

CITY OF DAYTON  
COUNCIL MEETING  
JANUARY 2, 2013

A regular meeting of Dayton City Council was held on Wednesday, January 2, 2013, in the council chamber of the Dayton City Building. Mayor Rankle opened the meeting with a moment of silent prayer and led the Pledge of Allegiance.

ROLL CALL:

Mayor Rankle	present	Member Allen	present
Member Hurtt	present	Member Gifford	present
Member Burns	present	City Adm. Redmond	present
Member Volter	present	City Att. Fischer	present
Member Boruske	present		

MAYOR'S REPORT:

Jay Brewer, Superintendent of Dayton School System, gave a mid-year update on happenings at Dayton High School and Lincoln Elementary School. The school system is out to a great start. Our theme is Grow-Lead-Engage. A few of the improvements make include Davis Field, DHS sitting wall, Lincoln Elementary Landscape, a new web site and we've added a part-time reading teacher. Grades 7-12 are considered a Green Devil Learning Community. This includes one on one reading mentors and the big box of books program. We have advisory team meetings and have added an additional professional school counselor. The school is partnered with Northern Kentucky University and the YMCA for an after school care program. The YMCA has applied for a \$75,000 three year grant. A few of the capital outlay projects include new flooring and ceiling tiles. There has been a lot of growth in the schools. The test results have improved. City Adm. Redmond discussed the improvement the city want to make on the city's cable channels. With the help of Casie Wood the city currently broadcasts the monthly city council meeting on channel 20. Casie Woods is doing a great job and is very helpful but the city needs to open another channel. We hope to work with the school and students on this project. The city has hired a consultant and we would like to make this cable channel an informative tool for the entire community. Mr. Brewer agreed. Member Gifford expressed his concerns about the traffic safety around DHS and Lincoln Elementary. Member Gifford said it's not safe in the mornings. Member Burns suggested no semi-traffic to businesses during the hours of 2:45 p.m. - 3:30 p.m. Rick Lucas, Supt. Public Works, suggested all bus traffic load and unload on Fifth Avenue in front of the school. Mr. Brewer will review the situation.

Motion by Member Hurtt, seconded by Member Burns to accept receipt and recommendation of Dayton Planning Commission for the Dayton Comprehensive Plan. Motion carried--so ordered.

CITY ADMINISTRATOR'S REPORT:

At the last council meeting Michael Giffen, Main Street Manager, was mistakenly appointed to the OKI Regional Council of Government. The appointee must be an elected official. Motion by Member Gifford, seconded by Member Boruske to appoint Member Allen. Motion carried--so ordered. Michael Giffen attended the meetings last year and will attend the meetings again this year with Member Allen.

CITY ATTORNEY'S REPORT:

None.

CONSENT AGENDA:

Motion by Member Volter, seconded by Member Gifford to approve the minutes from the December 4, 2012 meeting with the following change; **Ben** Baker not Barry Baker was appointed to the Planning & Zoning Board and Main Street Board. Motion carried--so ordered.

ORDINANCES & ORDRS:

First Reading:

**CITY OF DAYTON, KENTUCKY**

2013 - #1

**AN ORDINANCE AMENDING THE DAYTON CODE OF ORDINANCES CHAPTER 50.04 REGARDING REMOVAL OF GARBAGE**

**BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY:**

**SECTION ONE:** The Dayton Code of Ordinances Chapter 50, Section 50.04 "Preparation of Garbage" is amended as follows:

(A). Garbage and trash that is mixed with water or other liquids shall be drained before being placed in a garbage or trash receptacle. Animal matter that is subject to decomposition shall be wrapped in paper or other combustible material before being place in a garbage receptacle. Grease in a free-flowing state shall be reduced to a solid.

(B) All mattresses, upholstered furniture and pillows and cushions therefrom, carpeting and other upholstery-like material shall be securely wrapped in plastic before being placed for garbage and trash collection.

**SECTION TWO:** This ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published, and shall be in effect at the earliest time provided by law.

**PASSED** by City Council of the City of Dayton, Campbell County, Kentucky assembled in regular session.

First Reading:  
Second Reading:

**CITY OF DAYTON, KENTUCKY**

by \_\_\_\_\_  
Kenneth E. Rankle  
its Mayor

**ATTEST:**

\_\_\_\_\_  
Donna Leger, its Clerk

**CITY OF DAYTON, KENTUCKY**

2013#2

**AN ORDINANCE ADOPTING A NEW CHAPTER OF THE DAYTON CODE OF ORDINANCES REGULATING NUISANCE PROPERTY WITHIN THE CITY.**

**BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY:**

**SECTION ONE:** That a new Chapter of the City of Dayton, Kentucky Code of Ordinances is hereby adopted as follows:

**I. DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPLIANCES.** Includes but is not limited to items such as stoves, refrigerators, freezers, washing machines, dryers, dishwashers, and water heaters.

