

Ordinance # 378

City of Butler – Nuisances

The City of Butler is establishing this ordinance pursuant to KRS 381.771 “Abatement of nuisance; enforcement ordinance; lien; personal liability of property owner”.

In addition to what is declared in this ordinance to be a public nuisance, those offences which are known to the common law and in the statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this ordinance or in accordance with any other provisions of law.

Nuisance is defined as “Anything that, because of its condition, is unsafe, unsanitary, unfit for human habitation, a haven for vermin, or is dangerous or injurious to the health or safety of the residents of the City.”

It shall be unlawful for the owner, occupant or person having control of any public or private land within the city to permit a public nuisance to develop. The following conditions are declared to be public nuisances:

- I. Certain Conditions Declared A Nuisance:
 - A) Buildings
 - 1.) Dwellings unfit for human habitation: The erection, use, or maintenance of a dwelling which is unfit for human habitation due to unsafe or unsanitary conditions.
 - 2.) Any building so out of repair that it is likely to cause damage to persons or property, or which is detrimental to the appearance of the city.
 - B) Adoption
 - 1.) The city hereby adopts and incorporates herein, the International Property Maintenance Code 2000, as published by Building Officials and Code Administrators (BOCA) International, Inc., and all amendments thereto and regulations promulgated thereby. A copy of the Code is filed in the office of the City Clerk. The Code shall govern and control the housing standards and conditions that warrant finding of unfitness and unsafeness of all buildings and structures in the City.
 - C) Trees, shrubbery, or other objects
 - 1.) Any tree or other object adjoining public rights-of-way in such condition that it may cause damage to persons or property by falling parts or objects.
 - 2.) Any tree or shrubbery obstructing streets, sidewalks and drainage. The growing and maintenance of trees or shrubbery which in any way interferes with the use of streets or sidewalks, causes damage to streets or sidewalks, or constitutes an obstruction to drainage, or any dead tree standing more than three (3) feet in height.
 - D) Weeds and grass
 - 1.) The excessive growth of vegetation. Unless otherwise provided, excessive means vegetation which has grown to a height of 12 inches or more or which has matured, bloomed, and pollinated. Property under cultivation, or otherwise used for agriculture, or used for pasture land shall be exempt

from the provisions of this subsection as long as such property is adequately maintained to minimize or eliminate the growth of weeds and other non-crop vegetation.

- E) Accumulation of rubbish
 - 1.) Any accumulation on any premises of garbage, vegetable matter, dead animals, or any discarded construction materials, or other waste material which endangers the public health, welfare or safety. Or, that which interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger of fire, vermin, or windblown rubbish.
 - 2.) The storage of junk automobiles, automobile parts, storage tanks, junk machinery, discarded appliances, or scrap metal within the city limits.
 - 3.) The use or storage of furniture which is not designed for outdoor use in an exposed area which it is likely to decompose or retain moisture causing a health hazard or diminution in the value of neighboring properties.
- F) Odors
 - 1.) Permitting any foul or nauseous substance or odor to be emitted or to be discharged from the premises.
- G) Burning trash
 - 1.) The burning of any material within the city limits without first obtaining approval of the enforcement officer is prohibited.
 - 2.) Approval shall not be given to burn any materials, which can be picked up and disposed of by the city sanitation department or the locally franchised trash services.
- H) Explosives
 - 1.) The storage of explosive material, which creates a safety hazard to other property or persons in the vicinity.
- I) Animals
 - 1.) The failure to keep an animal's pen, or other enclosures in a sanitary condition and free from preventable offensive odors.
- J) Storage of junk motor vehicles and trailers
 - 1.) To permit a nonoperating motor vehicle or trailer to remain on any private or public property within the city longer than seven (7) days. A motor vehicle or trailer is covered by this section if it has an expired license, or if it is inoperative for more than seven (7) days.
- K) Uncovered dumpsters are not permitted except for the immediate removal of construction waste or other material.

Enforcement and Penalties

II. Enforcement

- A) The position of enforcement officer is created for the purpose of administering and enforcing the provisions of this ordinance. By municipal order, the Mayor, with the City Council approval, shall appoint one or more persons to serve as the City's enforcement officer. The enforcement officer shall report directly to the Mayor or his designee.

