

NOTICE

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**CHAPTER 1328
NUISANCE ABATEMENT**

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SECTION 1328.01 PUBLIC NUISANCE

(A) Premises and structures with conditions of blight, deterioration, defects, unlawful use, neglect, or lack of maintenance harm and/or annoy the public and damage public interests and are especially concerning when they endanger the health, safety, or welfare of the public, or cause harm or injury to anyone due to the state in which the premises or structure is allowed to remain. The following conditions are deemed public nuisances.

- (1) Whenever a lot, yard, fence, wall, deck, shed, garage, carport, building, structure, sign, tree, pole, excavation, hole, pit, pool, basement, cellar, well, cistern, truck dock, sidewalk, vegetation or any portion of the aforesaid because of poor maintenance, deterioration, uncontrolled spread, accumulation of litter, or improperly stored vehicles become a danger to the public or a deteriorating and blighting influence on nearby properties or is a detriment to the general health or safety of the community;
- (2) Whenever the exterior surfaces of a structure contain products sensitive to adverse weather conditions that have been left uncovered and unprotected against the effects of weather for a period as stated in Section 1323.04(B).
- (3) Whenever a structure is determined to be a fire hazard;
- (4) Whenever a structure is damaged by fire, wind, earthquake, flood, or by any other cause to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and no longer meets the minimum structural load requirements of the Kettering Building Code for new buildings of similar structure, purpose, or location;

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- (5) Whenever a structure is likely to cause sickness or disease because of inadequate maintenance, light, air, or sanitary facilities;
 - (6) Whenever a structure is determined to be unsafe, unsanitary, or unfit for human occupancy or use;
 - (7) Whenever a structure and/or the exterior property area, by reason of continued vacancy, results in lack of reasonable or adequate maintenance thereby causing a harborage for rodents, nuisance wildlife or other infestations, deterioration of the property and creating a blighting influence by depreciating the enjoyment and use of properties in the immediate vicinity to such an extent that it is harmful to the community in which such structure is situated;
 - (8) Whenever a structure is dilapidated or deteriorated to such an extent that it becomes an attractive nuisance to children, a harborage for rodents, nuisance wildlife and other infestations, a harborage for vagrants or illegal activities or because of its condition enables persons to resort thereto for the purpose of committing unlawful or immoral acts;
 - (9) Whenever a structure is in danger of collapse or partial collapse due to faulty construction or the removal, movement, or instability of any portion of the structure or ground necessary for the purpose of supporting such building, or any cause;
 - (10) Whenever a structure is in danger of any portion, member, or appurtenance thereof, due to insufficient strength or stability, or is so poorly anchored, attached, or fastened in place that it is incapable of resisting applied loads of that specified in the Kettering Building Code for new buildings of similar design and is likely to fall or to become detached or dislodged or to collapse for any reason and thereby injure persons or damage property;
 - (11) Whenever the demolition or construction of a structure remains incomplete and abandoned for a period in excess of six (6) months with no extension requested and approved by the Building Department thereby constituting an attractive nuisance or hazard to the general public;
 - (12) Whenever a structure or premise remains vacant and/or abandoned for a period in excess of six (6) months and having one or more conditions which violate the provisions of this code;
 - (13) Whenever a nuisance on or in a structure, lot, or premises has been abated by the City by securing the structure on more than two (2) occasions within a twelve (12) month period;
 - (14) Whenever a structure meets that which is defined as a public nuisance in ORC 3767.41, which is incorporated herein by reference and made part thereof;
 - (15) Whenever an inoperable vehicle is found stored on any exterior premises.

(B) The following conditions shall constitute a public nuisance:

- (1) That which is defined as a nuisance in ORC 3767.01(C), which is incorporated hereinby reference and made a part hereof;
- (2) Premises or real estate, including vacant land, on which a felony violation of ORC Sections 2925 or 3719 occurs, regardless of whether there has been a conviction for said violation.

SECTION 1328.02 NUISANCE DETERMINATION

Whenever there is reasonable basis to believe that a public nuisance exists, the Chief Code Official shall inspect or cause the inspection of the property or premises upon which the public nuisance is believed to exist. The Fire Marshal, Chief of Police, Chief Building Official, Zoning Administrator, or their designee, upon request of the Chief Code Official, may inspect or cause the inspection of premises on which a public nuisance is believed to exist. All findings and recommendations with respect to the existence of the public nuisance shall be documented photographically and in writing, and such documentation shall be filed with the Chief Code Official.

