

## **NOTICE**

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This version may, occasionally, differ from the official version and should only be relied upon for general information purposes. Any errors or omissions should be reported to the Clerk of Council. In no event shall the City of Kettering be held liable for damages of any nature, direct or indirect, arising from the use of this service or reliance on this unofficial document.

**CHAPTER 1328  
NUISANCE ABATEMENT**

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**SECTION 1328.01 PUBLIC NUISANCE**

1328.01.1 The following conditions or defects upon any premises or lot shall be deemed a public nuisance when they endanger the health, safety, welfare, life, or limb of the public, or cause any hurt, harm, inconvenience, damage, or injury to any person by reason of any one or more of the following conditions in which such premises or lot is permitted to be or remain:

1. Whenever a lot, yard, fence, wall, deck, shed, garage, carport, building, structure, sign, tree, pole, excavation, hole, pit, basement, cellar, well, cistern, truck dock, sidewalk, or any portion of the aforesaid because of poor maintenance, 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 a structure is determined to be a fire hazard;
3. 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;
4. Whenever a structure is likely to cause sickness or disease because of inadequate maintenance, light, air, or sanitary facilities;

5. Whenever a structure is determined to be unsafe, unsanitary, or unfit for human occupancy or use;
6. Whenever a structure by reason of continued vacancy results in lack of reasonable or adequate maintenance thereby causing 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;
7. Whenever a structure is dilapidated or deteriorated to such an extent that it becomes an attractive nuisance to children, 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;
8. 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;
9. 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;
10. Whenever any portion of a structure remains on a site after the partial demolition or destruction of such structure and is left incomplete or abandoned for a period in excess of six (6) months so as to constitute an attractive nuisance or hazard to the general public;
11. Whenever a structure 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;
12. 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 or mowing on more than three (3) occasions within a twelve (12) month period;
13. Whenever a structure meets that which is defined as a public nuisance in ORC 3767.41, which are incorporated herein by reference and made part thereof;
14. Whenever an inoperable, junk, or unregistered vehicle is found on any lot or premises abandoned in the open without the needed protection, care, or maintenance.

1328.01.2 The following conditions shall constitute a public nuisance:

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

### **SECTION 1328.02 NUISANCE DETERMINATION**

1328.02.1 Whenever there is reasonable basis to believe that a public nuisance exists, the Chief Code Official, or their designee, 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**

1328.03.1 General. If, upon inspection, it is determined that a public nuisance exists and requires abatement, the Chief Code Official, or their designee, shall send or deliver a written notice to abate such public nuisance to the owner or occupant, or both, who caused or permitted the public nuisance to exist. The public nuisance order, once issued by the Chief Code Official, or their designee, is against the property and runs with the subject property, notwithstanding any change(s) in the titled ownership or occupancy of the property.

1328.03.2 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. Information advising of the right to appeal;
4. Information advising of the right of the City to abate said nuisance upon non-compliance;
5. The requirement of the owner or occupant to abate the public nuisance by the removal of the condition(s) that caused the public nuisance either:

- a. Within seventy two (72) hours for emergency abatement, or
- b. Within such time frame as the Chief Code Official may deem necessary.

1328.03.3        Prohibitions.

1. No owner or occupant of a premises shall permit the existence of a public nuisance to occur or continue on such premises;
2. No owner and/or occupant of a premises shall fail to comply with any notice to abate a public nuisance;
3. No owner, occupant, or other person shall obstruct or interfere with the enforcement of such notice.

1328.03.4        Transfer of Ownership. It shall be unlawful for the owner of any lot, premises, dwelling unit, or structure to whom a notice to abate has been served to sell, transfer, mortgage, or otherwise dispose of such lot, premises, dwelling unit, or structure to another until the provisions of the notice to abate has been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of such notice to abate and shall furnish to the Chief Code Official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of such notice and fully accepting the responsibility without condition for making the corrections or repairs required by the notice.

1328.03.5        Duty to Vacate Premises.

1328.03.5.1    Within fifteen (15) days after it has been finally determined that a public nuisance, as defined in Section 1328.01.2, exists:

1. All persons responsible therefor shall vacate the premises;
2. 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.

1328.03.5.2    After the last person responsible for the public nuisance has vacated the premises, the owner shall keep such premises vacant 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 naming the City of Kettering, Ohio as obligee, with sureties to be approved by the Chief Code Official. The bond shall be in the amount of the value of the property, as determined by the Chief Code Official. 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 Montgomery County Auditor's current valuation record or on the basis of any other reliable evidence. The 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. The bond shall be posted for a full 365 days.

1328.03.6 Appeal Hearing for Public Nuisance Structures.

1328.03.6.1 The owner or other responsible person named on a notice to abate may, within ten (10) days after receipt of notice or within ten(10) days after any other determination has been made by the Chief Code Official pursuant to this chapter, make a demand in writing to the Chief Code Official for a hearing on any legal or factual issue relating to the nuisance notice, or any question set forth in Section 1328.03.6.2.2(4), or on any determination made by the Chief Code Official pursuant to the authority granted by this chapter. The demand shall include the correct mailing address of the owner or person representing the owner and shall be accompanied by the appeal fee set in the City of Kettering's Schedule for Permits, Inspections, Certificates, and Fees. The hearing shall be scheduled within a reasonable time, not to exceed sixty (60) days following receipt of the written demand.

