

CITY OF NORTHFIELD
ORDINANCE #14-05, SERIES 2014
AN ORDINANCE AMENDING REGULATIONS CONCERNING
RESTRICTION OF NUISANCES

WHEREAS, the City Council of the City of Northfield (the “City Council”) is concerned about the property values in the City of Northfield (the “City”) as well as the public health and safety of its citizens and the enforcement of City ordinances; and

WHEREAS, the City desires to establish a detailed mechanism to promote the public health and safety of its citizens by prohibiting nuisances, under the authority of KRS 381.770.

NOW THEREFORE, be it ordained by the City that:

Chapter _____ of the City Code of Ordinances (the “Code”) is hereby repealed and that the following is hereby enacted as Chapter _____ of the Code, to read as follows:

SECTION 1: PUBLIC PURPOSE, PUBLIC NUISANCES DEFINED

1.1. The City Council does hereby find that it is necessary to provide for the abatement of conditions which are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent property or premises, or hazardous or injurious to the health, safety or welfare of the general public in such ways to constitute a public nuisance; and, to provide standards to safeguard life, health and public welfare in keeping with the character of the City by allowing for the maintenance of property or premises for each of the following purposes:

- (1) To safeguard the health, safety and welfare of the people by maintaining property or premises in good and appropriate condition;
- (2) To promote a sound and attractive community appearance; and
- (3) To enhance the economic value of the community, and each area in it, through the regulation of the maintenance of property or premises.

1.2. Accordingly, the City Council finds and declares that the purpose of this chapter is to:

- (1) Reduce the threat to health, safety, welfare, appearance and economic value due to the decline in property condition(s) by lawfully delineating the circumstances under which such condition(s) may be considered illegal and/or abated; and further finds that,
- (2) Abatement of such condition(s) is in the best interest of the health, safety and welfare of the residents of the City because maximum use and enjoyment of property or premises in proximity to one another depends upon maintenance of those properties or premises at or above the minimum standard.

1.3 Definitions. For the purpose of this Chapter, the following words and phrases are defined as follows:

(a) **ABANDONED**, in addition to those definitions provided by state codes, local ordinances and case law, the term abandoned means and refers to any item which has ceased to be used for its designed and intended purpose. The following factors, among others, will be considered in determining whether or not an item has been abandoned:

- (1) Present operability and functional utility;

- (2) The date of last use;
- (3) The condition of disrepair or damage;
- (4) The last time an effort was made to repair or rehabilitate the item;
- (5) The status of registration or licensing of the item;
- (6) The age and degree of obsolescence;
- (7) The cost of rehabilitation or repair of the item versus its market value; and
- (8) The nature of the area and location of the item. (Items such as furniture, toys, appliances, stoves, refrigerators, freezers, washing machines, dryers, dishwashers, water heaters, television sets, and the like left outside the home in view for over seventy-two (72) hours and includes items not intended for use or storage in an outdoor environment.

(b) ABATE means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the Citation Officer in his/her judgment shall determine is necessary in the interest of the general health, safety and welfare of the community.

(c) CITATION OFFICER means each City police officer. Citation Officers are charged with addressing City Code violations, subject to the limitations contained herein and to any conditions established by the Mayor and the City Council from time to time.

(d) DISMANTLED means that from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

(e) INOPERATIVE means incapable of functioning or producing activity for mechanical or other reasons.

(r) LIENHOLDER means any person, as defined in this Chapter, who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of interest in real property.

(g) NUISANCE means any public nuisance known at common law or in equity jurisprudence, or any condition defined as a nuisance under this ordinance.

(h) OWNER means the registered owner of a vehicle, the person(s) to whom property tax is assessed on real or personal property, as shown on the last equalized assessment roll of the County, renter(s), lessee(s) and other occupants residing permanently or temporarily on property.

(i) PERSON means individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver or any other entity.

(j) PREMISES means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, occupied or unoccupied, including adjacent streets, sidewalks, parkways and parking strips.

