

CITY OF HURSTBOURNE ACRES, KENTUCKY

ORDINANCE NO. 4, SERIES 2017

AN ORDINANCE DEFINING AND PROHIBITING NUISANCES,
AND PROVIDING FOR ABATEMENT AND PENALTIES FOR VIOLATION THEREOF

WHEREAS, the Mayor and Commissioners of the City of Hurstbourne Acres, Kentucky, have the authority to enact Ordinances relating to the City pursuant to KRS 82.082, and

WHEREAS, the Mayor and Commissioners desire to establish a detailed mechanism to protect the existing drainage, curbs, sidewalks, streets, park, community appearance, property values, and health and safety of its citizens by prohibiting nuisances,

NOW THEREFORE, be it enacted and ordained by the City of Hurstbourne Acres that:

Ordinance No. 1, Series 1993 is hereby repealed and is replaced by the following:

SECTION 1. PURPOSE

1.1 The City Commission of the City of Hurstbourne Acres hereby finds 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 life or property, or hazardous or injurious to the health, safety or welfare of the general public in such ways as to constitute a public nuisance;

1.2 Accordingly, the City Commission of the City of Hurstbourne Acres finds and declares that the purpose of this ordinance is to:

- (1) Reduce the threat to public 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.

SECTION 2. DEFINITIONS

2.1 For purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) *Abatement* means the repair, replacement, removal, destruction or other remedy of the condition in question by such means and in such a manner and to such an extent as the City shall determine is necessary in the interest of the general health, safety and welfare of the community.
- (2) *Nuisance* is defined as anything which is injurious to health, or offensive to the senses, or any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood, or an obstruction to or interference with the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any public park, sidewalk, or street, or any public nuisance known at common law or equity jurisprudence.
- (3) *Ordinary view* is defined as a sight line within normal visual range by a person on a public street or sidewalk or adjacent real property (KRS 381.770(1)(b)).
- (4) *Vacant* is defined as a residential property with no legal resident or tenant; evidence of vacancy includes any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant; such conditions include but are not limited to: overgrown or dead vegetation, accumulation of flyers or mail, disconnected utilities, the absence of window coverings or furniture, evidence of inhabitation by undomesticated animals, and statements by neighbors, delivery persons, or government employees.
- (5) *Hard surface* is defined as asphalt or concrete.

SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL

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

Streets, Sidewalks, Sewers

- (1) *Trees and Shrubbery Obstructing Streets, Sidewalks, and Drainage.* The permitting of any tree, shrubbery, hedge or other object to grow or stand in such a condition that it interferes with the use, construction or maintenance of streets or sidewalks, that could cause injury to streets or sidewalks, or that causes an obstruction to drainage or poses a danger to life, limb or property;
- (2) *Visual Obstructions of Streets.* The permitting of any hedge, shrubbery, fence or other obstruction on any corner lot, including corner easements, to attain such a height as to become a visual obstruction and endanger public safety;
- (3) *Obstructions over Streets.* All hanging signs, awnings, canopies, wires and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety;
- (4) *Obstructions of Storm Water and Drainage Facilities.* The permitting of any limbs, leaves, grass clippings or other objects to accumulate or be placed in a manner that interferes with the use or maintenance of any storm water or drainage facilities;

SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL (cont'd.)

Animals

- (5) *Animal Pens.* Erection, use or maintenance of any building, structure, cage, or place for the keeping, feeding, sheltering or confining of any fowl or animal, whether temporary or permanent, which occasions noxious odors, offensive smells or raucous noises injurious to the health, comfort or property of individuals or of the public;
- (6) *Hoarding of Pet Animals.* The keeping of more pet animals than can be properly maintained in a healthy condition without presenting a health or safety hazard to the owners or others and without constituting a nuisance to the occupants or neighboring properties, characterized by failure to provide proper food, water, shelter, veterinary care and sanitation to the animals and resulting in squalid living conditions for the animals and the keeper and by complaints from neighbors including, but not limited to, mistreatment or neglect of animals, stench from the property and rodent and insect infestations;
- (7) *Dangerous Animals.* Allowing or permitting an animal to molest, chase, snap at, attack or attempt to attack passersby, vehicles, domestic pets or livestock; [Lou. Metro Ord. 290, Series 2007, 91.001 Definitions, Nuisance (1)(c)];
- (8) *Prohibited and Noisy Animals.* No chickens, ducks, pigs, or othe farm animals are allowed in the city, whether for food or as pets. Allowing or permitting an animal to habitually bark, whine, howl, mew, crow or cackle in an excessive or continual fashion or make other noise in such a manner so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises; [Lou. Metro Ord. 290, Series 2007, 91.001 Definitions, Nuisance (1)(a)];
- (9) *Unrestrained Dogs and Other Domesticated Animals.* Any dog or other domesticated animal outside the property of its owner that is not restrained by a leash and under the control of a person who is physically able to control the animal; allowing or permitting an animal to habitually or continually roam or be found on property of other than its owners or caretakers, trespassing parks or the property of any person; [Lou. Metro Ord. 290, Series 2007, 91.001 Definitions, Nuisance (1)(d)];
- (10) *Sanitary Disposal of Animal Feces.* The failure of any owner or person in charge of a dog or other domesticated animal to promptly remove all feces deposited by said animal(s) and dispose of same in a sanitary manner; this section shall not apply to blind or visually impaired and/or disabled persons accompanied by an assistance dog; [see Lou. Metro Ord. 290, Series 2007, 91.001 Definitions, Nuisance (1)(b)];

SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL (cont'd.)

Structures

- (11) *Dwellings Unfit for Human Habitation.* Any dwelling dangerous or detrimental to life or health because of want of repair or defects in the drainage, plumbing, electrical system, ventilation or construction; any dwelling dangerous or detrimental to life or health because of infection with contagious disease or the existence on the premises of unsanitary conditions likely to cause sickness among occupants of the dwelling; any premises from which the plumbing and heating have been removed, or from which utilities have been disconnected, destroyed, removed or rendered ineffective; [Lou. Metro PMC 156.005(E), Public Nuisance (5)];
- (12) *Prohibited and Dilapidated Structures.* No structures, including but not limited to gazebos shall be built or placed in the front yard. Any structure so out of repair and dilapidated as to constitute a fire hazard; any structure damaged by fire to the extent as not to provide shelter and or in danger of collapse or failure and dangerous to anyone on or near the premises; any structure that due to neglect or lack of adequate maintenance endangers the public health, welfare or safety; any structure which materially interferes with the peaceful enjoyment by owners or occupants of adjacent property; any structure which causes or tends to cause diminution in value of other property in the neighborhood; [see Lou. Metro PMC 156.005(E), Public Nuisances (4) and (8)];
- (13) *Structures with Inadequate Exterior Maintenance.* All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, balconies, railings, gutters, downspouts, trim, decks and fences not maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment; peeling, flaking and chipping paint shall be eliminated from any surface; all siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight; all metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion; all exterior walls shall be free from holes, breaks, and loose or rotting materials and maintained weatherproof and properly surface coated where required to prevent deterioration; [Lou. Metro PMC 156.053 (B) and (F)];
- (14) *Vacant Structures.* Any structure which is vacant or abandoned and open or accessible to vagrants or passersby; [see Lou. Metro PMC 156.005(E), Public Nuisance (5)];

(15) *Incomplete Projects*. Any renovation or construction to structures or grounds, including but not limited to, driveways, patios, fences, and walkways, not completed through consistent and sustained effort in a reasonable amount of time, given due
SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL (cont'd.)

consideration to the type of project; a period of 90 days without consistent and sustained effort shall be an unreasonable length of time without sufficient and specific written explanation for said delay;

Junk, Garbage, Debris

- (16) *Junk; Scrap Metal*. The storage or accumulation of scrap metal (whether recyclable or unrecyclable), salvage materials, tires, auto parts, storage tanks, dumpsters, junk machinery, machinery parts, abandoned, discarded or unused appliances, junked appliances, objects or equipment, whether intact or in parts, within the city limits and within the ordinary view;
- (17) *Accumulation of Construction, Demolition or Landscaping Debris*. The accumulation of combustible and noncombustible waste materials, including any material resulting from maintenance, demolition, repair, alteration or construction of buildings, structures or grounds, or landscaping or natural damage of grounds, including, but not limited to, fallen trees, tree branches, brush and yard trimmings;
- (18) *Rubbish*. An accumulation on any property of filth, plant matter, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents, or insects, or blow rubbish into any street, sidewalk, or property of another;
- (19) *Scattering Garbage, Etc*. The throwing, placing, or scattering of any garbage, rubbish, trash, or other refuse over or upon any premises, street or alley, either public or private, or adjacent thereto, and either with or without the intent to later remove;
- (20) *Hoarding of Materials*. The accumulation of combustible materials, trash, food, newspapers, magazines, old clothes and other items that create a serious fire and health hazard that can cause disease, contribute to vermin and/or insect infestations, affect the occupants of the building, neighbors, public safety personnel and the general public, or violate any other city safety code;

SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL (cont'd.)