1328.03.6.2 The hearing shall be conducted by the Property Maintenance Appeals Board.

1328.03.6.2.1 In an appeal concerning public nuisances defined in Section 1328.01.1, the Board may vote to:

1. 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
2. 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
3. Continue the matter for a period not to exceed forty-five (45) days for further investigation and disposition; or
4. Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter; or
5. Reverse the finding that a public nuisance exists on the property and dismiss the case.

1328.03.6.2.2 In an appeal concerning public nuisances defined in Section 1328.01.2, the Board may vote to:

1. Sustain the finding that a public nuisance exists on the property and order the abatement thereof.
2. Take such other action and render such other orders as it deems appropriate within the authority conferred by this chapter.
3. Reverse the finding that a public nuisance exists on the property and dismiss the case.
4. 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.

1328.03.6.3 A copy of the decision of the Board shall be mailed, with certificate of mailing, to the last known address of the owner, or person representing the owner, who demanded the hearing. It shall be the responsibility of the owner, or person representing the owner, to keep the secretary of the Board apprised of their current mailing address. For the purpose of appeal pursuant to ORC Chapter 2506, the final order shall be deemed to have been entered on the date on which the copy of the decision was mailed.

#### **SECTION 1328.04 SERVICE OF NOTICE TO ABATE**

1328.04.1 Service of Notice to Abate. A notice to abate shall follow the method of service found in Section 1322.07.3 of this code.

1328.04.2 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**

1328.05.1 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 who caused or permitted such public nuisance to exist.

1328.05.2 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 and all costs thereof shall be recovered from the owner as provided in Section 1322.06.8.

1. All costs incurred by the City in abatement of the nuisance plus an administrative fee, as outlined in the City of Kettering's Schedule for Permits, Inspections, Certificates, and Fees, shall be invoiced directly to the owner in accordance with Section 1322.06.8.

### **SECTION 1328.06 ABATEMENT AND COMPLIANCE DEADLINES**

1328.06.1 Abatement Plans and Compliance Agreements. 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 (30) 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**

1328.07.1 Demolition of Nuisance Structures. Upon failure of the owner to abate the nuisance within the time period outlined in the notice to abate, or such additional time period as may be granted by the Chief Code Official and review and concurrence by the Chief Code Official, the Chief Building Official, and the Planning and Development Director, 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. The costs of such abatement action shall be recovered from the owner according to the procedures as set forth in Section 1328.05.

1328.07.2 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**

1328.08.1 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 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 1328.03.5.

1328.08.2 In the event of a violation of Section 1328.08.1 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 1328.05.2.

1328.08.3 Unauthorized Entry Upon Nuisance Premises.

1328.08.3.1 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 his/her person at the time.

1328.08.3.2 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 his/her person at the time.

1328.08.3.3 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.

1328.08.3.4 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.

1328.08.3.5 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 1328.03.5.

1328.08.3.6 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.

1328.08.4 Culpability.

1328.08.4.1 A violation of Sections 1328.03.3, 1328.03.4, and 1328.03.5 shall be construed to be a strict liability offense.

1328.08.4.2 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 130.08, shall be the standard of culpability as to all other persons who violate Section 1328.08.

1328.08.5 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

1328.09.1 Notice to Elect. 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 will be full disclosure of the nuisance abatement issue as required in Section 1328.03.4. The owner must also 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.

1328.09.2            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 TALL GRASS/WEEDS**

1328.10.1            Nuisance Determination. Whenever there is reasonable basis to believe that a public nuisance, as defined in Section 1328.01, exists, the Chief Code Official, or their designee, shall inspect or cause the inspection of the property or premises upon which the 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.

1328.10.2            Notice to Abate. When the Chief Code Official determines a nuisance exists under Section 1328.01.1.12, involving grass and/or weeds, the Chief Code Official, or their designee, shall send or deliver written notice to abate such public nuisance to the owner and/or occupant by regular, U.S., first-class mail, postage prepaid, plus posting such notice in a conspicuous place in or about the premises or property.

Notice shall be in the form as prescribed in Section 1322.07.2.

1328.10.3            Removal of Tall Grass and Weeds. The owner, tenant, or user of the property, or other responsible person to whom a notice to abate has been served, shall, within five (5) days of the date of service of such notice, cut and remove such vegetation causing the nuisance.

1328.10.4            Abatement. Failure to abate the public nuisance within the time frame provided for in the notice to abate shall cause the City to abate the nuisance at the expense of the owner pursuant to Section 1328.05.

