



MISSOURI PUBLIC HEALTH AUTHORITY Legal Technical Assistance

Authority of Third-Class Counties to Adopt a Nuisance Abatement Ordinance

Questions Presented:

1. Does a third-class county in Missouri have legal authority to adopt a nuisance abatement ordinance?
2. Please share examples of nuisance abatement ordinances in Missouri.


Summary:

Most third-class counties in Missouri do not appear to have authority to adopt a general nuisance abatement ordinance. State law explicitly authorizes three third-class counties — Andrew, Dade, and Livingston — and all cities to adopt nuisance abatement ordinances. The County Commission of a third-class county in Missouri may adopt a nuisance abatement ordinance regarding county property. In addition, section 192.300 of the Revised Statutes of Missouri grants counties the authority to adopt public health ordinances, but public health ordinances are limited to those aimed at preventing the entrance of infectious diseases. We did not identify any examples of counties adopting a nuisance abatement ordinance under section 192.300.

In the absence of county authority to enact a general nuisance ordinance, county officials in a third-class county may consider supporting cities in their efforts to adopt or strengthen nuisance ordinances, working with state legislators to expand county authority to adopt nuisance ordinances, or developing public health ordinances to address property nuisances that present an infectious disease risk.

The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their jurisdiction.

Discussion:



This memorandum answers the question of whether third-class counties in Missouri have legal authority to adopt nuisance abatement ordinances. It includes a discussion of state law granting authority to some jurisdictions, including twelve specific counties, and cities, to enact nuisance abatement ordinances. Also included are sources of local public health authority that, in the absence of express specific authority, may provide alternative approaches to the abatement of particular nuisance types. Finally, examples of city and county nuisance abatement ordinances are included for reference.

I. Counties' General Authority to Enact Nuisance Ordinances

Generally, counties in Missouri have only the authority granted to them by the state legislature. There are, however, four counties with a charter form of government which authorizes greater control over local governance. In addition, Missouri has a classification system for noncharter counties; particular state statutes specify differences in authority based on a county's classification.¹ Counties are classified in accordance with Article VI, Section 8 of the Constitution of Missouri based on their valuation; a third-class county has a valuation of less than six hundred million dollars.² In all counties, local ordinances may not conflict with state law, though some state statutes authorize local jurisdictions to enact more stringent standards.

i. Noncharter counties may adopt nuisance abatement ordinances on county property in some instances

Section 49.650 of the Revised Statutes of Missouri authorizes noncharter counties to adopt ordinances regarding nuisance abatement on county property, excluding agricultural and horticultural property, if there is no provision in the state constitution or state statute that addresses the matter.³ If a county ordinance conflicts with a municipal ordinance, the municipal ordinance controls; therefore, the county ordinance would apply only to the areas of the county outside the boundaries of the municipality.⁴ Ordinances proposed under this section may be sent to voters for majority approval before taking effect. A tax or fee must be authorized by state statute prior to being submitted to voters.⁵


ii. The General Assembly has granted specific counties, including three third-class counties, statutory authority to enact nuisance abatement ordinances

Missouri law authorizes specific counties to enact nuisance abatement ordinances. Under section 67.402 of state law, the General Assembly has granted authority to the following counties: Andrew, Boone, Buchanan, Cass, Cole, Dade, Jasper, Jefferson, Livingston, Newton, St. Francois, and Taney.⁶

Andrew, Dade, and Livingston Counties are third-class counties.⁷

The statute authorizes the governing bodies of those counties to enact ordinances to abate particular conditions on lots or land including the presence of trash, specifically enumerated materials and derelict vehicles, or overgrown or noxious weeds in residential subdivisions or districts which may endanger public safety or are unhealthy or unsafe.⁸

iii. Some additional jurisdictions have specific statutory authority to enact nuisance abatement ordinances



Similar to the statute above, section 67.398 of the Revised Statutes of Missouri grants nuisance abatement authority to cities, villages, and certain first-class counties to address debris, vegetation hazards, trash, and other materials as specified which endanger health and safety.⁹

The law requires the relevant governing body to provide written notice to a property owner specifically describing the conditions declared to be a public nuisance and identify what action will remedy the nuisance. Unless there is an immediate public health or safety risk, property owners are to be provided at least ten days to abate the nuisance or commence removal of the conditions identified in the notice.

There are five charter counties in Missouri: Clay, Jackson, Jefferson, St. Charles, and St. Louis.¹⁰ The only city in Missouri with a population of at least three hundred thousand is Kansas City, so first-class counties that contain part of Kansas City also have authority to enact nuisance abatement ordinances under this provision of state law.