**ENVIRONMENTAL NUISANCE or NUISANCE.** (1) Any use of property which causes an annoyance, hazard, or injury which may be detrimental to the property or well-being of others; any person doing an unlawful act, or other act which may be lawful to the extent that it is done without becoming a nuisance; the omission to perform a duty; or suffering or permitting any condition or thing to exist, which act (lawful or unlawful), omission, condition, or thing either:

(a) Injures or endangers the welfare, health, or safety of others;

(b) Offends decency;

(c) Creates offensive odors;

(d) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch, or drainage;

(e) In any way renders other persons insecure in life or the use of property;

(f) Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others; or

(g) Permits the presence, existence, or accumulation of waste, rubbish, trash, or other non-operable appliance or vehicles or vehicles in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.

(2) Any yard grass exceeding six (6) inches in height or other plant or weed growth exceeding twelve (12) inches in height other than crops, trees, bushes, flowers, or other ornamental plants. It is not the intent of this provision to cause a change in the character of any geographical areas but only to remedy nuisances created by yard grass greater than six (6) inches or hillside weeds greater than twelve (12) inches.

(3) The disposal or accumulation of any foul, decaying, or putrescent substance, stagnant water, animal waste or other offensive material in or on any lot, tract of land, street, highway, or any sidewalk or alley abutting any of these which shall be the reasons for such offensive odors.

**HEARING OFFICER.** The Hearing Officer provided for herein shall be Code Enforcement Board of the City of Dayton. The Code Enforcement Board shall conduct all hearings provided for herein. A simple majority of the total membership of the Board shall constitute a quorum to conduct a hearing or other business required hereunder for the HEARING OFFICER. A majority vote of the quorum present shall be required for a decision.

**OWNER.** Any person or corporation who, alone or jointly or severally with others:

(1) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(2) Shall have charge, care, or control of any dwelling or dwelling unit, as owner, or as executor, executrix, administrator, administratrix, employee, agent, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with provisions of these rules and regulations imposed upon the owner.

**RUBBISH.** Any combustible or noncombustible waste materials, including but not restricted to paper, bags, boxes, cartons, wood excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, concrete crockery, dust, and the residue from the burning of combustible materials. This provision does not apply to garbage set out for pickup pursuant to the guidelines and regulations contained elsewhere in the Code of Ordinances.

**STR UCTURE.** Any building or part thereof used or occupied, or intended to be used for occupancy, for human habitation, or commercial or industrial purposes, and includes any outbuildings and appurtenances belonging thereto or usually enjoyed therewith.

**VEHICLE.** Any agency for the transportation of persons or property over or upon the public ways which is propelled otherwise than by human or animal muscular power, except electric or steam railways, road rollers, road graders, farm tractors, or vehicles of customary use on construction sites which are not practical for the transportation of personal property.

**WASTE.** Ashes, discarded wood, and abandoned, discarded, or unused objects or equipment such as furniture, appliances, junk cars, cans, containers, and garbage or refuse of any kind, whether liquid or solid; or any accumulation of any foul, decaying, or putrescent substances. (This definition shall not apply to materials deposited under authorization of any state statute, administrative regulation, ordinance, commission, conditional use permit, or other appropriate governmental approval or to goods, wares, or merchandise deposited on any public way or any other public place temporarily in the necessary course of trade or business and removed therefrom within two (2) hours of being so deposited).

**WEEDS.** Any unhealthful plant or growth such as, but not limited to the following: jimson, burdock, ragweed, thistle, cocklebur, or any other similar growth exceeding twelve (12) inches in height; vegetation which obstructs the safe view of traffic at any intersection or driveway; or vegetation which creates a nuisance by its very existence (i.e., poison ivy, kudzu, or dead or dying trees which may cause a hazard situation if they fall).

## **II. ENVIRONMENTAL NUISANCES**

It shall be unlawful for any owner, his or her agent, or any occupant of real property, public or private, or any other person or corporation, or each of them, in the city to cause, allow, or permit an environmental nuisance to exist on any property owned, occupied, or under control of the person, or to in any other way cause or permit a nuisance.

## **III. LITTER, GARBAGE, TRASH, AND WEEDS.**

(A) It shall be unlawful for any owner, his or her agent, or any occupant of real property, or any other person or corporation, or each of them, to drop, deposit, permit or acquiesce in the dropping, depositing or scattering in any manner in or on any public or private property or place within the city, any trash, litter, garbage, rubbish, debris, refuse, or waste of any kind, or other obnoxious materials, whether solid or liquid.

(B) It shall be unlawful for any owner, his agent, or any occupant of real property to perform any act with any of the aforementioned materials anywhere within the city on private or public property in such a manner that the materials maybe carried or deposited in whole or in part by the action of the sun, wind, rain, snow, or any of the nature's elements so as to be scattered, deposited or conveyed to any of the aforementioned places.