**SECTION 1328.11 JUNK AND ABANDONED VEHICLES**

1328.11.1 Definitions. "Junk Motor Vehicle" means any motor vehicle meeting all of the following requirements:

1. A vehicle that has been left on private property for more than forty-eight (48) hours or left on a public street, public way, or other property open to the public for purposes of vehicular travel or parking, or upon or within the right-of-way of any road or highway, for more than forty-eight (48) hours; and
2. A vehicle that is three years old, or older; and
3. A vehicle that is extensively damaged, including, but not limited to, any combination of the following types of damage:
  - a) deflated, wrecked, or missing tires or rims;
  - b) missing or wrecked body parts;
  - c) broken or missing headlights, tail lights or brake lights;
  - d) broken, cracked, or missing windows or windshields;
  - e) missing all or part of the motor or transmission;
  - f) missing, expired, or invalid license plate(s) or validation sticker(s); or
  - g) a vehicle that is otherwise apparently inoperable; and
4. A vehicle that has a fair market value of One Thousand Five Hundred Dollars (\$1,500.00) or less.

Junk Motor Vehicle shall not mean a vehicle properly stored on the premises of an authorized salvage facility or repair facility in conformance with applicable law. "Salvage" facility shall have the same meaning as used in the Kettering Zoning Code.

1328.11.2 Public Nuisance.

1328.11.2.1 The location or presence of any Junk Motor Vehicle on any public or private land or property, or public or private street, alley, or way within the City of Kettering is hereby deemed a public nuisance and is subject to summary abatement as provided in this section or any other ordinance or law of the City of Kettering or as provided under any relevant portion of the ORC.

1328.11.2.2 No person shall permit any Junk Motor Vehicle to remain in the open on any public or private property within the City of Kettering after receipt of a notice to remove such vehicle.

1328.11.3 Notice.

1328.11.3.1 The Chief Code Official, the Chief Code Official's designee(s), and sworn members of the Police Department are hereby authorized to issue written notice and order Junk Motor Vehicles to be removed.

1328.11.3.2 Such notice shall be provided in accordance with the notice requirements of this Property Maintenance Code. The notice shall further describe the vehicle to be removed with reasonable specificity, shall state that it constitutes a Junk Motor Vehicle and a public nuisance, shall state that the owner has fifteen (15) calendar days in which to either remove the vehicle or give written notice of a request for a hearing appealing the order under Section 1322.11.

1328.11.4 Conclusive Presumption of Junk Motor Vehicle as a Public Nuisance. If any recipient of a notice to remove a Junk Motor Vehicle fails to abate the nuisance or fails to appeal the notice in writing to the Property Maintenance Appeals Board within fifteen (15) calendar days after service of the notice, it shall be conclusively presumed to establish the Junk Motor Vehicle as a public nuisance and such vehicle may be removed immediately by the Police Department.

1328.11.5 Removal and Disposal of Junk Motor Vehicles.

1328.11.5.1 The Police Department shall order the Junk Motor Vehicle towed, or otherwise removed from the property or place where found, if such owner fails or refuses to remove the motor vehicle within the applicable time period after service of notice. Thereafter, such Junk Motor Vehicle shall be treated as abandoned and shall be deemed forfeited, to be disposed of in accordance with this Section 1328.11, or any relevant portion of the ORC.

1328.11.5.2 Prior to being removed, the abandoned Junk Motor Vehicle shall be photographed by a representative of the Chief Code Official or the Chief of Police. Such person shall also record the make and model of the vehicle, the vehicle identification number when available, and shall detail the damaged or missing parts or equipment to substantiate the value of One Thousand Five Hundred Dollars (\$1,500.00) or less.

1328.11.5.3 The Police Department shall thereupon tow, remove, or cause to be removed such abandoned Junk Motor Vehicle and shall immediately dispose of it to a motor vehicle salvage dealer, as defined in ORC 4738.01, or a scrap metal processing facility, as defined in ORC 4737.05, or to any other facility under contract with the City of Kettering for the disposal of such motor vehicles. The records and photographs relating to the abandoned junk motor vehicle shall be retained by the Kettering Police Department for a period of at least two (2) years. The junkyard, scrap metal processing facility, or towing service in possession of such vehicle shall

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execute in quadruplicate an affidavit, as prescribed by the registrar of motor vehicles, describing the subject motor vehicle and the manner in which it was disposed of, indicating that all requirements of this section have been complied with, and filing the same with the Clerk of Courts of Montgomery County. The Clerk of Courts shall retain the original of the affidavit for the files, furnish one copy thereof to the registrar, one copy to the junkyard or other facility handling the disposal of the vehicle, and one to the Kettering Police Department, who shall file such copy with the records and photograph(s) relating to the vehicle.

1328.11.5.4 Any monies arising from the disposal of a Junk Motor Vehicle in excess of the expenses resulting from the removal of the vehicle shall be credited to the general fund of the City of Kettering. The City assumes no liability for towing costs not covered by the sale of such vehicle.

1328.11.6 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 enclosure, any unlicensed collector's vehicle.

**Legislative History:** Title Five (Chapter 1328) enacted by Ord. 4328-19, passed 10-08-2019.