- B) Authority. Enforcement officers shall have the authority to enforce this ordinance, which authority shall include but not be limited:
- 1.) To enter upon property for the purpose of inspection and enforcement of this ordinance;
 - 2.) To apply for and obtain a search warrant, if necessary;
 - 3.) To declare property and conditions thereon a nuisance;
 - 4.) To issue notices of violation;
 - 5.) To monitor property for compliance with a notice of violation;
 - 6.) To enter upon property and to cause others to enter on property for the purpose of correcting a violation;
 - 7.) To file a notice of lien against real estate;
 - 8.) To cause the lien to be enforced; and,
 - 9.) To do all other things and take all other actions reasonably necessary to carry out the intent and purpose of, and to enforce, this ordinance.
- C) Declaration of a nuisance. Any property, which is found to be in violation of the provisions of this ordinance by an enforcement officer may be, declared a nuisance.
- D) Notice of violation. When any property is declared a public nuisance, notice of the violation of this ordinance shall be given as follows:
- 1.) Written notice of the violation and order to remedy shall be delivered or sent by first class mail to the owner or responsible person of the property and posted in a conspicuous place on or near the real estate.
 - 2.) Notice to any one owner of the property shall constitute notice to all other owners of the same.
 - 3.) Notice shall be mailed to the owner at the last address shown on the property tax roll maintained by the Property Valuation Administrator. Each owner shall have a duty to timely notify the City of the proper mailing address of the owners.
- E) Period to cure. In the written notice, the owner shall be afforded a period of 10 days during which to cure the violation. The enforcement officer may extend the period to cure for an additional period. All periods shall begin when notice is mailed or delivered.
- F) Hearing panel. By municipal order, the Mayor, with City Council approval, shall appoint three individuals who shall constitute a Hearing Panel for the purpose of conducting hearings pursuant to this ordinance. Members of the Hearing Panel may not be City employees and shall serve without compensation. An enforcement officer shall not be a member of the Hearing Panel.
- G) Alternate members. The Mayor, with approval from City Council may appoint two (2) alternate members of the Hearing Panel who may be called upon to serve when any regular member of the Panel is unable to discharge his or her duties. Alternate members shall meet all qualifications and be subject to all of the requirements of this ordinance that apply to all regular members.
- H) Hearing. Any owner of property declared a nuisance under this chapter shall have the right to a hearing before the Hearing Panel. A request for a hearing

shall be timely submitted in writing, signed by the requesting owner, containing the current mailing address and telephone number of the requesting owner, and received by or delivered to the City Clerk's office no later than ten (10) days following the date of mailing of the Notice of Violation. Upon receipt of a timely submitted written request for hearing, the enforcement officer shall schedule a hearing before the Hearing Panel as soon as reasonably possible. Written notice of the date, time, and location of the hearing shall be mailed to the owner or responsible person who requested the hearing. At the hearing both the owner and the enforcement office shall be allowed to present evidence and to cross-examine witnesses. The rules of evidence shall not apply. At the conclusion of the hearing, the Hearing Panel shall go into closed session, to discuss whether the notice of violation and order to remedy was appropriate under the circumstances. The decision of the Panel shall be made by majority vote and announced in open session following deliberations. A written order containing the findings and decisions of the Hearing Panel shall be filed with the Clerk of the City and mailed to the owner within five business days following announcement of the Panel's decision.