(C) It shall be unlawful for any owner, his agent, or any occupant of real property to allow any weeds or vegetation to accumulate.

## **III. ABATEMENT OF ENVIRONMENTAL NUISANCES.**

(A) It shall be unlawful for any owner, his agent, or any occupant or corporation, or each of them, whether or not the nuisance was created by said owner, agent, or occupant, to fail to remedy the existence of an environmental nuisance in violation of this Chapter within seven (7) days unless a shorter period is specified pursuant to division (B) or (C) of this section after receiving notice thereof pursuant to this subchapter regardless of whether the violator has requested a hearing pursuant to this Chapter. An additional violation shall occur for each additional day period that an environmental nuisance remains unabated regardless of whether the violator has requested a hearing pursuant to this Chapter.

(B) It shall be unlawful for any owner, his agent, or any occupant or corporation, or each of them, whether or not the nuisance was created by said owner, agent, or occupant, to fail to remedy the existence of an environmental nuisance in violation of the provisions of this Chapter within three (3) days after receiving notice thereof pursuant to this subchapter regardless of whether the violator has requested a hearing pursuant to this Chapter. In respect to violations of this section if these specific violations are not remedied, within seven (7) days after the three (3) day abatement period elapse then regardless whether an appeal has started as outlined under this Chapter the city may, with a proper search warrant, enter the property where the violation was cited in order to remedy the violation immediately. If after the appeal the ruling is found to be in the violators favor then no further action is necessary and the city will not be able to collect any fines, penalties or cost the city incurred to remedy the charged violation. If however after the appeal the ruling is in the city's favor the violator as described above shall be responsible to pay to the city within ten (10) days all fees resulting from fines, penalties and additional cost incurred by the city to remedy the violation. If payment is not received by within the ten (10) day period then a lien shall be placed by the city against the property in

which the violation occurred. Additional cost to remedy a violation shall be fair and approved by the Mayor prior to the work being completed.

(C) Notice in writing may be served upon an owner or person, or his agent or occupant, by hand delivery, or by certified first class mail **and** by posting of the same on the property. The required notice if mailed shall be mailed to the last-known address of the owner of record of said property. Such notice shall describe the environmental nuisance so maintained, assessment of fines, and shall demand abatement of the nuisance within seven (7) calendar days from the date of notice, unless the nuisance constitutes an immediate danger to the health, safety, and well-being of the community, in which case notice shall demand immediate abatement. It shall be the duty of all owners to see that their current address is maintained on record in the County P.V.A. Office.

#### **IV. DEADLINE FOR APPEAL OF NOTICE.**

(A) Those persons who receive notice to abate a nuisance pursuant to this Chapter, may, within seven (7) days after the date of the notice, request a hearing to contest the notice and fine as provided for hereunder. A request for a hearing will not prevent additional notices and fines pursuant to this Chapter. If the hearing officer finds the violators guilty of the violation, he shall order the fine paid along with any additional violation notice fine issued prior to the hearing date.

#### **V. DILAPIDATED HOUSING**

It shall be unlawful for any owner, his agent, or any occupant of real property in the city to cause, allow, or permit any structure to be unfit for human habitation, occupancy, or use as provided in this Chapter.

#### **VI PETITION ALLEGING THE STRUCTURE TO BE UNFIT; INSPECTION GUIDELINES USED BY CODE ENFORCMENT OFFICER; COMPLAINT, NOTICE OF HEARING.**

(A) Whenever a petition is filed with the Code Enforcement Officer by a public authority or by at least five (5) residents of the city charging that any structure is unfit for human habitation, occupancy, or use, or where it appears to the Code Enforcement Officer on his own petition that any structure is unfit for human habitation, occupancy, or use, the Code Enforcement Officer shall conduct a preliminary investigation, using the inspection guidelines set forth in division (C) of this section below. If this preliminary investigation discloses the basis for such charges, the Code Enforcement Officer shall issue and cause to be served upon the owner of such structure a notice of violation stating the charges in that respect. The notice of violation shall state the remedial measures to be taken to abate the violation in addition to the fine provided for herein. The notice shall state a time limit in which to fully accomplish the remedial measures. The notice shall be sent to the owners of public record. It shall be the duty of all property owners to inform the County P.V.A. Office of their current address at all times.

(B) The complaint shall state that:

(1) The violator shall be entitled to request within ten (10) days after the date of the notice of violation a hearing to contest the notice of violation, remedial measures or fines and hearing will be held before the Code Enforcement Board at a place therein fixed not less than ten (10) days nor more than sixty (60) days after the date of a request for a hearing;

(2) The owner and parties in interest may file a response to the notice of violation and appear in person or otherwise and give testimony of the place and time fixed for the hearing; and

(3) The rules of evidence prevailing in the course of law of equity shall not be applied to the hearings before the hearing officer. The hearing officer shall be bound to apply the laws of the Commonwealth and the city.