During the 2021 legislative session, Representative John Wiemann introduced House Bill 271 to amend Mo. Rev. Stat. § 67.398(1) to include “or any county of the first classification with more than one hundred one thousand but fewer than one hundred fifteen thousand inhabitants.”¹¹ Governor Parson signed the legislation into law on June 15, 2021. This change in state law affected only Franklin County, where County Commissioners then adopted a nuisance ordinance.¹²

II. City Authority to Enact Nuisance Ordinances

Under Missouri law, cities,¹³ towns, and villages have explicit authority to adopt nuisance ordinances to address threats to the health and welfare of residents. A city nuisance ordinance applies within city boundaries and within half a mile of the boundaries.¹⁴ Counties could potentially encourage the adoption of such local ordinances and provide consultation on public health implications where appropriate.

In addition to the specific statutory authority above, the state Constitution grants relatively broad authority to charter cities to include a general police power in their charter, and state law grants general police powers to third- and fourth-class cities, towns, and villages.¹⁵ Police powers are the general authority to enact laws for the public good, including for public health and safety.

III. County Public Health Authority to Address Nuisances

Because it appears that many counties in Missouri do not have specific authority to enact nuisance abatement ordinances, jurisdictions may consider turning to other sources of local public health authority to address specific types of public health concerns such as wastewater nuisances, environmental health risks, and infectious diseases.

i. Counties may adopt public health ordinances to enhance the public health and prevent the spread of disease

Section 192.300 of the Revised Statutes of Missouri grants authority to counties to adopt ordinances to enhance the public health and prevent the spread of disease:

1. The county commissions and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of

infectious, contagious, communicable or dangerous diseases into such county, but any orders, ordinances, rules or regulations shall not:

(1) Be in conflict with any rules or regulations authorized and made by the department of health and senior services in accordance with this chapter or by the department of social services under chapter 198; . . .

Mo. Rev. Stat § 192.300

Courts have interpreted section 192.300 as requiring ordinances promulgated under the law to both enhance public health *and* prevent disease.¹⁶ State courts have also required that ordinances adopted under section 192.300 bear a “reasonable relation to public health.”¹⁷ Some nuisance types may present clear connections to the potential spread of disease, but we did not locate any county nuisance ordinances adopted under section 192.300, nor any case law examining this potential application of 192.300. Counties may consider whether section 192.300 authorizes adoption of ordinances that would achieve their public health goals relating to the abatement of particular nuisances.

ii. LPHAs may require the abatement of nuisances from onsite wastewater treatment systems

Local public health agencies may have authority to address nuisances brought about by onsite wastewater treatment systems.

Sections 701.025 to 701.059 of state law and the rules promulgated under those sections govern onsite wastewater treatment systems throughout Missouri. Under state law, a wastewater nuisance includes conditions that breed flies and mosquitoes, produce odors, transmit disease, or contaminate surface water or groundwater.¹⁸ Any city or county that has adopted the state standard, in addition to MDHSS, may require a property owner to abate a nuisance or repair a malfunctioning system within thirty days of receiving notice.¹⁹ State law authorizes local jurisdictions to enact and enforce standards more stringent than those in state law.²⁰ The Missouri Environmental Health Operational Guidelines provide additional information for local public health agencies regarding the investigation of wastewater treatment system complaints.²¹

iii. LPHAs may address nuisance concerns through public health education

When local nuisance abatement laws and enforcement mechanisms are not available to address public health concerns on private property, health agencies may consider employing public health education and advice to encourage voluntary abatement of the nuisance.

The Department of Health and Senior Services does not have any statutes or rules it enforces concerning, for example, abandoned homes at risk of collapse or properties with excessive vehicles, debris, or trash. Department guidance is to check if county or city ordinances allow a local governing body to have inspection and/or condemnation authority (such as the building department). The Department advises that a local public health agency may provide public health advice and encourage a property owner to perform appropriate maintenance.²² The Bureau of Environmental Health Services offers consultation and guidance on ordinance development.

IV. Examples of Nuisance Abatement Ordinances in Missouri

i. Examples of County Ordinances

Note: These ordinances were enacted under sections 67.398 and 67.402 of the Revised Statutes of Missouri and the counties are charter or first-class counties.