SECTION 1328.03 NOTICE TO ABATE; CONTENT AND PROHIBITIONS

(A) General. If, upon inspection, it is determined that a public nuisance exists and requires abatement, the Chief Code Official shall send or deliver a written notice to abate such public nuisance to the owner, occupant, or tenant who caused or permitted the public nuisance to exist. The notice to abate runs with the subject premises or property, notwithstanding any change(s) in the titled ownership or occupancy of the premises or property.

(B) Content of Notice to Abate. Such notice shall include:

- (1) A description of the property sufficient for identification;
- (2) The findings of the Chief Code Official, or their designee, involving the nature of the violation and the relevant code section with respect to the existence of the public nuisance;
- (3) The requirement of the owner, occupant, or tenant to abate the public nuisance by the removal of the condition(s) that caused the public nuisance within such time frame as the Chief Code Official may deem necessary to protect the public health, safety, and welfare.
- (4) Information advising of the right of the City to abate said nuisance upon non-compliance;
- (5) Notice of the right to appeal.

(C) Prohibitions.

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- (1) No owner, occupant, or tenant of a premises shall permit the existence of a public nuisance to occur or continue on such premises;
 - (2) No owner, occupant, or tenant of a premises shall fail to comply with any notice to abate a public nuisance;
 - (3) No owner, occupant, tenant, or other person shall obstruct or interfere with the enforcement of such notice to abate.
 - (4) Unauthorized Tampering. No owner, occupant, tenant, or other such person shall remove, destroy or tamper with signs, placards, tags, or seals posted or affixed by the Chief Code Official or their designee without authorization from the Chief Code Official.
- (D)(1) Any owner, occupant, tenant, or lien holder of record who has been served with a notice to abate, shall inform prospective purchasers, vendees, grantees, assignees, sublessees or land contractees thereof of any such notice to abate. After receiving a notice to abate, no owner, occupant, tenant, or lien holder of record shall transfer to a vendee, grantee, assignee, sublessee or land contractee or any other transferee any interest in the subject premises, dwelling unit, or structure without first providing the transferee with a copy of such notice to abate.
- (2) Any buyer or grantee, by land contract or otherwise, of a dwelling unit or structure shall begin at the date of transfer to comply with any notice or order obtained or to be obtained pursuant to Section 1328.03(D)(1), and within ten (10) days of the date of transfer, shall notify the Chief Code Official, in writing, of the actions that will be taken to comply. The Chief Code Official may then establish a reasonable time to comply. If the grantee fails to provide a written plan, or to comply with the notice, within ten days, the grantee shall be in violation of this code. If the Chief Code Official considers the written plan to be acceptable, the Chief Code Official shall notify the grantee; the grantee shall be bound by the approved written plan as an extension of time under the notice to abate and shall be in violation of this code if the violations are not corrected by the time set forth in the written plan. If the Chief Code Official considers the written plan to be unacceptable, the Chief Code Official shall issue a notice to the grantee with a deadline for submitting a new plan. Failure to comply is a violation of this code
 - (3) Any and all owners of any premises, dwelling unit, or structure, who appear in the chain of title from the issuance of a notice to abate until abatement of the nuisance, shall be jointly and severally responsible for all costs and expenses incurred relating to the abatement of the nuisance, including without limitation, demolition, and all costs and expenses of prosecution or collection related thereto.

(E) Duty to Vacate Premises.

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- (1) Within fifteen (15) days after issuance of the notice to abate a public nuisance as defined in Section 1328.01(B):
- (a) All persons responsible therefor shall vacate the subject premises. Being found on or in the premises thereafter shall constitute a trespass;
 - (b) The owner shall initiate such legal action as is necessary to vacate all persons responsible therefor from the premises, and shall diligently prosecute such legal action to a conclusion.
- (2) Within fifteen (15) days after issuance of the notice to abate a public nuisance as defined in Section 1328.01(B), the owner shall keep such premises vacant by boarding it up for a period of 365 days, unless the owner and every person responsible for the nuisance who wishes to occupy the premises each file a bond securing their obligation to abate the public nuisance and keep the premises free of public nuisance. Each bond shall name the City of Kettering, Ohio as obligee with sureties, form, and substance subject to approval by the Chief Code Official. Each bond shall be in the amount of the value of the property, as determined by the Chief Code Official, and be tendered to the Chief Code Official prior to the expiration of the fifteen (15) days in Section 1328.03(E). The Chief Code Official may make such determination on the basis of the total market value of the land and improvements as shown on the county auditor's current valuation record or on the basis of any other reliable evidence. Each bond shall be conditioned that such owner and other persons responsible for the nuisance will immediately abate such public nuisance and prevent the same from being established or kept during the 365-day period. Each bond shall be posted for a full 365 days. If the owner fails to board up the premises or fails to tender the required bond along with bonds from every person responsible for the nuisance who wishes to occupy the premises, then the City may abate the nuisance by boarding the premises at the expense of the owner. All costs incurred by the City shall be recovered in accordance with Section 1322.06(F).

