

**CITY OF BELLEVUE, KENTUCKY**

**ORDINANCE NO. 2012 – 05-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLEVUE, KENTUCKY (“CITY”) ENTITLED "CRIMINAL ACTIVITY NUISANCE PROPERTIES" PROVIDING A NEW PROCESS FOR NUISANCE ENFORCEMENT AND ABATEMENT OF CRIMINAL ACTIVITIES NUISANCES THAT REPEATEDLY OCCUR OR EXIST ON REAL PROPERTIED WITHIN THE CITY.**

**WHEREAS**, the current provisions of the Bellevue Code of Ordinances do not provide an adequate tool for abating criminal activity nuisance properties within the City; and

**WHEREAS**, the City Council desires to supplement the Bellevue Code of Ordinances Chapter 95 pertaining to nuisances by providing a new process for enforcement and abatement of Criminal Activity Nuisances that repeatedly occur or exist on properties;

**WHEREAS**, when the persons responsible for criminal activities nuisances on real property within the City fail to take corrective action to abate the continuing criminal activity nuisances, it presents grave health, safety and welfare concerns. Criminal Activity Nuisance properties within the City have a negative impact upon the quality of life, safety, neighbors and health in the neighborhoods where they are located. This Ordinance is enacted to address criminal nuisance activities that are particularly disruptive to the quality of life and repeatedly occur or exist at properties within the City by providing a process for abatement. This remedy is intended to be in addition to any remedy available under any state or local laws and may be used in conjunction with such other laws.

**WHEREAS**, in addition, properties where Criminal Activity Nuisances occur create a financial and social burden on the City due to from the nature of the activities involved. They consume a disproportionate amount of City services due to repeated calls for service to those properties. The City Council desires to ameliorate those conditions and hold accountable those persons responsible for such properties;

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

**SECTION 1 – DEFINITIONS**

For the purposes of this section, the definitions are as set forth herein, or if not established herein, then as otherwise defined in Chapter 95 (Nuisances) of the Bellevue Code of Ordinances.

**1. CRIMINAL ACTIVITY NUISANCE.** The occurrence on more than one occasion in the preceding 12-month period of a Criminal Nuisance Violation at any building, premises or parcel of real property located in the City.

2. **CRIMINAL NUISANCE VIOLATION.** A criminal citation, arrest, or court-issued search warrant, for crimes involving prostitution, controlled substances, alcohol, or gambling.

### **SECTION 2 - PROHIBITIONS**

(A) **UNLAWFUL USE OF PROPERTY.** No owner of real property ("Owner") located in the City shall allow his or her real property ("Property") to become or be a Criminal Activity Nuisance after having received Notice that the Property has been used for the commission of a Criminal Nuisance Violation(s). An Owner of Property is deemed to have knowledge of such activity upon receipt of a Notice from the City.

(B) **DESTROYING ORDERS OR NOTICES.** No person or owner shall destroy, remove, or deface any Order or Notice posted by the Code Enforcement Officer.

(C) **DISOBEYING ORDERS.** No person or owner shall disobey an Order issued hereunder, or use or occupy or permit any other person to use or occupy any Property ordered closed hereunder.

### **SECTION 3.- DEFENSES AND EXCEPTIONS**

(A) If an Owner (or legal tenant) reports an illegal activity that leads to a criminal citation or court-ordered search warrant, such citation or warrant shall not be considered a Criminal Nuisance Violation for purposes of this Ordinance.

(B) If an Owner (or the legal tenant) is the victim of a crime what would otherwise be considered a Criminal Activity Nuisance or Criminal Nuisance Violation, that particular crime shall be excluded for purposes of determining Criminal Activity Nuisance and any violation under Section 2(A) above.

(C) **Eviction of Offenders.**

If an Owner institutes an eviction proceeding against the offending tenant or occupant(s) within 30 days of a qualifying Criminal Activity Nuisance or Criminal Nuisance Violation(s) and that Owner completes the eviction within 60 days of commencement or as soon thereafter as court procedures allow, that particular crime shall be excluded for purposes of determining Criminal Activity Nuisance and any violation under Section 2(A) above. In the event that judicial or quasi-judicial proceedings prohibit an Owner from proceeding with an eviction, abatement of the Criminal Activity Nuisance or Criminal Nuisance Violation(s) will be stayed until the judicial or quasi-judicial proceeding is resolved.

In the case of a Criminal Activity Nuisance or Criminal Nuisance Violation(s) at a Property that contains a multi-unit dwelling or multi-tenant building, the only parties necessary to name in an eviction proceeding hereunder are the occupants of the actual unit involved with the Criminal Nuisance Violation, or the occupants suspected of the Criminal Nuisance Violation described in the Notice.

**SECTION 4 – ABATEMENT PROCEDURE FOR  
CHRONIC NUISANCE PROPERTIES**

(A) **Duty of Police Department.** The Bellevue Police shall, as soon as possible but not less than every 30 days after criminally citing or arresting persons or executing court-issued search warrants for crimes included in the definition of a Criminal Nuisance Violation, notify the Code Enforcement Officer in writing of the specific violation investigated, the address of the Property on or in which the violations occurred, and the circumstances of the violation. After the police notify the Code Enforcement Officer of the Criminal Nuisance Violation at a Property for the first time, the Code Enforcement Officer shall notify the Owner of the Criminal Nuisance Violation by regular U.S. mail.