- D) Appeal. The owner shall have the right of appeal from any order of the Hearing Panel as provided in KRS 82.715(4)

III. Remedies.

- A) When any owner is found to be in violation of any provision of this ordinance, the City, in its discretion and without obligation, may elect to pursue any or all remedies available in an effort to cure the problem, including declaring the property a nuisance and, after notice and opportunity for hearing as set forth herein, proceeding to abate the nuisance; imposition of civil penalties; seeking injunctive relief; or pursuing any other remedy available at law. The election of one remedy shall not preclude the pursuit of any other.
- B) Abatement by city. If the owner of the property in violation fails to properly cure or remedy the violation within the time prescribed in the notice of violation or within seven (7) days following entry of an order by the Hearing Panel upholding a notice of violation, whichever is later, then the City, in its discretion and without obligation, may enter upon the real estate and take such action as it deems appropriate to cure the violation and abate the nuisance. Such action may include removing the waste or other matter constituting the violation, making necessary repairs or alterations or causing the demolition of the offending structure.
- C) Civil penalties. Any owner who fails to properly cure or remedy the violation within the time prescribed in the notice of violation, or a final order of the Hearing Panel upholding a notice of violation, whichever is later, shall be subject to a civil penalty of \$100 per day from said date until the nuisance is abated by the owner or the City. Any person or firm who has subsequent violations for which civil penalties are imposed shall receive the following penalties: for second violation, the civil penalty shall be \$200 per day for each

offense, and for the third and subsequent violation, the civil penalty shall be \$500 per day for each offense.

- D) **Lien.** The City shall have the right to assert a lien against the real estate for the reasonable value of labor, materials, and equipment used in remedying the situation, together with all civil penalties and all attorneys' fees, costs, and expenses incurred by the City as a result of enforcing this ordinance and the lien. The affidavit of the enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this ordinance, and shall be recorded in the office of the County Clerk. The lien shall be noticed to all persons from the time of its recording and shall bear interest thereafter at the rate of 12% per annum until paid. The lien created shall be superior to and have priority over all other liens, except State, County, School Board, and City taxes, any may be enforced by Judicial proceeding.
- E) **Owner's liability.** In addition to enforcement of the lien prescribed in this section or any other remedy authorized by law, the owners of real estate upon which a lien has been attached pursuant to this section shall be jointly and severally liable for the amount of the lien, including all interest, civil penalties, attorneys' fees incurred by the City, expenses of litigation, court costs, and other charges, and the City may bring a civil action against any owners and shall have the same remedies as provided for the recovery of a debt owed.
- F) Nothing contained herein shall prohibit the City from pursuing any other remedy available, including, without limitation, applying for injunctive relief or correction the violation itself, after notice, as provided in this ordinance or any other law.

IV. Severability

Should any provision, or other portion of this ordinance be unconstitutional, invalid, or otherwise unenforceable, such determination shall not affect any other portion of this ordinance, it being the legislative intent to ordain and enact each part of this chapter independently of all other parts and in accordance with the laws of the Commonwealth of Kentucky.

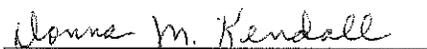
V. This ordinance shall become effective immediately upon passage and publication.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this the
23d day of July, 2001.

PUBLICLY READ, ADOPTED AND APPROVED ON SECOND
READING, this 6th day of August, 2001.



Mayor, City of Butler



Attest, City Clerk

Published 9-11-01

Filed 9-7-01

MUNICIPAL ORDER
APPOINTING ENFORCEMENT OFFICER
UNDER ORDINANCE #378 (NUISANCES)

IT IS HEREBY ORDERED that Kenneth Hale is appointed as the Enforcement Officer for the City of Butler, Kentucky under Ordinance #378 (Nuisances).

Witness my hand this 2nd day of May, 2005.



DELBERT REID, MAYOR

ADOPTED AND APPROVED at the May 2, 2005 meeting of the Butler City Council.

ATTEST:



DONNA M. KENDALL, CITY CLERK

MUNICIPAL ORDER
APPOINTING HEARING PANEL MEMBERS
UNDER ORDINANCE #378 (NUISANCES)

IT IS HEREBY ORDERED that the following three persons are appointed to serve as members of the Hearing Panel for the City of Butler, Kentucky under Ordinance #378 (Nuisances):

Jay Yelton

Paul Vanlandingham

Delcie Roberts

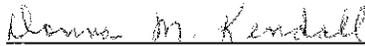
Witness my hand this 2nd day of May, 2005.



DELBERT REID, MAYOR

ADOPTED AND APPROVED at the May 2, 2005 meeting of the Butler City Council.

ATTEST:



DONNA M. KENDALL, CITY CLERK