

**ORDINANCE NO. \_\_\_\_\_, 2020**

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, ENACTING REGULATIONS TO PROMOTE THE ABATEMENT OF PUBLIC NUISANCES AND PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE BY OWNERS OF PROPERTIES WHO PERMIT THE REOCCURRENCE OF PUBLIC NUISANCE ACTIVITIES ON THEIR PROPERTIES WITHOUT TAKING REASONABLE ACTIONS TO ABATE THE MISUSE OF THEIR PROPERTIES.

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WHEREAS, chronic use of properties in a manner which foster criminal and drug activity endanger the health, safety and welfare of the Ashland community, and

WHEREAS, a process and means to hold property owners accountable for nuisance conditions and activities that occur repeatedly in connection with the same properties without intervention by property owners is needed in order to help maintain, protect and improve the quality of life in the City of Ashland, and

WHEREAS, to protect the health, safety and welfare of the Ashland community, the City of Ashland has the right and the duty to enact regulations to promote the abatement of public nuisances and impose fines upon owners of properties who permit the reoccurrence of public nuisance activities on their properties without taking reasonable actions to abate the misuse of their properties;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. DEFINITIONS.

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

*"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;

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

**"Chronic nuisance property"** means:

- (1) Property that, within any one hundred twenty (120) day period, has three (3) or more nuisance activities; or
- (2) Property that, within any three hundred sixty-five (365) day period, has six (6) or more nuisance activities.

**"Nuisance activity"** means any nuisance that occurs or exists upon a property, or if specified in this section, occurs or exists within two hundred (200) feet of a property. To be considered a nuisance activity within two hundred (200) feet of the property, the nuisance activity must involve the person in control of the property and/or any person associated with the person in control of the property. A person is associated with the person in control of the property if he or she is a guest or invitee of the person in control of the property.

Nuisance activity includes:

- (1) assault, menacing, wanton endangerment, criminal abuse or terroristic threatening in violation of KRS Chapter 508;
- (2) prostitution, promoting prostitution, permitting prostitution, loitering for prostitution purposes, human trafficking, or promoting human trafficking in violation of KRS Chapter 529;
- (3) possession of a defaced firearm, possession of a firearm by convicted felon or other weapons violation in violation of KRS Chapter 527;
- (4) gambling, promoting gambling, permitting gambling, possession of gambling records, possession of gambling devices in violation of KRS Chapter 528; and
- (5) possession of a controlled substance, trafficking in a controlled substance, possession, trafficking and cultivating marijuana, manufacture of methamphetamine, unlawful possession of methamphetamine precursor, unlawful distribution of methamphetamine precursor, possession or trafficking in synthetic drugs, and all related offenses in violation of KRS Chapter 218A.
- (6) Disorderly conduct, harassment, loitering, or public intoxication in violation of KRS Chapter 525.

- (7) Distribution of obscene material, using a minor to distribute obscene material, promotion of obscene material, voyeurism, or video voyeurism, sexual exploitation of minors, use of a minor in a sexual performance, promoting a sexual performance by a minor, possession or viewing of matter portraying a sexual performance by a minor, distribution of matter portraying a sexual performance by a minor, promoting sale of matter portraying a sexual performance by a minor, or advertising material portraying a sexual performance by a minor, in violation of KRS Chapter 531.
- (8) Any property with respect to which a Boyd County Court of competent jurisdiction has issued a search warrant based upon probable cause to believe that possession, manufacture, distribution or delivery of a controlled substance has occurred on the premises.
- (9) 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 or alleged nuisance activity involving allegations of domestic violence as defined in KRS Chapter 403.720(1).

**"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;

**"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 chapter; an occupant in control of the property or structure which is subject to this chapter; 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 chapter; and/or any person, including but not limited to, a lessee, tenant, occupant or manager who has actual or constructive possession or control over the property and allows a violation of this chapter to continue;

**"Premises"** and **"property"** may be used by this chapter interchangeably and means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, grounds, vacant lots, facilities, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent.

## SECTION 2. VIOLATION.

(A) Any property within the City of Ashland which is a chronic nuisance property is in violation of this chapter and subject to its remedies; and

(B) Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

## SECTION 3. PROCEDURE.

(A) The Chief of Police may declare that a property is a chronic nuisance property, as defined in this chapter, when there are specific facts and circumstances documenting (1) the occurrence of three or more nuisance activities on a property within sixty days or six or more nuisance activities within a twelve month period. The Chief of Police shall provide written notice of this declaration to the persons in charge of the property. The notice shall be sent by first class mail or personally served, and a copy shall be sent by certified mail. The notice shall contain:

1. the street address or a legal description sufficient for identification of the property;
2. a declaration that the Chief of Police has determined the property has become a chronic nuisance property with a concise description of the nuisance activities that exist or that have occurred;
3. a notice that the owner and other persons in charge of the property are subject to monetary penalties as set forth in Sections 6 and 9 hereof.
4. a demand the owner and other persons in charge respond to the Chief of Police within seven days of service of the notice to discuss a course of action to correct the nuisance;
5. a notice that, if the person in charge does not respond to the Chief of Police as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the Chief of Police, the City may file an action to abate the property as a chronic nuisance property pursuant to Section 7 hereof and/or take other action against the property or person in charge.

(B) When a notice is issued pursuant to this section to a person in charge, other than an owner or an owner's agent, who has permitted a property to become a chronic nuisance property, a copy of such notice shall also be sent by first class mail or personally served on the owner of the property, and a copy shall be sent by certified mail.