Environment, Health, Safety

- (21) *Nauseous or Noxious Substances or Odors.* The allowing of any nauseous or offensive odor to be emitted from the premises; the disposal or accumulation of any foul, decaying, or putrescent substances or other offensive materials dangerous to public health in or on any premises which shall by reason of offensive odors become injurious to the health of any person; [Lou. Metro PMC 156.005(E), Public Nuisance (9)];
- (22) *Stagnant Water.* All stagnant water in which mosquitoes or other insects can multiply;
- (23) *Burning of Leaves.* The burning of leaves and other landscape waste shall be prohibited;
- (24) *Compost Piles.* Any compost pile which is of such a nature as to spread or harbor disease, emit unreasonable, unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects, provided that the presence of earthworms in a compost pile shall not constitute a nuisance;
- (25) *Pest Infestations.* The permitting of any structure to be infested with rats, mice, roaches, squirrels, or other pests, or infected with any contagious disease; every reasonable precaution available should be taken to keep all structures from insect and rodent infestation; all structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health; [Lou. Metro PMC 156.056(A)];
- (26) *Attractive Nuisances.* Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance accessible to children on the exterior premises; [see Lou. Metro PMC 156.005(E), Public Nuisance (1)];
- (27) *Open Wells.* The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, vault, or sinkhole situated upon private property in any open or unfenced lot or place;
- (28) *Storage of Explosives.* The storage of explosive material, including, but not limited to fireworks, which creates a safety hazard to other property or persons in the vicinity;
- (29) *Non-Consumer Fireworks.* The use of fireworks other than those specifically defined as consumer fireworks per KRS 227.702;
- (30) *Loud Noise.* Operating or permitting the operation of any music after 11 p.m. and all other noise-producing agencies, whether human or mechanical, which by reason of the

SECTION 3. CERTAIN CONDITIONS DECLARED A NUISANCE AND UNLAWFUL (cont'd.)

volume and continuance thereof shall disturb the comfort or repose of any persons in the vicinity;

Other Nuisances

- (31) *Defacement of property.* The willful or wanton damage, mutilation or defacement of any exterior surface of any structure, building or sign on any private or public property by placing thereon any marking, carving or graffiti [see Lou. Metro PMC 156.052(I)];
- (32) *Exterior Use or Storage of Indoor Furniture.* The use or storage of furniture which is upholstered or not designed for outdoor use in an uncovered or exposed area in which it is likely to decay, decompose or retain moisture causing a health hazard;
- (33) *Weeds and Grass.* When grass is cut, it is not to be left on the city street or sidewalks. It must be removed without delay. The excessive growth of weeds, grass, or other vegetation, except flowers or other ornamental vegetation which are properly maintained; the premises shall be kept free of all weeds and prohibited plant growth to the center line of such street, easement or alley as are adjacent to or abut the premises [Lou. Metro PMC 156.051(B)(1)]; "excessive" shall mean growth to a height of ten (10) inches or more [see Lou. Metro PMC 156.052(D)];
- (34) *Junked or Inoperable Motor Vehicles.* The presence of any junked motor vehicle on public property or on any private lot, tract or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, or unregistered, within the city and within ordinary view. Further, a junked motor vehicle or parts thereof shall be considered rubbish or refuse, and it shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning or discarding any motor vehicle on any real property within ordinary view;
- (35) *Boats, Trailers, Campers, Recreational Vehicles, Construction Equipment.* Any boat, trailer, camper, recreational vehicle, or construction equipment or vehicle parked or stored for more than 7 consecutive days or 28 days per calendar year on any public or private property except where the parking or storing of the vehicle is further from any abutting public way than the nearest building line to that abutting way; moving the vehicle to another location within city limits will not exempt the days of its relocation within city limits from inclusion in the time restrictions above;
- (36) There shall be no parking in the yard, except on a hard surface driveway. There shall be no parking of dumpsters on the street. Dumpster can only be parked or left on a hard surface driveway. No commercial vehicles (such as 18 wheel rigs, or other large trucks) or vehicles carrying hazardous materials may be parked overnight in the City.

SECTION 4. COMMON LAW AND STATUTORY NUISANCES

- 4.1 In addition to what is declared in this ordinance to be a public nuisance, those offenses which are known to the common law and 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 provision of law.

SECTION 5. TEST FOR NUISANCES

- 5.1 Whether or not a particular annoyance constitutes a nuisance shall depend on its effect upon persons of ordinary health and average sensibilities and not its effect upon persons who are delicate or supersensitive, or whose habits, tastes, or conditions are such that they never are sensible of any annoyance.

SECTION 6. NUISANCES CREATED BY OTHERS

- 6.1 For the purposes of this ordinance, it shall not be essential that the nuisance be created or contributed to by the owner, occupant or person having control or management of the premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware.