(B) **Notice.** Whenever the Code Enforcement Officer receives information that a Criminal Activity Nuisance exists in or upon a Property, i.e., a second Criminal Nuisance Violation has occurred at the Property, the Code Enforcement Officer shall notify the Owner that the Property is a Criminal Activity Nuisance and that the nuisance must be abated (the "Notice"). The Notice shall be mailed by certified mail, return receipt requested and by regular mail. If the Notice by certified mail is not accepted or received by the Owner, then Notice may be served by personal delivery upon the Owner. If the whereabouts of the Owner are unknown and cannot be ascertained by the Code Enforcement Officer in the exercise of reasonable diligence, or if the whereabouts of the Owner are known and he or she refuses to accept the Notice, then the Code Enforcement Officer shall make an affidavit to that effect, and thereafter may serve the Notice by posting a copy of it in a conspicuous place on the Property, and by sending a copy of the Notice by regular U.S. mail to the Owner's last known mailing address, by newspaper publication, pursuant to KRS Chapter 424, and by recording the Notice in the real estate records of the Campbell County Clerk's Office.

(C) **Abatement.**

(1) Should the Criminal Activity Nuisance not be abated at the time stated in the Notice, or by any extension granted by the City or its agencies, the Code Enforcement Officer shall be authorized at any time thereafter to issue an order closing and vacating the Property, or portions thereof, to the extent necessary to abate the Criminal Activity Nuisance ("Order"). Such closing and vacating shall be for such period as the Code Enforcement Officer reasonably may direct, but in no event shall the closing and vacating be for a period of more than one year from the date of the Order. An Order issued hereunder is not an act of possession, ownership, or control by the City.

(2) If the Property contains multi-unit dwellings, multiple tenants, or mixed uses and the Criminal Activity Nuisance has occurred solely within a unit or units, the Order shall be restricted to the unit(s) in which the Criminal Activity Nuisance has occurred, and shall not extend to any other unit on the Property.

(3) Upon the issuance of an Order, a copy of the Order shall be served on the Owner in the same manner as the Notice and a copy shall be conspicuously posted on the Property.

(4) If an Owner fails to comply with an Order issued hereunder, the Code Enforcement Officer may:

(a) Prohibit the furnishing of utility service, including but not limited to gas, electric, water, and heating oil, to the Property by any public utility holding a franchise to use the streets and public ways of the city;

(b) Revoke the Certificate of Occupancy of the Property or the Occupational License of a business occupying or operating the Property; or

(c) Use any other legal remedy available under the laws of the Commonwealth and the City's ordinances.

(5) **Relief from Order.** The Code Enforcement Officer may vacate or suspend the provisions of an Order upon a showing by clear and convincing evidence that the Criminal Activity Nuisance has been abated and the Owner has taken steps to insure that additional violations will not be permitted at the Property.

(6) **Abatement Actions Not in Violation of law.** Actions taken by an Owner to abate a Criminal Activity Nuisance shall not be deemed to be violations of any fair housing laws or other landlord/tenant statutes or ordinances.

(7) **Other remedies available.** Enforcement of this Ordinance does not impair or restrict the ability of the City to bring a separate action to revoke the occupational license of a landlord or business that allows a Criminal Activity Nuisance to exist on the Property or to bring an action before the Code Enforcement Board for the imposition of civil fines. No civil fines will be assessed by the Code Enforcement Board until after notice is sent pursuant to subsection (B) of this section or if an eviction proceeding has been instituted pursuant to Section 3(C) of this Ordinance.

(8) **Appeals.** All Orders and civil fines may be appealed to the Code Enforcement Board.

#### SECTION 5 – PENALTIES

(A) An Owner that violates this Ordinance shall be guilty of a civil offense and subject to a civil fine of not less than \$100 per day per violation but not more than \$500 per day per violation, or the cost to the City to abate the Criminal Activity Nuisance, or both. Each date that a violation of this Ordinance continues after Notice has been served, it shall be deemed a separate offense to a maximum of \$5,000 per citation. However, if the Owner does not appeal the citation to the Code Enforcement Board, then the Owner shall not be charged the full fine but instead the civil penalty total shall be reduced by ten percent (10%).

(B) Any Owner that violates this Ordinance shall also be deemed guilty of a Class A misdemeanor with a maximum fine of \$500 and/or twelve (12) months imprisonment.

**SECTION 6 – LIEN**

The City 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 Criminal Activity Nuisance. This lien shall be superior to and have priority over all other liens on the Property except taxes and may be enforced by judicial proceedings.

**SECTION 7 – 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 8 - EFFECTIVE DATE**

This Ordinance shall take effect upon its passage, approval and publication. This Ordinance may be published in summary.

**CITY OF BELLEVUE, KENTUCKY**

By Edward Riehl  
Edward Riehl, Mayor

**ATTEST:**

Mary H. Scott  
Mary H. Scott, City Clerk

1st Reading: 5/9/12

2nd Reading: 6/13/12

Publication: 6/21/12

