

CITY OF BELLEVUE, KENTUCKY

ORDINANCE NO. 2008-11-03

AN ORDINANCE of the City Council of the City of Bellevue, Kentucky, amending Bellevue Code of Ordinances Chapter 95 to create a new section entitled "Chronic Nuisance Properties" providing a new process for enforcement and abatement of certain nuisance activities that repeatedly occur or exist at chronic nuisance properties.

WHEREAS, the current provisions of Bellevue Municipal Code do not provide an adequate tool for abating chronic nuisance properties; and

WHEREAS, the City Council desires to supplement the Bellevue Code of Ordinances Chapter 95, governing nuisances, by providing a new process for enforcement and abatement of nuisance activities that repeatedly occur or exist at chronic nuisance properties;

WHEREAS, chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety, and health of the neighborhoods where they are located. This chapter is enacted to remedy nuisance activities that are particularly disruptive to the quality of life and repeatedly occur or exist at properties by providing a process for abatement. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

WHEREAS, chronic nuisance properties are a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This City Council desires to ameliorate those conditions and hold accountable those persons responsible for such property;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLEVUE, KENTUCKY, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 – DEFINITIONS

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

(a) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable city department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community;

(b) "Control" means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;

(c) "Chronic Nuisance Property" means any real property on which any combination of three or more Nuisance Activities occur or exist during any ninety-day period;

(d) "Drug-Related Activity" means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined under KRS chapters 217 and 218A, legend drug as defined in KRS chapter 217, or imitation controlled substances as defined in KRS chapter 217 and 218A;

(e) "Nuisance Activity" means and includes:

(1) Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:

- (a) Abandoned and Junk Vehicles, Bellevue Code of Ordinances Chapter 99;
- (b) Fire Prevention, Bellevue Code of Ordinances Chapter 93;
- (c) Health and Sanitation, Bellevue Code of Ordinances Chapters;
- (d) International Property Maintenance Code as adopted by the City of Bellevue, Bellevue Code of Ordinances Chapter 156;
- (e) Noise Control, Bellevue Code of Ordinances Chapter 94;
- (f) Animals, Bellevue Code of Ordinances Chapter 90;
- (g) Nuisances, Bellevue Code of Ordinances Chapter 95;
- (h) Building Regulations, Bellevue Code of Ordinances Chapter 150;
- (i) Rental Inspections, Bellevue Code of Ordinances Chapter 156A; and
- (j) Zoning Code and Subdivision Regulations, Bellevue Code of Ordinances Chapters 157 and 158.

(2) Any criminal conduct as defined by state law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:

- (a) Stalking;
- (b) Harassment;
- (c) Failure to Disperse;
- (d) Disorderly Conduct;
- (e) Assault;
- (f) Any Domestic Violence Crimes;
- (g) Reckless Endangerment;
- (h) Prostitution;
- (i) Patronizing a Prostitute;
- (j) Public Disturbance Noises;

- (k) Any Firearms/Dangerous Weapons Violations;
- (l) Drug-Related Loitering;
- (m) Any Dangerous Animal Violations; and
- (n) Any Drug-Related Activity.

(3) For purposes of this chapter, "Nuisance Activity" shall not include conduct where the Person Responsible is the victim of a crime and had no control over the criminal act.

(f) "Person Responsible for Property" or "Person Responsible" means, unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this ordinance, an occupant in control of the property or structure which is subject to this ordinance, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this ordinance and/or any person who has control over the property and allows a violation of this ordinance to continue.

(g) "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;

(h) "Premises and Property" may be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential property;

(i) "Rental Unit" means any structure or that part of a structure, including but not limited to single family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons;

SECTION 2 - PROHIBITION

(a) Any property within the City of Bellevue which is a Chronic Nuisance Property is declared a public nuisance and in violation of this Ordinance and subject to the remedies provided herein; and

(b) Any Person Responsible for Property who permits property to be a Chronic Nuisance Property shall be in violation of this ordinance.

SECTION 3 – ABATEMENT PROCEDURE FOR CHRONIC NUISANCE PROPERTIES

(a) When the Code Enforcement Officer, or his designee(s), receives documentation or information confirming the occurrence of three or more nuisance activities within a ninety day period on or at any premises or property, the Code Enforcement Officer, or his designee(s), shall review such documentation or information to determine whether it describes the nuisance activities enumerated in this ordinance. Upon such a finding, the Code Enforcement Officer, or

his designee(s), shall warn the Person Responsible for such property, in writing, that the property is in danger of being declared a Chronic Nuisance Property.