(C) All building and structure inspections performed by the Code Enforcement Officer under division (A) of this section shall be reduced to a written report which shall among other things identify the type of building and structure being inspected. The report shall identify the component elements of the structure, such as but not limited to the foundation, exterior walls, exterior skins, windows, doors, porch, chimneys, plumbing vents, gutters, downspouts, electrical vents, roof, secondary buildings, site conditions, interior walls, floors, hoists, sills, posts, subfloors, plumbing, heating equipment, pest controls, kitchens, bathrooms, other habitable rooms, attic, stairways, installation, electrical systems and plumbing fixtures.

(1) Each component element of the structure shall be considered and evaluated in terms of three (3) qualifiers, defined below:

(a) **ADEQUATE.** Refers to a component in good repair without any defect.

(b) **REPAIR/MAINTAIN.** Refers to components that are defective due to deferred maintenance or are substandard under the code. (In general, by repairing a component the end result should be equal to replacement of the component. A patch, minor defects, and painting are typically the kind of things repairs refer to. When in doubt as to whether an item can be repaired, it should be replaced).

(c) **REPLACE or INSTALL.** Refers to components that are defective due to deferred maintenance beyond repair, components that are needed to bring the item up to code (replace electrical services, or the installation of plumbing vents when none exist).

(2) Each defect observed by the Inspector shall be rated in terms of the three (3) qualifiers defined in division (C) (1) above. A particular defect can be qualified in combinations such as repair/maintain and replace/install, if needed.

(3) A cost factor shall be identified by the inspector for each component element of the structure. A cost factor for each component element of the structure to be inspected shall be determined by the Code Enforcement Officer using the best available cost/price information for construction within the area. Cost factors per component shall be made

available to the public as they are adopted from to time by the Code Enforcement Officer. The cost factor will be stated in terms of points per component. Points are then totaled for both the exterior and interior survey. The interior survey results are totaled and average point totals are generated. The sampling of interior surveys should be representative of the area. The average interior point should then be added to each of the exterior surveys to achieve a sum total of points.

(4) The sum points per unit are multiplied by the adjustable point multiplier for a given year. The point multiplier shall from year to year be determined by the producer's price index for construction material obtained from the Bureau of Labor Statistics. The formula for total costs is computed as follows.

(a) Number of exterior sidings per component X cost factor per component = exterior component points.

(b) Sum exterior component points per structure.

(c) Add the interior point average from the sample to total exterior points per structure = sum total points per structure.

(d) Now multiply the sum total points per structure by the point estimated costs to rehabilitation structure.

(5) (a) A cost adjustment shall be made for the size of the dwelling unit. The cost shall be increased as the size of the structure exceeds one thousand two hundred (1,200) square feet. The cost adjustment shall be computed as follows:

Gross Square Feet

Percentage Increase

1201 - 1700 1701 - 2100 2101 - 2600 2600+

Add 10% Add 25% Add 50% Add 75%

(b) After adjusted cost is completed, a total target area rehabilitation cost shall be calculated. A reasonable contingency amount shall be calculated. A reasonable contingency amount from between seven percent (7%) to ten percent (10%) shall be added to the final figure to cover unpredictable costs.

(6) VALUE OF THE STRUCTURE as referred to in this subchapter is defined as the fair market value of the structure in its existing condition at the time of the inspection. Fair market value is defined as the price that a person who is willing but not compelled to buy would pay, and a seller who is willing but not forced to sell would accept for the property in question, less the fair market value of the real estate without the inspected structure. Consideration may be given to comparable sale of similar properties, the use and character of the neighborhood, adequacy of lot size, utilities and street layout. The city may elect to have the FAIR MARKET VALUE OF THE STRUCTURE determined by a professional real estate appraiser.

#### **VIII HEARINGS; FINDINGS OF FACT; ORDER.**

If, after the notice and hearing, the hearing officer determines that the structure under consideration is unfit for human habitation, occupancy, or use, he shall state in writing his findings of facts in support of such determination as provided for in this Chapter (if different than the fine set in the notice of violation), and shall issue and cause to be served upon the owner thereof an order requiring the owner:

(A) To the extent and within the time specified in the order, to repair or alter said structure to render it fit for human habitation, occupancy, or use, or, at the option of the owner, remove or demolish said structure; or

(B) Within the time specified in the order, to remove or demolish said structure if the structure has been found to be unfit for human habitation, occupancy, or use for the third time within a three (3) year period regardless of ownership or cost to repair, alter, or improve.

#### **IX. REPAIRS, CLOSING AND DEMOLITION BY CITY WHEN ORDER NOT COMPLIED WITH; LIEN FOR EXPENSE.**

(A) It shall be unlawful for any owner, his agent, or any occupant, in person or by his authorized agent, to fail to remedy the existence of any violation of this subchapter within the required time.

