



BUTLER | SNOW

**STATE STATUTE
MISS. CODE ANN. § 21-19-11
CLEANING OF PRIVATE PROPERTY**

CLEANUP STATUTES

- Miss. Code Ann. § 21-19-20: Demolishing Drug Houses
 - Miss. Code Ann. § 21-19-21: Fire Prevention
 - Miss. Code Ann. § 21-23-7(14): Municipal Court
 - Miss. Code Ann. § 39-13-15: Historic Preservation Act
 - Miss. Code Ann. § 43-35-101 *et seq.*: Slum Clearance
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MISS. CODE ANN. § 21-19-11




APPLICATION AND PROCESS

PROCESS

- Inspection
 - Notice of hearing
 - Hearing
 - Property Cleanup
 - Collect Costs
 - Re-entry to Cleanup
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WHAT CAN YOU DO?

- Cutting grass and weeds;
 - Filling cisterns;
 - Securing abandoned or dilapidated buildings;
 - Removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property and other debris; and
 - Draining cesspools and standing water.
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WHEN DOES IT APPLY?

- Property within City limits
 - Commercial & Residential
 - Developed & Undeveloped
 - Railroads
 - Public utilities
 - Historic Preservation Districts
 - Perpetual Care Cemeteries – Special treatment
 - State owned property - Get permission!
 - Bankruptcy
 - No exemptions for elderly, charitable organizations or churches
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PROPERTY INSPECTION

- Who is authorized to conduct inspection?
 - City officials
 - City employees
- The City is authorized to enter property for inspection if:
 - Where property owner has given consent; or
 - With a warrant showing probable cause for a zoning violation; or
 - Where conditions on property are observable from a public street or from a consenting neighbor's property

*Okuhuysen v. Starkville, 333 So.3d 573 (Miss. 2022)




WHO SETS THE HEARING?

- 2 Types of Actions against property owner
 - Municipal Court/ Judicial Proceeding - § 21-23-7(14)
 - Hearing before the City Board/Council
 - Board can set hearing itself; or
 - Petition from majority of residents living within 400 feet of the property; or
 - Expedited procedure
 - City can delegate to authorized employee
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NOTICE OF HEARING

- Notice must be sent to “Property Owner”
 - Notice requirements
 - Language that informs property owner of 2 year right of re-entry
 - Include notice in the minutes of the City
 - Provide notice 2 weeks before hearing using 2 methods:
 - Mail
 - The address of the subject property, except vacant property; and
 - The address where the ad valorem tax notice is sent
 - Certified mail not required
 - Posting Notice
 - On the property; and
 - At City Hall or somewhere in town where such notices would be normally be posted
 - State-owned properties – Not required if Secretary of State grants authorization
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KEY POINTS FOR NOTICE

- Consider unique information
 - Obligation to provide notice based on information that city either receives or knows about a property owner
 - Sometimes notices will fail
 - Include all city's efforts to find property owners and to provide notice in the minutes of hearing to adjudicate the condition of the property
 - Notice must be mailed regardless of potential for unsuccessful mail delivery
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Lee v. City of Pascagoula (April 9, 2024)

Blighted property and due process rights

Motel owner appealed the City Council's decision declaring motel to be a menace to public health, safety, and welfare and ordering motel to be immediately demolished, asserting that the city's decision was not supported by substantial evidence and that she was not given proper due process.

The trial court found that the City complied with the notice requirements of state law and found substantial evidence that the property constituted a menace under state law. The owners appealed the decision.

The Supreme Court found ample evidence to support the City's finding that the property was a public menace because the City produced all of the records to justify this action (well documented by the City).
HOWEVER....

The Supreme Court found that the Owner's due process was violated (even though the City followed all of the requirements of the statute) because the landowner must be provided "specific notice of what is at stake in the proceeding."

"Because there are a wide range of remedies that may be taken by the municipality pursuant to the statute, it is incumbent to specifically explain what action is sought."