(b) The warning shall be sent by certified mail, return receipt requested, and contain:

- (1) the street address or a legal description sufficient for identification of the property;
- (2) a concise description of the nuisance activities that exist, or that have occurred on the property;
- (3) a demand that the Person Responsible for such Property respond to the notice within ten days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
- (4) offer the Person Responsible an opportunity to abate the nuisance activities giving rise to the violation; and
- (5) a statement describing that the property could be subject to closure and civil penalties and/or costs assessed up to two hundred dollars per day if the property is declared a Chronic Nuisance Property.

(c) The Code Enforcement Officer or his designee(s) shall serve or cause to be served the warning and notice to abate upon the Person Responsible by certified mail, return receipt requested, or may be personally serve the Person Responsible in accordance with the procedures set forth in KRS 381.770(4) and KRS 65.8825(3).

(d) If the Person Responsible fails to respond to the warning within the time prescribed, the Code Enforcement Officer, or his/her designee(s) shall issue a notice declaring the property to be a Chronic Nuisance Property and post such notice at the property and issue the Person Responsible a citation for a civil infraction, punishable by a maximum penalty of Two Hundred Dollars (\$200.00). If the Personal Responsible fails to respond to the warning, notice or citation, the matter shall be referred for Enforcement.

(e) If the Person Responsible responds as required by the notice and agrees to abate the nuisance activity, the Code Enforcement Officer, or his designee(s), and the Person Responsible, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Code Enforcement Board or other city enforcement board or agency and any additional appropriate entity or office for appropriate official enforcement action. Provided, that in the event the Code of Enforcement Officer or his designee(s) determine that the Person Responsible has taken reasonable steps to abate the nuisance activity, the City shall not commence an enforcement action under this Chapter, notwithstanding the continuance of the nuisance activity.

(f) It is a defense to an action for Chronic Nuisance Property that the Person Responsible, at all material times, could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the Property is Chronic Nuisance Property.

SECTION 4 – ENFORCEMENT AND PENALTIES

(a) In addition to other remedies set out in this ordinance or by statute, should the Chronic Nuisance Property not be abated at the time stated in the notice to abate, the Code Enforcement Officer shall be authorized to issue any appropriate citation. Upon failure of the property owner to request a hearing before the Code Enforcement Board, an order may be issued condemning and vacating the premises or portions thereof to the extent necessary to abate the Chronic Nuisance Property. Any close and vacate order shall be for a period of less than one (1) year from the date of closing and rescind within fourteen (14) days of an abatement. If the property consists of multi-unit dwellings, and the Nuisance Activity has occurred solely within a single unit, the condemnation and vacate order may be limited to the single unit.

(b) Upon the issuance of any order provided for in this section, a copy of the order shall be served on the owner of the Property in the same manner as the warning and shall be conspicuously posted on the Property.

(c) In addition to an order condemning and vacating the Property, a maximum civil penalty of Two Hundred Dollars (\$200.00) shall be imposed for any violation of this ordinance. However, if the Responsible Party does not appeal the citation to the Code Enforcement Board, then the civil penalty shall be reduced to One Hundred-Seventy Five Dollars (\$175.00).

(d) Nothing in this ordinance shall prevent the City from pursuing additional remedies including judicial actions provided by statute or common law to enjoin or otherwise remedy the Chronic Nuisance.

SECTION 5 – SUMMARY CLOSURE

Nothing in this ordinance prohibits the City from taking any emergency action for the summary closure of such Property when it is necessary to avoid an immediate threat to public welfare and safety.

SECTION 6 – PENALTY UPON FAILURE TO COMPLY

Upon the failure of the property owner to comply with an order to close and vacate, the Code Enforcement Department may prohibit the furnishing of utility service, to include but not limited to, gas, electric, water, and heating oil, to the premises by any public utility holding a franchise to use the streets and public ways of the City of Bellevue; revoke the certificate of occupancy of the Premises; or use any other legal remedy available under the laws of the state.

SECTION 7 – RELIEF FROM ORDER

The Code Official may vacate or suspend the provisions of an order to close and vacate upon a showing by clear and convincing evidence that the Nuisance Activity has been abated and will not be maintained or permitted on the property or a unit thereof.

SECTION 8 – LIEN

Pursuant to the provisions KRS 381.770, the City of Bellevue shall possess a lien against the Property for all fines, penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the Nuisance Activity. The lien shall be superior to and have priority over all other liens on the Property except state, City of Bellevue, school board and City of Bellevue taxes, and may be enforced by judicial proceeding.

SECTION 9 – SEVERABILITY

If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION 10 - EFFECTIVE DATE

This ordinance shall take effect and be in force ten (10) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council the _____ day of December, 2008.

CITY OF BELLEVUE, KENTUCKY

By _____
John D. Meyer, Mayor

ATTEST:

Mary Scott, its Clerk

1st Reading: _____

2nd Reading: _____

Publication: _____