(k) PROPERTY means any real property including but not limited to land, lot, or parcel of land, and shall include any alley, sidewalk, parkway or unimproved public easement abutting such real property, lot or parcel of land.

(l) STRUCTURE means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages, carports, swimming and wading pools, patios, outdoor areas, paved areas, walks, tennis courts and similar recreation areas.

(m) WRECKED means that which has outward manifestation or appearance of damage to parts and contents which are essential to operation.

(n) WASTE ITEMS means boxes, bags, plastic, paper, clothing, discarded or unused items, trash, filth, waste material (solid or liquid), litter, rubbish, debris, building materials of any kind (not being utilized for a current lawful on going construction project on property), and containers or refuse of any kind (not being utilized for a current lawful on going construction project on property) left in view for over seventy-two (72) hours.

(o) SCRAP METAL means pieces or parts of steel, iron, tin, zinc, copper, aluminum or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its intended purpose.

(p) UNFIT FOR FURTHER USE means any household item, object, etc., or any device used to carry out a specific function which has served its usefulness and is more or less in its original form and can no longer be used for its originally intended purpose or having defective or missing parts or in such a condition generally as to the unfit for further use or conveyance.

(q) GARBAGE The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food and similar animal and vegetable refuse whether liquid or solid, or any accumulation of any sour, decaying or putrescent substance, either gas or solid.

(r) IN-VIEW means any nuisance that can be seen from any public view.

(s) GOOD REPAIR means external structure elements of buildings being maintained in a state of repair, which allows that element to provide the functional use for which it was intended.

SECTION 2: PROPERTY MAINTENANCE STANDARDS

2.1 It is hereby declared to be a public nuisance for any owner or other person in control of any property, premises, or other personal property located in the City and referred to herein to keep, maintain, or utilize such property, premises, or other personal property in such a manner that any of the following conditions are found to exist with respect to same:

(a) Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property or on sidewalks or streets, which is in plain view from a public street, which said items are readily accessible from such place, or which are stored in violation of any other law or ordinance;

(b) Discarded food, garbage, rubbish, refuse, or recyclable items which have not been disposed or recycled within thirty (30) days of being deposited on the property which are determined to constitute a fire hazard or to be detrimental to human life, health or safety;

(c) Lumber (excluding lumber for a construction project on the property with a valid permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of seventy-two (72) hours and in view;

- (d) Receptacles for discarded materials and recyclables which are habitually left on the public street more than twenty-four (24) hours following the day on which the regularly scheduled refuse pick-up for the property took place;
- (e) With respect to any receptacles being used for discarded materials in connection with a current lawful ongoing construction project on a particular property, no such receptacles may be placed or left on a City street for any period of time;
- (f) Swimming pool, pond, spa, other body of water, or excavation that is abandoned, unattended, or empty, that is not fully contained inside a fenced area such that the area is inaccessible to the public, or any attractive nuisance not properly secured from public access, that endangers life, health, or public safety;
- (g) Any property or dwelling on a property which detrimentally impacts the surrounding neighborhood as a result of either (i) severe dilapidation, deterioration or decay, or (ii) being uninhabited for a period greater than eight (8) weeks and not being secured or being improperly secured;
- (h) Any lawn with a growth of grass, and/or weeds contained therein, allowed to grow to a height exceeding twelve (12) inches for a period exceeding fourteen (14) days;
- (i) Any non-ornamental wild plant or planting, other than the “Excluded Plantings” (as defined below, that are over 36” in height and that have all of the following characteristics: (i) the plant or planting grew from wild starts, without being planted by human hands, (ii) the property owner or Occupant (as defined below) does not spend regular time tending to the plant or planting, (iii) there are no defined boundaries with respect to the plant or planting, and (iv) the plant or planting is in view. For purposes of this section, “Excluded Plantings” shall mean those non-ornamental wild plants that may be contained on a property bordering a U.S. Highway or Interstate and that have the distinct purpose(s) of creating or serving as a noise barrier or visible traffic buffering mechanism with respect to such U.S. Highway or Interstate;
- (j) Interference with and/or obstruction of a drainage ditch, device or system so as to inhibit, alter, or prevent proper storm water drainage patterns;
- (k) Placement of portable storage and/or moving containers (i.e. PODS etc.) on or around any property for a period of more than seven (7) consecutive calendar days; or
- (l) Any tree or other object standing in such a condition that is likely to, if the condition is allowed to continue, endanger life, limb or property, or cause injury or damage to persons or property by falling or by parts thereof falling.