SECTION 7. ABATEMENT

7.1 Whenever it is determined by the City that a nuisance exists, it may proceed to cause the abatement of such nuisance in any one or more of the following ways:

- (1) If the nuisance involves a matter of health and sanitation with respect to which a local board of health has jurisdiction, the nuisance may be referred to the local health board.
- (2) If the nuisance is one which is prohibited by statute, the person causing such nuisance or the owner or occupant of the premises where such nuisance exists may be proceeded against as provided by such statute.
- (3) The City may advise the person causing or permitting the nuisance or the owner or occupant of the property where such nuisance exist that a violation has occurred and order same to abate such nuisance within a reasonable time, which shall be determined by the City with consideration for the degree of threat to the public health, safety and welfare and the means required to abate such nuisance. The notice of violation and order to abate shall be served in writing via U.S. mail, or may be personally served upon the owner(s). The notice shall be mailed or personally served to the owner at the last known address of the owner of property as it appears on the current tax assessment roll. Such notice shall describe in reasonable detail the nuisance permitted or allowed to occur, and demand abatement of such nuisance in the manner and within the time prescribed therein, which time shall not be less than the thirty-day appeal time granted in Section 9 of this ordinance unless the City determines that the nuisance represents an immediate threat to the public health, safety or welfare. The notice shall advise the person served of the amount of any fine imposed per Section 8 of this ordinance.
- (4) The City may act on its own initiative to effect abatement, the cost for which the owner of the property shall be personally liable, and for which cost the City shall have a lien against the property as described in paragraph (5) below.
- (5) The City may instruct the city attorney to bring suit to enjoin continuance of the nuisance. In addition, the City shall have a lien against the property for the fine imposed. The affidavit of the authorized city official shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 381.770 and this section, and shall be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the rate of 6% per annum thereafter until paid. The lien created shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding. In addition to this remedy 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 that the City may incur, including but not limited to attorney fees and costs in prosecuting a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

SECTION 8. PENALTIES

8.1 Whenever it is determined by the City that a nuisance exists, either upon complaint of any resident of the City or upon its own initiative, it may proceed to impose a fine for the violation of the provision(s) of this ordinance per the following schedule:

(1) Each and every offense under this ordinance is punishable by:

(a) A fine of fifty dollars (\$50.00) of the first offense;

(b) A fine of one hundred dollars (\$100.00) for the second offense of the same or similar provision within a period of one year; or

(c) A fine of five hundred dollars (\$500.00) for each additional offense, after the second, of the same or similar provision of this ordinance within a period of one year of the second offense.

(2) The notice of penalty shall be served in writing via U.S. mail, or may be personally served upon the owner(s). The notice shall be mailed or personally served to the property owner at the last known address of the owner of property as it appears on the current tax assessment roll. Such notice shall describe in reasonable detail the nuisance so permitted or allowed to occur on, in or originate from the property, advise the amount of the fine, and demand payment within 30 days of date of notice.

SECTION 9. APPEALS

9.1 Any action taken by the City to enforce city ordinances may be appealed to the City by any person cited hereunder. Such appeal must be in writing, stating with specificity the grounds of the appeal, and must be filed with the City Clerk or any member of the City Commission within the same time allowed for abatement or payment of fine, which shall not be less than 10 days unless the City has determined that the nuisance represents an immediate threat to the public health, safety or welfare. Extensions are not allowed. Such appeal shall be heard by the City within 60 days of its filing. While such appeal is pending, notices of fine and/or abatement related to the specific offense for which the appeal has been filed may be held in abeyance, but only if a cash bond is posted with the City Treasurer in the amount of the fine. An aggrieved party may appeal an adverse and final written decision of the City to a Kentucky court of competent jurisdiction within 30 days after the final decision has been mailed to the aggrieved party. The date of mailing shall appear on the face of the final written decision and it shall be mailed on that date.

SECTION 10. SEVERABILITY

10.1 If any provision, clause, sentence, paragraph, or phrase of this ordinance or the application thereof to any person or circumstance 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 Commission of the City of Hurstbourne Acres 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 passage and publication.

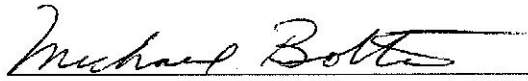
First reading: Sept 21, 2017 Second reading: Oct 12, 2017

Passed and approved this the 10th day of October, 2017

Sean Fore, Mayor
Sean Fore, Mayor, City of Hurstbourne Acres

Attest:

Attest:

A handwritten signature in cursive script that reads "Michael Bolten". The signature is written in black ink and is positioned above a horizontal line.

Michael Bolten, City Clerk, City of Hurstbourne Acres