(B) If the owner, his agent, or any occupant, in person or by his authorized agent does not comply with the remedial measures provided for in this Chapter or an order to abate as provided for in this Chapter or other order to repair, alter, or improve, the city is authorized (in addition to any fine imposed) under this Chapter to enter upon said property, to remedy the condition, or to repair, alter, improve, vacate, or close. The Code Enforcement Officer may cause to be posted on the main entrance of any closed structure a placard with the following words: "This building is unsafe for human habitation, occupancy or use; and the use or occupancy of this building for human habitation, occupancy or use, is prohibited and unlawful."

(C) If the owner does not comply with an order to remove or demolish a structure issued pursuant to this Chapter, the city is authorized to enter upon the property and remove or demolish the structure.

(D) (1) If the owner does not comply with an order to abate issued pursuant to this Chapter within the time provided for therein; or the remedial measures set forth in a notice of violation issued pursuant to this Chapter within the time provided for therein; a "notice of intent to remove to demolish" may be issued to the owner of public record by

first class mail which shall state: "That a hearing will be held before such officer as may be designated by the City Commission at a place therein fixed not less than thirty (30) days nor more than sixty (60) days after the date of the notice." Notice shall also be posted on the violating structure. This notice shall be in addition to any fine imposed for failure to abate under this Chapter.

(2) If, after the notice and hearing, the hearing officer determines that the repairs, alterations or improvement previously ordered pursuant to this Chapter cannot be made at a cost that is not more than fifty percent (50%) of the value of the structure, shall issue an order permitting the city to remove or demolish the structure.

(3) If the hearing officer finds that the repairs, alterations or improvements can be made at a cost that is not more than fifty percent (50%) of the value of the structure, he shall so state in an order and the city shall be permitted to pursue other remedies provided for in this chapter.

(4) The city has previously adopted regulations to be used in determining if repairs, alterations or improvement can be made at a cost that is not more than fifty percent (50%) of the value of the structure.

(E) The amount of the cost to remedy the condition; to make repairs, alterations, or improvements; to vacate, close, or remove; or to demolish shall be a lien upon the real property upon which said cost was incurred. This will include the cost of cutting, clearing, and removing such environmental nuisances in addition to other reasonable action necessary to abate the same. The affidavit of the Code Enforcement Officer or other responsible officer designated by the city shall constitute the time or place or evidence of the amount of the lien and the proceedings pursuant to this chapter upon the same being recorded in the office of the County Clerk. Said document shall establish and constitute a lien upon and against the property wherein such labor and materials were utilized to remedy said condition. The recording of said lien shall be notice to the public at large of the existence of said lien and the same shall bear interest at the rate of twelve percent (12%) per annum from date of lien and thereafter until paid. If the structure is caused to be removed or demolished by the Code Enforcement Officer, the city may cause the structure to be removed or demolished, shall sell the materials of the structure, and shall credit the proceeds of said sale against the cost of removal or demolition. Any balance remaining therefrom shall be deposited in the Circuit Court by the Code Enforcement Officer to be disbursed by final order or decree of the Court.

#### **X. CONDITIONS THAT WARRANT FINDING OF UNFITNESS.**

A structure is unfit for human habitation, occupancy, or use if conditions exist in such structure which are dangerous or injurious to the health, safety, or morals of the occupants of such structure, the occupants of the neighboring structure, or other residents of the city. Such conditions shall include, but not be limited to, the following: defects increasing the hazard of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities or other essential equipment required by this chapter; dilapidation; disrepair; structural defects; uncleanness; violation of any law of the Commonwealth of Kentucky, Kentucky building code or other Ordinance of the City of Dayton. The code requirements relating to maintenance of existing buildings for human occupancy and habitation promulgated by the Building Officials and Code Administrators (BOCA) International, Inc. National Property Maintenance Code/2006 and has subsequently amended is hereby adopted by reference as an additional guideline in determining if a structure is unfit.

#### **XI. EVICTION OF OCCUPANTS OF CONDEMNED STRUCTURE.**

When the hearing officer has condemned as unfit for human habitation, occupancy or use, any structure, pursuant to this chapter and has ordered the same to be vacated, the Code Enforcement Officer may, after ten (10) days notice to the occupant or occupants thereof, apply to the District Court and obtain from such Court an order of eviction against the occupant or occupants thereof, and the sheriff shall forthwith evict such occupant or occupants and his belongings from said building. When there is actual and immediate danger of failure or collapse of a structure which would endanger life or when there is actual or potential danger to the buildings, occupants or those in the proximity of any structure because of violation of this ordinance, the Code Enforcement Officer, fire chief or fire inspector is hereby authorized and empowered to order and require the occupants to vacate the premise forthwith.

#### **XII. SERVICE OF COMPLAINTS AND ORDERS.**

Notices or orders issued by the Code Enforcement Officer pursuant to this chapter shall be served upon persons required herein either personally or by certified first class mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the Code Enforcement Officer in the exercise or reasonable diligence, then the service of such notice or order upon such persons maybe made by publication pursuant to KRS Chapter 424. A copy of such notice or order shall be posted in a conspicuous place on the premises affected by the complaint or order. Service upon a corporation shall be had upon its agent for service process or if none is maintained within the state, then to the last known address of the corporation or agent.