(C) If the owner or person in charge responds as required by the notice issued pursuant to Section 3(A) hereof and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements of Section 5 hereof shall be executed.

(D) If (1) the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of issuance of the notice pursuant to Section 3(A) hereof, or within such longer period as may be permitted by the Chief of Police in writing when it appears that thirty days is an insufficient period of time to accomplish the agreed course of action or (2) the person in charge fails to respond as required by the notice, the Chief of Police may refer the matter to the City of Ashland Corporation Counsel for initiation of proceedings pursuant to Sections 6(B) and 7.

#### SECTION 4. OWNER COOPERATION.

An owner who receives a copy of a notice pursuant to Section 3 hereof describing a chronic nuisance property permitted by a person in charge other than the owner or the owner's agent, shall promptly take all reasonable steps requested in writing by the Chief of Police to assist in abatement of the nuisance property. Such reasonable steps may include the owner taking all acts and pursuing all remedies, including pursuing eviction of the person in charge, that are (1) available to the owner pursuant to any lease or other agreement, and (2) consistent with federal, state and local law.

## SECTION 5. CORRECTION AGREEMENT.

A correction agreement is a contract between the City and the person in charge of the chronic nuisance property in which such person agrees to promptly take all lawful and reasonable actions, which shall be set forth in the agreement to abate the nuisance activities within a specified time and according to specified conditions. The agreement shall be signed by the person in charge and, if different, the owner. The agreement shall include the following:

- (A) The name and address of the persons in charge of the property;
- (B) The street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring;
- (C) A description of the nuisance activities;
- (D) The necessary corrective action to be taken, and a date or time by which correction must be completed;
- (E) An agreement by the person in charge that the City may inspect the property as may be necessary to determine compliance with the correction agreement;
- (F) An agreement by the person in charge that the City may abate the nuisance and recover its costs and expenses and monetary penalties pursuant to this chapter from the person in charge for the nuisance if the terms of the correction agreement are not met; and
- (G) When a person in charge, other than an owner or an owner's agent, has permitted a property to be a chronic nuisance property, an agreement by the owner to promptly take all acts and pursue all remedies requested by the Chief of Police pursuant to Sections 3 and 4 hereof.

## SECTION 6. PENALTIES.

(A) Except as provided in this section, in addition to any other sanction or remedial procedure that may be available, the person in charge is subject to a civil penalty of up to \$500 dollars per day from the date of the notice issued pursuant to Section 3 hereof until the Chief of Police confirms that the property is no longer a chronic nuisance property.

(B) If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of the notice issued pursuant to Section 3(A) hereof, or such longer period as may be allowed by the Chief of Police pursuant to Section 3(D) hereof, the matter shall ~~not~~ be referred to the City of Ashland Corporation Counsel and the person in charge shall not be subject to any penalty pursuant to this Chapter.

(C) An owner who fails to comply with Sections 3, 4 or 5 hereof is subject to a civil penalty as set forth in Section 6(A) hereof up to a maximum of \$25,000.

#### SECTION 7. COMMENCEMENT OF ACTION – ENFORCEMENT.

Upon referral pursuant to Section 6(B) hereof, the Corporation Counsel for the City of Ashland may initiate an action in Boyd Circuit Court to abate a chronic nuisance property, to impose penalties pursuant to this chapter, to seek alternative remedies under city or state laws and to seek any other relief authorized by law, including but not limited to, injunctive relief.

#### SECTION 8. BURDEN OF PROOF.

In an action against a person in charge to abate a chronic nuisance property or to recover penalties authorized by this chapter, the City shall have the burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property pursuant to this chapter. In an action against an owner to recover penalties authorized by Section 6 hereof, the City shall have the additional burden to prove by a preponderance of the evidence that the owner failed to comply with Sections 3, 4 or 5 hereof. Copies of police incident reports and reports of other city departments documenting nuisance activities shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions.

It is a defense to an action for chronic nuisance that the person responsible, at all material times, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic nuisance property.

#### SECTION 9. REMEDIES.

(A) If the Court determines a property is a chronic nuisance property pursuant to this chapter the court may order any of the following: (1) order the person in charge to immediately abate nuisance activity from occurring on the property, (2) order that the Chief of Police shall have the right to inspect the property to determine if the court's orders have been complied with, (3) impose a penalty of up to \$500 per day against the person in charge for each day from the date the notice pursuant to Section 3 hereof was issued until the Chief of Police confirms that the property is no longer a chronic nuisance property, (4) make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the City to take action to abate nuisance activities from occurring upon the property if other court orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such City action are to be paid for by the person in charge of the property.

(B) If the court finds that an owner failed to take all reasonable steps requested in writing pursuant to Section 4 hereof, the court may impose a civil penalty as set forth in Section 6 hereof not to exceed \$25,000.

#### SECTION 10. SUSPENSION OR REVOCATION OF BUSINESS LICENSE.

In addition to any other remedy that is authorized by this chapter or other laws, upon the finding by a court that a property is a chronic nuisance property pursuant to this chapter, the person in charge is subject to the suspension or revocation of a business license or other license at such property issued pursuant to Title XI of the City of Ashland, Kentucky Municipal Code.

SECTION 11. This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.

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MAYOR

ATTEST:

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CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS: \_\_\_\_\_  
READOPTED BY THE BOARD OF COMMISSIONERS: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_

REQUESTED/SPONSORED BY:  
\\ORDINANCE\Nuisance Properties.Chronic