

CITY OF BELLEVUE, KENTUCKY

ORDINANCE NO 2012-11-01.

AN ORDINANCE repealing and replacing Ordinance No. 2008-11-03 of the City Council of the City of Bellevue, Kentucky, with a new more effective and efficient Chronic Nuisance Properties Ordinance.

WHEREAS, the existing Ordinance No. 2008-11-03 did not provide an adequate tool for abating chronic nuisance properties;

WHEREAS, the City Council desires to supplement the Bellevue Code of Ordinances Chapter 95, governing nuisances, by providing an updated 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 law and may be used in conjunction with such other laws; and

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 – REPEAL AND REPLACE

Ordinance No. 2008-11-03 is repealed in its entirety and this Ordinance is hereby inserted in its place and stead.

SECTION 2 – 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 three or more nuisance activities exist or have occurred during any 365 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) "Good Cause" means circumstances beyond the ability of a person acting with reasonable care and diligence to control.

(f) "Nuisance Activity or Activities" 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, as defined in Bellevue Code of Ordinances Chapter 99;
- (b) Fire Prevention, Bellevue Code of Ordinances Chapter 93;
- (c) International Property Maintenance Code as adopted by the City of Bellevue, as defined in Bellevue Code of Ordinances Chapter 156;
- (d) Noise Violations, as defined in Bellevue Code of Ordinances Chapter 94;
- (e) Animals Violations, as defined in Bellevue Code of Ordinances Chapter 90;
- (f) Nuisances Violations, Bellevue Code of Ordinances Chapter 95;
- (g) Building Regulations Violations, Bellevue Code of Ordinances Chapter 150;
- (h) Rental Inspections Violations, as defined in Bellevue Code of Ordinances Chapter 156A; and
- (i) Zoning Code and Subdivision Regulation violations as defined in 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) Harassment, as defined in KRS 525.070 through 525.080;
- (b) Disorderly Conduct, as defined in KRS 525.055 or KRS 525.060;

- (c) Assault, menacing, wanton endangerment, terroristic threatening, criminal abuse and stalking as defined in KRS 508.90 through 508.160;
- (d) Any Domestic Violence offenses as defined in KRS 403.715 to 403.785;
- (e) Endangering the welfare of a minor or an unlawful transaction with a minor as defined in KRS 530.060 through 530.080;
- (f) Prostitution offenses as defined in KRS 529.010 through 529.110;
- (g) Public Disturbance Noises;
- (h) Weapons related offenses as defined in KRS 527.010 through 527.210;
- (i) Any Drug-Related Activity as defined by KRS 218A.010 through 218A.1444;
- (j) Public intoxication as defined in KRS 525.100;
- (k) Robbery as defined in KRS 515.010 through 55.030;
- (l) Receiving stolen property as defined in KRS 514.110; and
- (m) Sexual exploitation, as defined in KRS 531.300 through 351.370.

(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.

(4) To qualify, all nuisance activities must be based on either:

(a) Personal observation of a police officer, or code enforcement officer; or

(b) A determination by a police officer or code enforcement officer, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident that the alleged nuisance activities did, in fact, occur.

(g) "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.

(h) "Permit" means to suffer, allow, consent to, acquiesce by failure to prevent or expressly assent or agree to the doing of the act.

(i) "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;

(j) "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;

(k) "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;

(l) "Residential Landlord" means a real property owner of land upon which is located one or more dwelling units based or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semi-permanent site at which lots are based or otherwise rented to tenant for the parking of a manufactured home, mobile home, or residential vehicle that is solely for residential purposes.

SECTION 3 - 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 4 – ABATEMENT PROCEDURE FOR CHRONIC NUISANCE PROPERTIES

(A) When the Code Enforcement Officer, or his designee(s), receives information documenting the existence of activities which qualify as nuisance activities: (1) the Code Enforcement Officer or Police Chief, or their designee(s), shall independently review the information to determine whether a Chronic Nuisance Property, as defined herein in Section 1, is established by the information; and (2) upon such determination, the Code Enforcement Officer or Police Chief, or their designee(s), shall issue a notice of violation to the Person Responsible for such property, in writing, that the property is in danger of being declared a Chronic Nuisance Property.

(B) The notice shall contain the following information:

- (1) The street address or a legal description sufficient for identification of the property;
- (2) A concise statement that the property has been determined to be a chronic nuisance property with a description of the nuisance activities leading to the determination;

- (3) A demand that the Person Responsible for such Property respond to the notice within ten days of service of the notice by describing the actions the person intends to take to abate the nuisance activities (an Abatement Plan), or indicating Good Cause as to why the Responsible Person cannot abate the nuisance activities;
- (4) Advising that an Abatement Plan must be reached with the Code Enforcement Officer or his designee within 30 days from the date of the notice of determination or Chronic Nuisance property;
- (5) That if the Nuisance Activities are not abated or good cause for failure to abate is not shown, a citation may be issued;
- (6) That permitting the existence of a Chronic Nuisance Property is a violation of this Chapter;
- (7) That the above remedies are in addition to those otherwise provided by law; and
- (8) A statement describing that the property could be subject to closure and civil penalties and/or costs assessed up to \$200.00 per day if the property is declared a Chronic Nuisance Property.