#### **XIII. REMEDIES.**

Any person affected by an order issued by the hearing officer may, within thirty (30) days after the posting and service of the order, petition the Circuit Court for an injunction restraining the Code Enforcement Officer from carrying out the provisions of the order, and the Court may issue a temporary injunction restraining the hearing officer pending the final disposition of the case. Hearing shall be held by the Court on such petition as soon thereafter as possible. In all such proceedings the findings of the hearing officer as to facts, if supported by any evidence, shall be conclusive. The remedies herein provided shall be exclusive remedies and no person affected by an order of the hearing officer shall be entitled to recover any damages, for actions taken pursuant to any order of the hearing officer or because of noncompliance by such person with any order of the hearing officer.

#### **XIV. POWERS OF CODE ENFORCEMENT OFFICER AND HEARING OFFICER.**

To investigate structures, issue notices of violation and obtain evidence the Code Enforcement Officer, fire inspector, fire chief, police officer, city administrator or such other person designated by the Mayor shall be vested with such powers as necessary and convenient to carry out the provisions of this chapter including the following powers in addition to others herein granted:

(1) To investigate the structural conditions of the city in order to determine which structures therein are unfit for human habitation, occupancy or use;

(2) The hearing officer shall be vested with the power, in addition to others herein granted, to administer oaths, affirmations, examine witness and receive evidence and to summons witness by making application to the Campbell District Court. To enter upon the premises for the purpose of making examinations, but such entry shall be made in such manner as to cause the least possible inconvenience to the person in possession.

#### **XV. INTERFERENCE WITH CODE ENFORCEMENT OFFICER DURING PERFORMANCE OF DUTIES.**

It shall be unlawful for any person to interfere with the duties of the Code Enforcement Officer as required hereunder or to refuse entry upon any premises or into any structure in which the Code Enforcement Officer is authorized to enter pursuant to this chapter.

#### **XVI. LANDLORD LICENSING**

(A) Every person, individual, firm, owner, corporation, landlord, or combination thereof engaged in the business of leasing or renting of any apartment building, multiple unit, multiple dwelling units, or single-dwelling unit which has a separate power meter and is rented or leased for more than sixty (60) days to the same person or family regardless of whether the initial term is less than sixty (60) days if the term is routinely renewed for more than sixty (60) days, is hereby required to make application to and receive an annual license from the City Clerk/Treasurer's Office before engaging in the business. The annual license fee shall be the fee set forth in the business. The annual license fee shall be the fee set forth elsewhere in this Code or Ordinances. Said applicant shall state their name and address and identify the number of tenants occupying his or her property and the location thereof. The Clerk/Treasurer's Office shall present an updated list of all license holders the first working day of each month. The City Clerk/Treasurer's Office shall issue said license if:

(1) The applicant's property is not in violation of any ordinance of the city;

(2) All city taxes and fees shall be fully paid; and

(3) The applicant provides a full legal description of all parcels of property he or she rents.

(B) The Code Enforcement Officer is hereby empowered to revoke said license if it is discovered that the applicant has:

(1) Misrepresented himself or herself or the estate of his or her property;

(2) Refused access to premises for inspection as required by law; or

(3) Unabated violations or more than three (3) repeated violations on a same property in a twelve (12) month period.

#### **XVII. INSPECTION; ENFORCEMENT.**

(A) The Code Enforcement Officer shall inspect each unit before it is reoccupied by tenants or may inspect every rental facility within every two (2) to five (5) years, whichever event is shorter, in addition to any other inspection required by law or herein to which an applicant for license or licenses shall consent, to determine the health and safety conditions of the apartment buildings, multiple dwellings, rooming houses, dwelling or dwelling units, within the city.

(B) For the purpose of making this inspection, the Code Enforcement Officer is hereby authorized to enter, examine, and survey at all reasonable times before the unit is reoccupied all apartment buildings, commercial buildings, multiple dwellings, rooming houses, dwellings, or dwelling units. The tenant or person in charge of an apartment building, commercial building, multiple dwelling, rooming house, dwelling, or dwelling unit shall give the Code Enforcement Officer free access only to the leased portion of same or central facility serving same for the purpose of such inspection, examination, and survey.

#### **XVIII. NOTICE OF REVOCATION HEARING.**

The Code Enforcement Officer shall cause notice of the revocation of the permit or license to be served upon the licensee as provided for herein for violation of any of the provisions of this chapter. The permittee or licensee may appeal to the Code Enforcement Board as stated elsewhere in this Code of Ordinances within seven (7) days of service of the notice of revocation. The owner may not allow another tenant to occupy their structure until such time as all issues are remedied or until the hearing is concluded and the decision is rendered to allow tenants back into their structure.