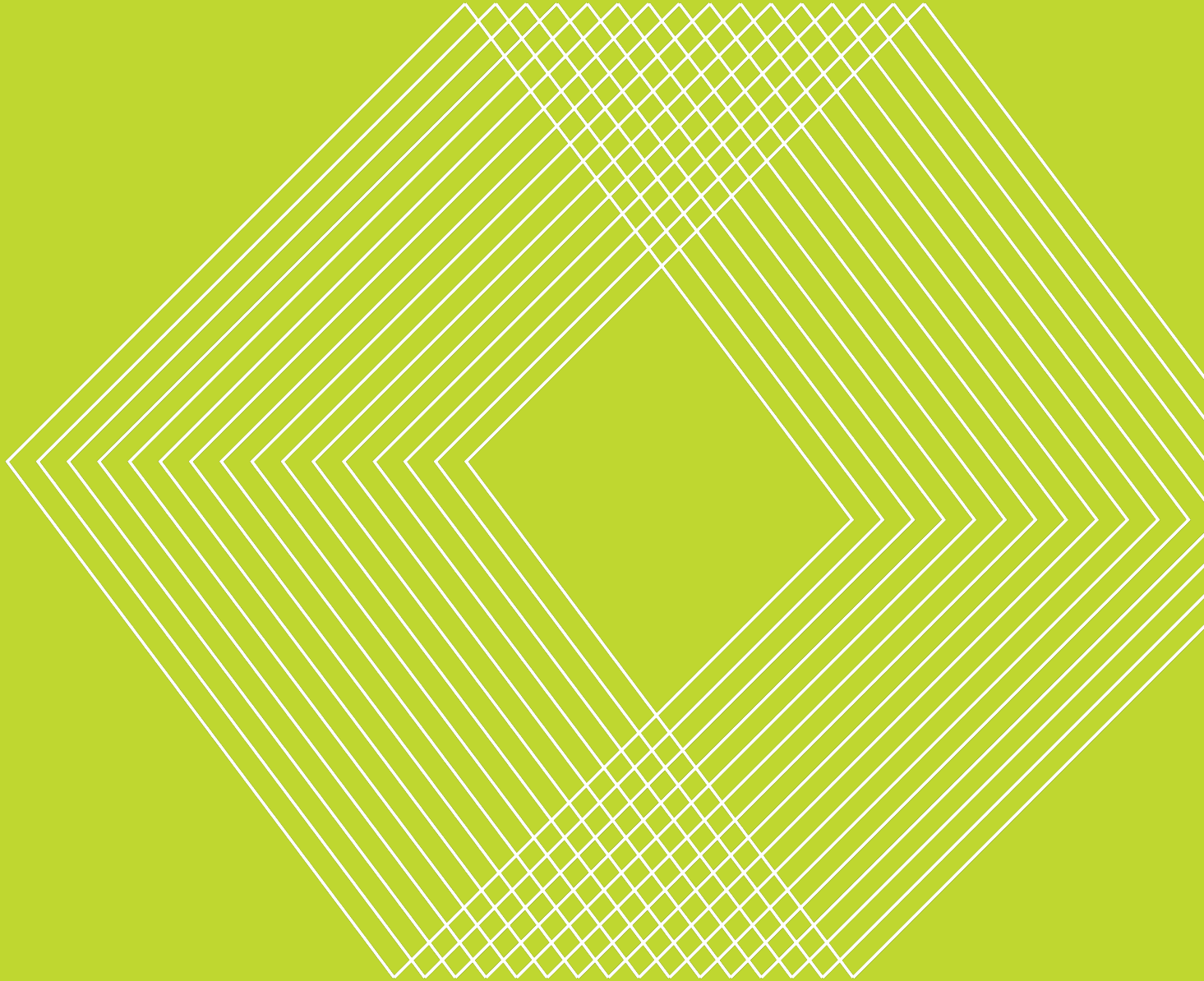
Additionally, the owner must be given the opportunity to cure the menace before action is taken.

For these reasons, the owner was not afforded due process.

THE HEARING

- Conducted by Board of Alderman/Council
 - Property must be in such state of uncleanness as to be “a menace to the public health, safety and welfare of the community”
 - Common interest affected rather than the interest of a particular individual
 - Minutes of hearing should include:
 - Extensive documentation and photos that supports decision
 - Attempts at notice
 - A finding that the property owner has been properly served
 - Decision can be appealed within 10 days of meeting
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CLEANUP




