul: League of Minnesota Cities, 2007 online edition), 12-16–12-18.

³⁹ [Minn. Stat. § 145A.04](#), subd. 8.

⁴⁰ Notice for abatement or removal must be served on the owner, occupant, or agent of the property in one of the following ways:

- (1) by registered or certified mail
- (2) by an officer authorized to serve a warrant
- (3) by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice

If the owner of the property is unknown or absent and has no known representative upon whom notice can be served, the board of health or its agent shall post a written or printed notice on the property stating that, unless the threat to the public health is abated or removed within a period not longer than ten days, the board will have the threat abated or removed at the expense of the owner under section [145A.08](#) or other applicable state or local law. [Minn. Stat. § 145A.04](#), subd. 8.

⁴¹ [Minn. Stat. § 145A.04](#), subd. 8.

⁴² [Minn. Stat. § 145A.04](#), subd. 9.

⁴³ [Minn. Stat. § 145A.04](#), subd. 10.

member of a board of public health that refuses or neglects to perform a duty imposed by statute or ordinance is guilty of a misdemeanor.⁴⁴

Private Nuisance Actions

Separate from public nuisance but sometimes overlapping it, Minnesota statutes also recognize private nuisance. Private nuisance is a form of damage caused by wrongful conduct. The wrongful activity may consist of a statute or ordinance violation, or it may be lawful and involve intentional conduct, negligence, or an ultrahazardous activity.

Private nuisance is defined formally as anything “injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.”⁴⁵

Any person whose property is damaged or whose personal enjoyment is affected by the nuisance may bring an action in court to stop the activity.⁴⁶ If successful, in addition to having the private nuisance activity stopped, the person filing suit may also recover damages sustained as a result of the activity.

If the conduct both violates a public nuisance statute and interferes with an individual’s ability to freely use and enjoy property, the activity can be addressed both by the prosecutor through the public nuisance statute and by an individual’s separate private civil action for damages or an injunction.

Business Activities

While case law indicates a business should not be destroyed unless necessary to protect another’s rights, abatements have been ordered that have closed down legitimate businesses. Examples of business activities that Minnesota case law has recognized to be private nuisances include industrial plants transferring dust to adjacent residential property;⁴⁷ a limestone quarry giving off noise, fumes, and odors;⁴⁸ wastewater treatment plant odors;⁴⁹ poultry and hog farm odors;⁵⁰ and water and sewage runoff.⁵¹

⁴⁴ [Minn. Stat. § 145A.04](#), subd. 11.

⁴⁵ [Minn. Stat. § 561.01](#).

⁴⁶ *Id.*

⁴⁷ *Heller v. American Range Corp.*, 234 N.W. 316 (Minn. 1931).

⁴⁸ *Brede v. Minnesota Crushed Stone Co.*, 179 N.W. 638 (Minn. 1920).

⁴⁹ *Fagerlie v. City of Wilmar*, 435 N.W.2d 641 (Minn. App. 1989).

⁵⁰ *Schrupp v. Hanson*, 235 N.W.2d 822 (Minn. 1975).

⁵¹ *Highview North Apts. v. County of Ramsey*, 323 N.W.2d 65 (Minn. 1982).

Agricultural Operations

While courts have held that agricultural activities may in some circumstances constitute a nuisance, Minnesota law contains a specific protection for established agricultural operations.⁵² So long as the agricultural operation is located in an area zoned for agriculture, is in compliance with federal, state, and local laws and permits, and operates according to the generally accepted agricultural practices,⁵³ then the operation may not be considered either a public or private nuisance after two years from the date the operation was established as a matter of law.⁵⁴

This protection for agricultural operations does not apply to certain animal feedlot facilities specified in law, and does not prevent a prosecution for the crime of public nuisance or an action to abate a particular condition that is a public nuisance by a public authority.⁵⁵ The protection also does not prevent the enforcement of zoning laws by local units of government.⁵⁶

Animals

Minnesota law specifically exempts an owner of land from liability for nuisance (or any other action) for damage caused by wild animals while on the owner's property.⁵⁷ However, a person who knowingly permits a domestic animal to run at large or trespass on private property may be subject to liability in a civil action, for up to three times the damages sustained as a result of the animal's activity.⁵⁸ An action for damage in this case would not formally be considered a "nuisance"; rather, an individual would seek recovery against the animal's owner for trespassing on the property.

For more information about civil laws, visit the civil law and the courts area of our web site, www.house.mn/hrd/issinfo/civil.htm.

⁵² "Agricultural operation" means a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products. [Minn. Stat. § 561.19](#), subd. 1(a).

⁵³ "Generally accepted agricultural practices" means those practices commonly used by other farmers in the county or a contiguous county in which a nuisance claim is asserted. [Minn. Stat. § 561.19](#), subd. 1(c).

⁵⁴ [Minn. Stat. § 561.19](#).

⁵⁵ The law does not protect "[a]n animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the Pollution Control Agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more." [Minn. Stat. § 561.19](#), subd. 2(c).

⁵⁶ [Minn. Stat. § 561.19](#), subd. 2(c).

⁵⁷ [Minn. Stat. § 561.051](#).

⁵⁸ [Minn. Stat. § 561.09](#).