(F) Appeal Hearing for Public Nuisances.

- (1) The means of appeal for a notice to abate shall be as provided in Section 1322.11, except as otherwise provided by this subsection.
- (2) In an appeal concerning public nuisances defined in Section 1328.01(A), the Board may vote to:
- (a) Sustain the finding that a public nuisance exists on the property and order the abatement thereof by repair or replacement or removal of the items found to constitute a public nuisance, or order the abatement thereof by demolition; or
 - (b) Sustain the finding that a public nuisance exists on the property and order that the structure be secured and the premises maintained so as to lessen the severity of the public nuisance; or
 - (c) Continue the matter for further investigation and disposition; or

- (d) Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter; or
 - (e) Reverse the finding that a public nuisance exists on the property and dismiss the case.
- (3) In an appeal concerning public nuisances defined in Section 1328.01(B), the Board may vote to:
- (a) Sustain the finding that a public nuisance exists on the property and order the abatement thereof.
 - (b) Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter.
 - (c) Reverse the finding that a public nuisance exists on the property and dismiss the case.
 - (d) Determine that the owner of the real property or personal property used in furtherance of the public nuisance was, in good faith, innocent of knowledge of the use of such property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof, and dismiss the case with respect to that owner.
 - (e) Determine that the tenant, resident, or occupant of the real property, if different from the owner, was a victim of criminal activity giving rise to the nuisance or is not at fault for such criminal activity and dismiss the matter with respect to that tenant, resident, or occupant.

SECTION 1328.04 SERVICE OF NOTICE TO ABATE

- (A) Service of Notice to Abate. A notice to abate shall be served as provided in Section 1322.07(C).
- (B) Posted Notice to Abate. A notice to abate shall remain on the structure, equipment, or premises which qualify as a public nuisance until the condition is corrected or removed in accordance with the notice to abate as served. No person shall remove such notice until the Chief Code Official determines that the public nuisance has been abated.

SECTION 1328.05 ABATEMENT BY CITY

- (A) General. Failure to abate the public nuisance within the time provided for in the notice to abate or failure to submit a written request for a compliance extension at least twenty-four (24) hours prior to the compliance deadline prescribed within the notice to abate is cause for the City to abate the public nuisance at the expense of the owner.

- (B) Abatement by City. The City shall be authorized, at any time after the expiration of the time provided in the notice to abate, to enter upon such premises to abate the nuisance. In abating the nuisance, the City shall take such action as reasonably necessary to complete the abatement. All costs incurred by the City shall be recovered in accordance with Section 1322.06(F).

SECTION 1328.06 COMPLIANCE DEADLINE EXTENSION

If a written request for an extension of the compliance deadline is received at least twenty-four (24) hours prior to the compliance deadline, the Chief Code Official, at their discretion, may grant up to a thirty day extension to the time originally permitted to complete the abatement. An extension of time beyond thirty (30) days for good cause shall require a compliance agreement with the owner. Said agreement will include a list of all required work and a time frame for completion of each item and shall not exceed a ninety (90) day time period.

SECTION 1328.07 ABATEMENT BY DEMOLITION

- (A) Demolition of Nuisance Structures. Upon failure of the owner to abate the nuisance structure within the time period stated in the notice to abate, or such additional time period as may be granted by the Chief Code Official, the City shall be authorized at any time thereafter, to enter upon such premises to abate the nuisance by demolition and removal of the nuisance structure. In abating such nuisance, the City may call upon any department of the City for any required assistance and by private contract complete the abatement thereof. All costs incurred by the City shall be recovered in accordance with Section 1322.06(F).
- (B) Salvage Materials. When any nuisance structure has been ordered, demolished and removed, the City may sell the salvage and valuable materials from the nuisance structure or retain them for City use. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

SECTION 1328.08 ILLEGAL OCCUPANCY OF A PUBLIC NUISANCE

- (A) No owner, or other person, shall occupy or let or permit to be occupied or let by another for occupancy any structure that has been declared by the Chief Code Official to be a public nuisance and ordered vacated without first applying for and obtaining the written consent of the Chief Code Official. Consent shall be given when all violations of all applicable housing, building, and other health and safety codes of the City of Kettering and the State of Ohio have been corrected, when any injunctions obtained against use or occupancy have been dissolved, and when all parties have complied with all applicable requirements of Section 1328.03(E).
- (B) In the event of a violation of Section 1328.08(A) by the owner, the cost of the relocation of tenants by the City shall be included as a cost of abating or lessening the

severity of the public nuisance, and shall be recovered in the manner provided in Section 1322.06(F).