THE CLEANUP

- Grace periods
 - Permission to enter the property not needed after hearing
 - Work must be consistent with the resolution adjudicating that the property needs cleaning
 - Cannot improve, restore or landscape private property
 - The Act permits a city to board-up windows and doors to secure abandoned or dilapidated structures
 - With approval of the Department of Archives and History, repairs can be made to buildings in historic districts. See Miss. Code Ann. § 39-13-15
 - Comply with Public Bid Laws
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DISPOSAL OF PERSONAL PROPERTY

- May not dispose of personal property acquired by virtue of cleaning private property under Miss. Code Ann. § 21-39-21
 - However, a city may utilize the mechanism provided by Miss. Code Ann. § 21-19-11 for disposal of lost, stolen or abandoned personal property
 - “Reasonable care standard” if property held for owner
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RE-ENTRY FOR SUBSEQUENT CLEANING

- 2 re-entry periods
 - 12 Month
 - 24 Month
 - 7 days' notice required for each re-entry
 - Posted on property; and
 - At City Hall or somewhere in town where such notices would be normally be posted
 - No new hearing required for each re-entry
 - Work must be consistent with initial decision
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RE-ENTRY FOR SUBSEQUENT CLEANING

- 12 Month Period

- Re-enter 6 times
- Scope:
 - Remove and secure abandoned or dilapidated buildings
 - Remove slabs
 - Remove dilapidated fences
 - Remove outside toilets

- 24 Month Period

- Re-enter 12 times
- Scope:
 - Cut grass and weeds
 - Remove rubbish
 - Remove personal property
 - Remove other debris



COLLECTING THE COST OF CLEANUP


COST OF CLEANUP

- Cost can include
 - Actual costs;
 - Administrative costs;
 - Penalty imposed; and
 - Legal costs
 - Statutory Limits on Cost
 - Greater of
 - \$20,000 per calendar year; or
 - Fair market value of the property after cleaning
 - Does not include any penalty
 - Does not include Hazardous waste cleanup
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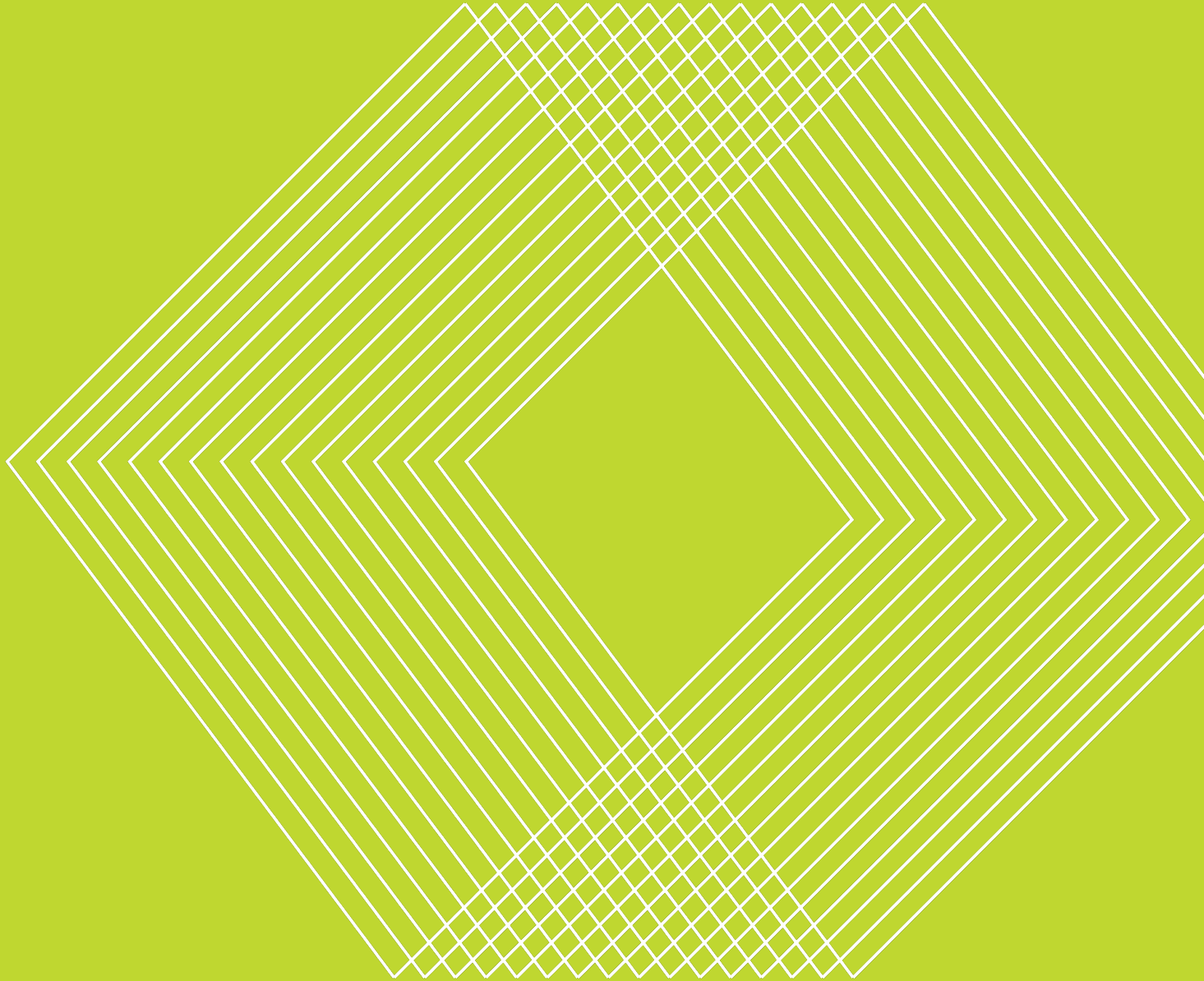
COST OF CLEANUP