(C) The notice may be delivered in person or sent registered mail with return receipt requested. The notice may be delivered to the property itself, or to the mailing address of the owner of the property as listed on city tax roll or to any other address that is likely to give the Person Responsible notice of the determination and notice of violation. Failure of the person to receive the notice shall not invalidate or otherwise alter the proceedings under this Chapter.

(D) Failure to respond, failure to abate the Nuisance Activities, or failure to propose an abatement plan shall be prima facie evidence of lack of cooperativeness of the Person Responsible. Failure to implement or comply with any abatement plan shall be prima facie evidence of an absence of good faith in mitigating or connecting the chronic nuisance violation.

(E) The Code Enforcement Officer or his designee may issue a citation if: (1) the Responsible Person fails to respond within ten days from the date of notice of violation and Chronic Nuisance Property determination; or (2) no agreeable written abatement plan is reached within 30 days from the notice of violation and determination of Chronic Nuisance Property by the Code Enforcement Officer or his designee and the Responsible Person fails to establish one of the affirmative defenses provided in Section 1(f)(3), Section 4(G), (H) or (I); or (3) the Responsible Person fails to abate the nuisance activities from the property as required by the agreed abatement plan; or (4) the Responsible Person fails to comply with all conditions of the written abatement plan for a period of one year.

(F) A timely response and statement from a Responsible Person does not constitute an admission that any nuisance activities have occurred or are occurring but may be used as evidence and considered by any trier of fact for any purpose.

(G) Landlord's Affirmative Defense. A Residential Landlord has an affirmative defense to a violation under this ordinance if they establish by a preponderance of the evidence

that the basis for the charge is the actions or omissions of a tenant(s) and the Residential Landlord establishes the following:

(H) That the Residential Landlord, upon written notice by the City that a Nuisance Activity has occurred on the property within the prior 365 days, commences an eviction action against the tenant whose action or omission forms the basis of the charge, and diligently prosecutes that action to completion, irrespective of any ultimate ruling by a court on the merits of the action.

(I) Good Cause Affirmative Defense. Any person charged under this subchapter has an affirmative defense to a violation under this ordinance if they establish by a preponderance of the evidence that:

(1) The Responsible Person has taken all actions to deter and prevent the Nuisance Activity that formed the basis of the violation;

(2) The Nuisance Activity that forms the basis of the citation was not the result of the actions or omissions of the Responsible Person, their authorized guests, tenants or any other person residing in their household; and

(3) The Nuisance Activity that forms the basis of the citation was not suffered, permitted or tolerated by the Responsible Person.

SECTION 5 – ENFORCEMENT

(A) When a citation is issued for a Chronic Nuisance Property, the responsible person shall have those rights and be subject to the procedures and provisions set forth in Chapter 35.90 et seq. of The Bellevue Kentucky Code of Ordinances. If the Code Enforcement Board finds that the real property is a Chronic Nuisance Property, then it shall issue such civil fine or order any other action consistent with the provisions of Chapter 35.90 et seq.

(B) Whenever the Code Enforcement Board finds, or a citation is not appealed, that a Chronic Nuisance Property exists, the Board or Code Enforcement Official shall forward the finding to the Mayor. Based on such determination, the Mayor may suspend or revoke any occupational license and rental license of any person conducting any business upon the Chronic Nuisance Property.

SECTION 6 – SUMMARY CLOSURE

The City may also initiate a summary closure proceeding in Campbell District and/or Circuit Court. Such an action shall be based on evidence showing that Nuisance Activities exist and have occurred on the property and that action is necessary to avoid a threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by applicable Kentucky law for obtaining temporary restraining orders. In the event of summary closure, the City is not required to comply with the notification procedures of Chapter 35.90. As part of any

summary closure order, the District/Circuit Court may revoke or suspend the occupational license of any person conducting business upon the property where the chronic nuisance exists.

SECTION 7 – PENALTY

(A) Notwithstanding the civil penalties or the general criminal penalties set forth in this ordinance, whoever violates any provision of this Ordinance shall be guilty of a Class A misdemeanor and shall be fined not more than \$500 and/or imprisoned up to 12 months for each offense. Each day's continued violation shall constitute a separate offense.

(B) Any violation of this Chapter is also classified as a civil offense, pursuant to KRS 65.8808 and Chapter 35 and such classification shall provide an additional or supplemental means of obtaining compliance.

(C) If a citation for violation of this Chapter is not contested by the person charged with a violation, the civil fine to be imposed for each offense shall be \$100 for the first offense, \$200 for the second offense, and \$400 for the third and subsequent offenses.

(D) If a citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be from \$125 to \$250 for the first offense, from \$225 to \$350 for the second offense, and \$425 to \$500 for the third and subsequent offense.

(E) Each section of the Ordinance violated shall be considered a separate fineable civil offense. All fines shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

SECTION 8 – UTILITY SERVICE PROHIBITION

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 9 – 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 10 – 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 11 – 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 12 - EFFECTIVE DATE

This Ordinance shall take effect and be in force upon its passage, approval and publication as provided by law.

PASSED by the City Council the ____ day of _____, 2012.

CITY OF BELLEVUE, KENTUCKY

By _____
Edward Riehl, Mayor

ATTEST:

Mary Scott, its Clerk

1st Reading: _____

2nd Reading: _____

Publication: _____