(C) Unauthorized Entry Upon Nuisance Premises.

- (1) No owner or other person shall enter or be present in or on any building or premises that has been posted with a notice identifying the said building or premises to be a public nuisance without first obtaining authorization in writing from the Chief Code Official and having such written authorization on their person at the time.
- (2) It shall be an affirmative defense to a violation of this section that the person was the owner, or was authorized by the owner, to be present on the said premises, and that one of the persons present had the required written authorization on their person at the time.
- (3) The officers, agents, and employees of the city, state, or federal government or any political subdivision or of any public utility shall be exempt from the requirements of this section while in the course of their employment.
- (4) Written authorization, as provided in this section, shall be issued by the Chief Code Official to any person who provides documentation which, on its face, indicates that such person is either an owner of the premises or is authorized by the owner to be present, or to any person who makes application and pays for any permit to do work on the premises.
- (5) Written authorization, as provided in this section, shall not be issued in connection with any property which has been declared a public nuisance, unless all parties have complied with all applicable requirements of Section 1328.03(C).
- (6) The issuance of an authorization provided herein shall not be construed to create a privilege, as that term is used in ORC Sections 2911.21 or 133.05, nor shall this section be deemed to have any effect whatsoever on the interpretations or application of those sections.

(D) Culpability.

(1) A violation of Sections 1328.03(C), 1328.03(D), and 1328.03(E) shall be construed to be a strict liability offense.

(2) A violation of Section 1328.08 shall be construed to be a strict liability offense as to all owners or persons responsible for the nuisance. Negligence, as defined in ORC 2901.22, shall be the standard of culpability as to all other persons who violate Section 1328.08.

- (E) Reputation. In any case in which it necessary to prove that a property is a public nuisance as defined in Section 1328.01, evidence as to the reputation of such place shall be admissible on the question of whether the property is or is not a public nuisance, and every owner and every person responsible for the premises shall be

presumed to have knowledge of the reputation of the place.

SECTION 1328.09 NON-COMPLIANT BOARDED STRUCTURES

- (A) Notice to Elect. Excluding structures boarded under Section 1328.03(E)(2), the owner of a structure known to have been boarded for fourteen (14) days or more, whether boarded by the City or by the owner, shall receive from the Chief Code Official a notice to elect whether to rehabilitate, sell, or demolish the structure in order to bring the structure into compliance with current code. Service of notice to elect shall be as set forth in Section 1328.04. The owner shall have the right to appeal such notice to elect, pursuant to Section 1322.11. Within thirty (30) days of the issuance date of the aforesaid notice to elect, the owner of the structure shall submit to the Chief Code Official, in writing, their plan to meet the notice to elect order and a timetable for completing the proposed work. The Chief Code Official shall within five (5) working days examine the proposal and make a determination as to the reasonableness of the owner's response.
- (1) If the Chief Code Official determines the response is reasonable, and provided there is a timely start and adequate progress, a timetable of as long as one hundred and eighty (180) days after approval of the response may be allowed and further City enforcement shall be withheld as long as the property remains secure and the timetable is maintained. Extensions to the timetable may be approved for just cause;
 - (2) If the Chief Code Official determines the proposed timetable in the notice to elect is unreasonable, or that the proposal will not bring the property into compliance with the law, the Chief Code Official shall disapprove the proposal, state a written reason(s) therefor to the owner, and continue enforcement action as prescribed to require the repair or demolition of the structure;
 - (3) If the owner submits a proposal to sell, the owner must demonstrate to the City that there has been full disclosure of the notice to abate as required in Section 1328.03(D). The owner must also diligently and in good faith work with the City to ensure that the new owner enters into a compliance agreement with the City, which shall outline a time frame for completion of the work and shall become effective twenty-four (24) hours after closing on transfer of the property.
- (B) Finding Upon Failure to Comply. It is hereby found that structures whose owners have not responded to a notice to elect within thirty (30) days of issuance of such notice are public nuisances. This finding reflects the blighting influence of such structure(s) due to their accelerated decay and the tendency to become a harborage for rodents and vermin, as well as, an attractive nuisance for vandals. Thus, the City shall have the right to pursue abatement options which shall include demolition pursuant to Section 1328.07.

SECTION 1328.10 HIGH RISK TREES

(A) Removal. The owner, occupant, or tenant to whom a notice of violation of this Section 1328.10 for High Risk Trees on the exterior premises has been served, shall remove the subject tree(s) within the timeframe provided in such notice.