- Penalty
 - Greater of
 - Not to exceed \$1,500; or
 - Not to exceed 50% of the actual cost of the cleanup
 - May be assessed each time the city re-enters property
 - City must adjudicate the cost of cleaning at a meeting and at that time assess the penalty
 - Penalties shall not be assessed against the State of Mississippi
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COLLECTING COSTS

- Civil Suit
 - Assessment Lien/Tax Sale
 - Lien Amnesty
 - Perpetual Cemetery Trust
 - Municipal Intercept Company (MIC)
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SPECIAL PROVISIONS



EXPEDITED PROCEDURE

- Applies to
 - >1,500 population; and
 - ≤1 acre or Cost to clean <\$250
 - Notice
 - 7 days' notice by mail ; and
 - Post Notice
 - Hearing officer makes adjudications
 - Cleaning expense limited to:
 - no more than \$250/cleaning; plus
 - administrative fee no more than \$50/cleaning; and
 - penalty of \$100 or 100% of the actual cleaning costs, whichever is more
 - May re-enter property up to 6 times within 1 year
 - May re-enter property up to 12 times within 2 years
 - Total aggregate actual cost of cleaning property may not exceed \$1,000 per year
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STATE PROPERTY

- Must get permission to clean state owned property
 - MS Secretary of State – Public Lands Division
 - Notice not required
 - No penalty assessed against State
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PERPETUAL CARE CEMETERIES

- Can clean if not being “properly maintained” and “shows signs of neglect” that include:
 - Unchecked growth in vegetation
 - Vandalism
 - Unusable entrances and exits
 - Excess rubbish and debris
 - Disintegration of grave markers or boundaries
 - Notice provisions apply
 - Penalty may not be assessed against cemetery owner
 - Secretary of State may order Trustee to reimburse the City for costs of cleanup
 - Proper Notice and Hearing
 - Paid from either accrued interest in the trust or the corpus
 - Limited to one (1) cleaning every four (4) years
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CITY COURTS

**Can we utilize our
City Courts to help us
get these properties
cleaned?**

MISS. CODE ANN. § 21-23-7 (14)

- For violations of municipal ordinances related to real property, the municipal judge shall have the power to order a defendant to remedy violations within a reasonable time period as set by the judge, and at the discretion of the judge, the judge may simultaneously authorize the municipality, at its request, the option to remedy the violation itself, through the use of its own employees or its contractors, without further notice should the defendant fail to fully do so within the time period set by the judge. Subsequent to the municipality remedying the violation, the municipality may petition the court to assess documented cleanup costs to the defendant, and, if, following a hearing on such petition, the judge determines (a) the violations were not remedied by the defendant within the time required by the court, (b) that the municipality remedied the violation itself after such time period expired and (c) that the costs incurred by the municipality were reasonable, the court may assess the costs to the defendant as a judgement, which may be enrolled in the office of the circuit clerk.



QUESTIONS

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