SECTION 3: RESPONSIBILITY FOR PROPERTY MAINTENANCE

- 3.1. The owner, occupant, lessee, or tenant of any property within the City shall be responsible for the maintenance of property and premises in a manner consistent with the provisions of this Chapter and the Code, and the Kentucky Building Code.
- 3.2. Enforcement of this Chapter may be accomplished by the Citation Officer in any manner authorized by this Chapter or by any other law, including but not limited to issuance of citations, civil actions and abatement.
- 3.3. Abatement of public nuisances:

- (a) Non-exclusive authority to abate. The City may choose to abate any public nuisance or violation of the Code through any of the abatement methods set forth in the Code or in other local, state or federal law, and nothing contained in this Chapter shall be construed as limiting, prejudicing, or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City may deem are applicable. Proceeding under this Section will not preclude from City from proceeding under other Sections of this Chapter. Whenever a Citation Officer determines that any condition exists in violation of the provisions of this Chapter, he/she may take enforcement action pursuant to this Section.

- (b) Right of entry. The Citation Officer may enter any property or premises at all times to perform any duty imposed upon him/her by this Chapter, whenever the Citation Officer has cause to believe a violation of provisions of this Chapter is occurring, provided that:
 - (1) The Citation Officer shall present proper credentials, state the reason for entry, request entry from the owner or occupant, and, if entry is permitted, enter the property or premises and, if entry is denied:
 - (i) the Citation Officer may seek a court ordered inspection warrant if cause exists pursuant to the Kentucky Revised Statutes.
 - (ii) the Citation Officer shall have recourse to every remedy provided by law to secure entry.

 - (2) The Citation Officer shall make a reasonable effort to locate the owner of any unoccupied property or premises, inform the owner of the reasons for entry and request entry.

 - (3) Notwithstanding anything in this Chapter to the contrary, the Citation Officer shall not enter any property or premises in the absence of permission to enter, unless an inspection warrant has been issued by a court of competent jurisdiction.

SECTION 4: ENFORCEMENT AND CLEANUP OR ABATEMENT

4.1 Enforcement Procedures and Notice.

- (a) The City hereby establishes the standards and procedures for the enforcement of this ordinance under KRS 381.770 as follows:
 - (1) Whenever any condition set forth in Section 2.1 hereof is found to exist, the Citation Officer, Mayor, City Clerk, or Attorney for the City, at the direction of the Mayor, shall give ten (10) days written notice to (i) the owner of the property, and (ii) to the occupant, lessee, or tenant of the property, as the case may be (the "Occupant"), if different from the owner, to remedy such condition. However, if the condition is of a nature that the same cannot reasonably be expected to be completely remedied within a ten (10) day period, the notice shall direct the recipient to proceed with reasonable diligence to remedy such condition as soon as possible.

 - (2) The notice referenced above shall be served by certified mail or by personal service (with signed acknowledgement of receipt). If by certified mail, it shall be addressed to the last known address of the owner of the property, as it appears on the current tax assessment roll and to Occupant at the address of the property. The failure of any or all of the addressees to receive the notice shall not invalidate any of the proceedings. Further, the failure of any owner or Occupant to see, read, or understand the notice shall not invalidate any of the proceedings.

4.2 In order to enforce the provisions of this Chapter, when the Mayor and the City Council find and determine (i) that the severity of the violation warrants immediate action, or (ii) the notice process set out in Section 4.1(a) has been followed but neither the owner nor Occupant of the property has timely remedied the condition set out in the notice, the Mayor is authorized to send employees or persons hired by the City upon said property to remedy, clean up and/or abate the condition. The cost of such remedy, cleanup or abatement may be recovered by the City from the property owner directly or through a civil action. Such cleanup or abatement will not relieve the person of further action which may be taken by the Mayor and the City Council, including but not limited to, liability for any violations of this Chapter, or any other applicable provisions of state law and local ordinances.