#### **XIX NOISE POLLUTION**

#### **DEFINITIONS.**

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CONSTRUCTION.** Any site preparation, assembly, erection, substantial repair, alteration or similar action, for or of public or private rights-of-way, structures, utilities or similar property.

**EMERGENCY MACHINERY, VEHICLE OR ALARM.** Any machinery, vehicle or alarm used, employed, performed or operated in an effort to protect, provide or restore safe conditions in the community or for the citizenry or work by private or public utilities when restoring utility service.

**EMERGENCY WORK.** Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency or work by private or public utilities when restoring utility services.

**PERSON.** Any individual, firm, association, partnership, joint venture or corporation.

**WEEKDAY.** Any day, Monday through Saturday, which is not a legal holiday.

## **XX. PROHIBITED NOISES.**

No person shall make, or cause or suffer, or permit to be made upon any premises owned, occupied or controlled by such person, any unnecessary noises, sounds or vibrations which are physically annoying to reasonable persons of ordinary sensitivity or which are so harsh or so prolonged or unnatural or unusual in their use, time, or place as to occasion unnecessary discomfort to any persons within the neighborhood from which the noises emanate or which interfere with the peace and comfort of the residents of their guests, or the operators or customers in places of business in the vicinity, or which may detrimentally or adversely affect such residences or places of business.

## **XXI. PROHIBITED ACTS.**

Notwithstanding any other provisions of this chapter, the following acts and the causing or permitting thereof, are declared to be in violation of this chapter and are subject to penalty as mentioned in this Chapter:

(A) Unnecessary noises. The unnecessary making of, or knowingly and unnecessarily permitting to be made, any loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park or other place or building, except that the ordinary and usual sounds, noises, commotion or vibration incidental to the operation of those places when conducted in accordance with the usual and normal standard of practice applicable thereto and in a manner which will not disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators or customers of adjacent places of business.

(B) (1) Radios, phonographs, and the like. The using, operating or permitting to be played, used or operated of any radio, musical instrument, phonograph, television set, or instrument or device similar to those heretofore specifically mentioned for the production or reproduction of sound in volume sufficiently loud as to disturb the peace, quiet or repose of persons of ordinary and normal sensitivity who are in the immediate vicinity of such machine or device.

(2) Portable radios in public conveyances. The audible using, operating or playing, or permitting to be used, operated or played, of any radio, musical instrument or electronic recording device of any kind or character whatever in any public conveyance. It shall not be unlawful to listen to any such device by means of earplugs inserted in the hearer's ears and inaudible to any other person.

(C) Engines, motors and mechanical devices near residential district. Except as provided in division (F) below regarding construction-related noise, the sustained operation or use between the hours of 10:00 p.m. and 7 :00 a.m. of any electric or gasoline powered motor or engine or the repair, modification, reconstruction, testing or operation of any automobile, motorcycle, machine or mechanical device or other contrivance or facility unless such motor, engine, automobile, motorcycle, machine or mechanical device is enclosed within a sound insulated structure so as to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from such structure, or within ten (10) feet of any residence.

(D) Motor vehicles. Racing the engine of any motor vehicle or needlessly bringing to a sudden start or stop of any motor vehicle.

(E) Loading and unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to cause noise disturbance.

(F) Commercial construction, demolitions and excavation. The erection, including excavating, demolition, alteration or repair of any building, land clearing, land grading, drilling or road and utility construction other than between 7:00 a.m. and 7:00 p.m., Monday through Saturday and in case of an urgent necessity in the interest of public safety on Sunday.

(G) Non-emergency signaling devices.

(1) Sounding or permitting the sounding of any electronically-amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place, for more than ten (10) consecutive seconds in any hourly period.



(2) Sound sources included within this provision which are not exempted under this Chapter may be exempted by a variance issued by the Mayor.

(H) Emergency signaling devices.

(1) The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren whistle or similar emergency signaling device, for testing, except as provided in division (H)(2) below.

(2) Testing of an emergency signaling device shall not occur before 7:00 a.m. or after 7:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds. Testing of the emergency signaling system shall not occur more than once in each calendar month.

(3) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm unless such alarm is terminated within fifteen (15) minutes of activation.

(I) Animals and birds. Owning, possessing or harboring any pet animal or pet bird that frequently or for continued duration makes sounds that create a noise disturbance across a residential real property line. (For the purpose of this division, a noise disturbance from a barking dog shall be defined as that created by a dog barking continually for ten (10) minutes or intermittently for thirty (30) minutes unless provoked.) This division (I) shall be enforced by the Animal Control Officer during regular business hours.

(J) Commercial establishments adjacent to residential property. Sustained noise from the premises of any commercial establishment, including any outdoor area part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. shall not be plainly unreasonably audible creating a disturbance at any residential dwelling.