- i. [Boone County](#)
- ii. [Clay County](#)
- iii. [Jackson County](#)
- iv. [Jefferson County](#)
- v. [St. Charles County](#)
- vi. [St. Louis County](#)


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SUPPORTERS

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- ¹ See Mo. Rev. Stat. Tit. VI establishing county authority including authority related to the formation and management of county government.
- ² Mo. Const. art. 8, § 8; Mo. Rev. Stat. § 48.020.
- ³ Noncharter counties may not enact ordinances governing any railroad company, telecommunications or wireless companies, public utilities, rural electric cooperatives, or municipal utilities. Mo. Rev. Stat. § 49.650.
- ⁴ If there is no conflicting municipal, fire protection district, or ambulance district ordinance, then the county ordinance controls. See *Orla Holman Cemetery, Inc. v. Robert W. Plaster Tr.*, 304 S.W.3d 112 (Mo. 2010).
- ⁵ When imposing fees via a public health ordinance, counties should carefully evaluate whether the fee is subject to the Hancock Amendment and therefore requires voter approval. Mo. Const. art. X § 18-24. Mo. Rev. Stat. § 49.650.
- ⁶ Mo. Rev. Stat. § 67.402.
- ⁷ Missouri Counties by Classification (Jan. 2023), <https://static1.squarespace.com/static/6164a0a296d53f60bbf47a00/t/63d2b5cb1b8d137e0cfd6b6f/1674753483617/Missouri+Counties+by+Classification+-+2023.pdf>.
- ⁸ Mo. Rev. Stat. § 67.402.
- ⁹ Mo. Rev. Stat. § 67.398(1).
- ¹⁰ Missouri Counties by Classification (Jan. 2023), <https://static1.squarespace.com/static/6164a0a296d53f60bbf47a00/t/63d2b5cb1b8d137e0cfd6b6f/1674753483617/Missouri+Counties+by+Classification+-+2023.pdf>.
- ¹¹ 2021 Missouri House Bill No. 271, Missouri One-Hundredth First General Assembly, First Regular Session, 2021 Missouri House Bill No. 271, Missouri One-Hundredth First General Assembly, First Regular Session.
- ¹² Missouri Senate, HB 271 Current Bill Summary, https://www.senate.mo.gov/21info/bts_web/bill.aspx?SessionType=R&BillID=58845294; Geoff Folsom, County Commissioners Approves Nuisance Ordinance, *emissourian.com*, https://www.emissourian.com/local_news/county-commissioners-approves-nuisance-ordinance/article_b6b8c594-ea1d-11eb-9d7a-afe76d5e098d.html.
- ¹³ Under Mo. Rev. Stat. § 67.398(2), home rule cities with more than 400,000 inhabitants and located in more than one county may enact nuisance abatement ordinances for the abatement of a condition of any lot or land that has vacant buildings or structures open to entry. Currently, this only applies to Kansas City.
- ¹⁴ Mo. Rev. Stat. § 71.780. See also Mo. Rev. Stat. § 67.398(1) (“The governing body of any city or village . . . may enact ordinances to provide for the abatement of a condition of any lot or land that has the presence of a nuisance”) and Mo. Rev. Stat. § 77.560 (authority of cities of the third classification to abate certain nuisances).
- ¹⁵ Missouri Const. art. VI, § 19(a); Mo. Rev. Stat § 77.260; Mo. Rev. Stat § 79.110; Mo. Rev. Stat. § 80.090(40).
- ¹⁶ See *City of Olivette, Missouri v. St. Louis Cnty.*, Missouri, 507 S.W.3d 637 (Mo. Ct. App. 2017).
- ¹⁷ See *Avanti Petroleum, Inc. v. St. Louis Cnty.*, 974 S.W.2d 506 (Mo. Ct. App. 1998); *Readey v. St. Louis Cnty. Water Co.*, 352 S.W.2d 622 (Mo. 1961). See also *Pro. Houndsmen of Missouri, Inc. v. Cnty. of Boone*, 836 S.W.2d 17 (Mo. Ct. App. 1992).
- ¹⁸ Mo. Rev. Stat. § 701.025.
- ¹⁹ Mo. Rev. Stat. § 701.037.
- ²⁰ Mo. Rev. Stat. § 701.035.
- ²¹ Missouri Department of Health and Senior Services, Environmental Health Operating Guidelines (Aug. 2021), pp.176-83, <https://health.mo.gov/atoz/ehog/pdf/ehog-2021.pdf>.
- ²² Missouri Department of Health and Senior Services, Environmental Health Operating Guidelines (Aug. 2021), pp. 252-3, <https://health.mo.gov/atoz/ehog/pdf/ehog-2021.pdf>.