4.3 In addition to the being responsible for the cost to remedy, cleanup or abate a condition as set forth above, each and every violation of this Chapter which is deemed a violation is punishable by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for the second violation of the same or similar provision within a one (1) year period; or
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation, after the second, of the same or similar provision of this Chapter within a one (1) year period of the first violation.

The above penalties do not include enforcement, remedy, cleanup or abatement costs, are cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state law and local ordinances. All fines collected in connection herewith shall be deposited into the City's general fund.

4.4 The City may petition the Jefferson District Court to impose, assess and recover penalties imposed pursuant to this Ordinance in addition to all costs related to enforcement, remedy, cleanup, and/or abatement. In any civil action commenced by the City under this Chapter, the City shall be entitled to recover from the Defendant of such action, reasonable attorney's fees and costs of suit.

4.5 The City shall have a lien against the applicable property for the reasonable value of labor and materials used in the remedy, cleanup or abatement of the applicable condition. An Affidavit of the Mayor of the City shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this ordinance and KRS 381.770, and shall be recorded in the Office of the Jefferson County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid at the rate of 1.5% per month, compounded monthly, and may be enforced by judicial proceedings.

4.6 In addition to the remedy prescribed in the previous sections of this ordinance or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the City may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

4.7 Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this Chapter as civil or abatement actions, as described above, or as criminal actions as follows:

- (a) Violation/Misdemeanor. Any person who violates any of the provisions of this Chapter shall be guilty of a violation and/or misdemeanor.
- (b) Prosecution. Every violation of this Chapter shall be a misdemeanor; provided, however, that where the Attorney for the City has determined that such action would be in the best interest of justice, such Attorney may specify in the accusatory pleading or citation, that the violation shall be prosecuted as a violation.

- (c) Penalty for misdemeanor. Any person found guilty of a misdemeanor under this Chapter shall be subject to the same fines that are applicable to a violation and shall be liable for all enforcement, remedy, cleanup, and/or abatement costs arising in connection with such violation.

The enforcement by the City of violations of the provisions of this Chapter as either a civil, abatement or criminal action shall not preclude the City from simultaneously enforcing violations of the provisions of this Chapter by any other type of action.

4.8 Nothing in this Chapter shall be construed as requiring the City to enforce prohibitions in this Chapter against all or any properties which may violate this Ordinance. In the City’s prosecutorial discretion, and as the City’s resources permit, this Ordinance may or may not be enforced only as to a limited number of problem properties per year. Nothing in this Section 4.8 or the absence of any similar provision from any other City law shall be construed to impose a duty upon the City to enforce such other provision of law.

SECTION 5: APPEALS

5.1 Any action taken by the Citation Officer, or other official under this ordinance may be appealed to the City Council by any person cited hereunder. Such appeal shall be taken within the same time allowed for abatement (without extension), and shall be in writing served on the Clerk of the City. The grounds for the appeal shall be stated in such appeal in detail. Such appeal shall be heard at the next regular or special meeting of the City Council unless otherwise determined by the City Council. While such appeal is pending, the abatement notice shall be held in abeyance.

SECTION 6: SEVERABILITY

6.1 If any provision, clause, sentence, paragraph, or phrase of this Ordinance or the application thereof to any person or circumstances is held, for any reason by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable. The City Council declares that it would have passed this Ordinance, and every section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases were to be held invalid or unconstitutional by such court.

This Ordinance shall take effect immediately upon its adoption, passage and publication.

First Reading: October 27, 2014

Second Reading: _____

Passed and approved this the ____ day of _____, 2014.

Randolph Chappell, Mayor

ATTEST:

Phyllis Onachilla, City Clerk

Those in Favor _____

Those Opposed _____