- (1) When located in front yards, high risk trees, including the trunks, shall be removed down to within 3" of the adjacent grade, or as may be otherwise approved by the Chief Code Official.
- (2) High risk trees removed from adjacent rights-of-way along paved streets shall be removed in their entirety to be level with the adjacent grade.
- (3) High risk trees removed from adjacent rights-of-way that are unimproved shall be removed to a height of no more than twelve inches (12") above adjacent grade. Where the Chief Code Official has determined the unimproved right-of-way to be wooded as defined in Section 1321, such high risk trees shall be removed to a height of no more than sixty inches (60") above adjacent grade.

(B) In the event the owner, occupant, or tenant fails to comply within the time prescribed, then the Chief Code Official is hereby authorized to cause the high risk tree to be cut and removed from the exterior premises.

SECTION 1328.11 INOPERABLE MOTOR VEHICLES

(A) No person shall store, place, or park, or permit to be stored, placed, or parked or allow to remain, any inoperable motor vehicle upon any premises, public or private, in the City, unless such person is lawfully operating a junk yard or scrap metal processing facility or unless the inoperable motor vehicle is completely enclosed inside of a garage or other suitable structure and is shielded from public view. Covering a motor vehicle with a tarp or vehicle cover does not remove a vehicle from public view.

(B) The maintenance of an inoperable motor vehicle in a manner prohibited by Section A hereof undermines the health, safety, and welfare of the community and constitutes a nuisance subject to abatement.

(C) The provisions of this section are specifically intended to impose strict liability.

(D) Removal of Inoperable Motor Vehicles; Service of notice.

- (1) Whenever an inoperable motor vehicle is found, the Chief Code Official shall serve a notice to abate complying with Section 1328.03(B) on the owner of the premises on which the vehicle sits ordering removal of the vehicle within ten days after service of the notice
- (2) Such notice to abate shall be served upon the record owner of the premises in question as provided for in Section 1322.07(C). A copy of the notice shall also be placed in a

conspicuous place on the inoperable motor vehicle.

(3) Should the record owner of the premises, within ten days after service of the notice, notify the Chief Code Official that the inoperable motor vehicle is either an abandoned vehicle or an abandoned junk motor vehicle which has been left on their premises without permission and requests removal thereof, the Chief of Police or the Chief's designee shall order into storage and dispose of such vehicle pursuant to ORC 4513.60 or 4513.63. An owner who, in response to receiving a notice, represents and warrants by affidavit that the inoperable motor vehicle was left on their premises without permission and requests its removal will not be charged for removal and storage costs.

(4) In the absence of compliance with the notice to abate or timely appeal thereof, the Chief Code Official or anyone designated by the Chief Code Official may abate the nuisance by removal of the vehicle(s) for the preservation of the life, health, comfort and safety of the public. Any removed vehicle will be sent to storage and disposed of in accordance with ORC 4513.61 and 4513.62. Notice(s) required by those sections may be given by the entity that removed and stored the vehicle.

(E) Right of Entry. The Chief Code Official or any designee is hereby expressly authorized to enter upon private property for the purpose of abating the nuisance and enforcing the provisions of this section. No person shall interfere, hinder, or refuse to allow them to enter upon private property for such purpose and to remove any inoperable motor vehicle in accordance with the provisions of this section. Any person to whom notice was given pursuant to this section, shall have the right to remove or house such inoperable motor vehicle in accordance with the provisions of this section at their own expense at any time prior to the arrival of the designee for the purpose of removal. If the inoperable motor vehicle is located within the curtilage of the premises, the Chief Code Official or their designee may apply to a court of competent jurisdiction for a warrant authorizing removal of said vehicle.

(F) Costs. Towing, storage, and others costs incurred by the City in abating the nuisance and enforcing this section shall be recovered from the premises owner as provided for in Section 1322.06(F) or the vehicle owner under ORC 4513.61 or 4513.62.

(G) Collector's Vehicles. No person shall be prevented from storing or keeping, or restricted in the method of storing or keeping, any collector's vehicle on private property with the permission of the person having the right to the possession of the property, except that a person having such permission shall be required to conceal, by means of an enclosed building, garage, or other suitable structure meeting the requirement of the Zoning Code, any unlicensed and/or inoperable collector's vehicle.

Legislative History: Title Five(Chapters 1321-1327) amended by Ord. 4328-19, passed 10-08-2019; Title Five (Chapters 1321-1328) amended by Ord. 4436-25, passed 10-14-2025.