(K) It shall be unlawful for any person, in or upon any public street, alley, or public place within the city to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purpose of influencing or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandise or other articles, or for the purpose of inducing or influencing or attempting to induce or influence, any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment or for the purpose of intimidating, threatening or coercing any person who is performing, seeking or obtaining service or labor or employment in any works, factory, place of business or employment.

(L) Noises near schools, hospitals, churches, and the like. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in session, or adjacent to any hospital, which unreasonably interferes with the workings or session thereof; provided, that signs must be displayed in such streets indicating that the same is a school, institution of learning, church, court or hospital.

(M) The following acts and the causing thereof are declared to be loud, disturbing and unnecessary noises in violation of this subchapter, but the enumeration herein shall no be deemed to be exclusive:

(1) Horns and signaling devices. The sounding of any horn or other signaling device on any automobile, motorcycle, bus or other vehicle while stationary, except as a danger signal when an approaching vehicle is apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound or the sounding of any such device for an unnecessary period of time.

(2) Noisy vehicles. No person shall:

(a) Use an automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud, unnecessary, grating, grinding, rattling or other noise.

(b) Operate any vehicle in such a manner as to cause unnecessary noise by spinning or squealing the tires or revving the motor of such vehicle.

(c) Modify or cause to be modified the muffler, exhaust system or other noise-control device of any vehicle in a manner that will increase the noise emitted by such vehicle above that emitted by the vehicle when newly manufactured, regardless of the date of manufacture. The noise control devices of any vehicle operated in the city shall be maintained and in good working order. No person shall operate or permit to be operated a vehicle where the muffler, exhaust system or other noise-control device has been so modified or has not been maintained. A law enforcement officer shall use his or her judgment to determine if someone is out of tolerance.

(N) The operation of restaurants, taverns, bars and nightclubs.

(1) No restaurant, tavern, bar, nightclub, dance club or other similar use, whether public or private, shall be conducted so that unreasonable or unnecessary music or other noise is caused by and/or emanates from that use.

(2) Any owner, operator or proprietor of such a business use or the owner, licensee or person in control of any private premises shall so limit the level of noise emanating from the premises.

(3) Further, it shall be the duty of any such person to disperse any assembly of persons loitering, drinking alcoholic beverages or otherwise engaging in lewd or disorderly conduct adjacent to or near the premises or to immediately notify the police of such conduct.

(O) Private residences. No noise from parties, entertainment, music or social gatherings of any kind, whether public or private, shall be such that noise caused by and/or emanating from that use can be heard between the hours of

11:00 p.m. and 7:00 a.m. the following day inside any residence, regardless of whether the windows of such residence are open, or at any other time if the noise is unnecessary or unreasonable under the circumstances.

(P) Hawkers and peddlers. The loud shouting and crying of peddlers, hawkers and vendors which disturb the peace and quiet of the neighborhood.

(Q) Vendor's vehicle. Using, operating or playing, or permitting to be used, operated or played, any bell, radio, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for producing or reproducing sound in or upon any vehicle used for the transportation and sale of any goods, wares or merchandise in or upon any of the streets or highways within the city, which sound-producing instruments are set to produce any noise, music or sound in excess of one hundred fifteen (115) decibels, measured at six (6) inches from the sound-producing amplifier of the speaker; the use and operation of any vehicle so equipped with such soundproducing equipment in operation, between the hours of 10:00 p.m. and 10:00 a.m. of the succeeding day; or the use or operation of any such sound-producing equipment in or upon any such vehicle while the vehicle is moving along or upon any street or highway; it being the intent and purpose of this division (Q) to permit the use of such sound-producing equipment in or upon any such vehicle only when the vehicle is parked or standing still in or upon any street or highway and during the hours provided in this division (Q).

## **XXII. EXEMPTIONS.**

The following activities shall be exempt from the provisions of this chapter:

(A) Emergency exception. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(B) Warning devices. Warning devices necessary for the protection of public safety as for example, police, fire and ambulance sirens and train horns.

(C) Outdoor activities. Activities conducted on public playgrounds and public or private school grounds including but not limited to school athletic and school entertainment events.

(D) Construction-special circumstances.

(1) The provisions of this Chapter do not apply to any person who performs construction, repair, excavation or earthmoving work pursuant to the expressed written permission of the Mayor to perform such work at times prohibited in this Chapter. The applicant must submit to the Mayor an application in writing, stating the reasons for the request and the facts upon which such reasons are based. The Mayor may grant written permission for the construction if he or she finds:

(a) The work proposed to be done is in the public interest;

(b) Hardship, injustice or unreasonable delay would result from the interruption thereof during the hours and days specified in this Chapter; or

(c) The building or structure involved is devoted or intended to be devoted to a use immediately incident to public defense.

(2) Any applicant dissatisfied with the decision of the Mayor may appeal to the City Council by filing a notice of appeal with the City Clerk within ten (10) days after notice of the Mayor's decision. The City Council shall, within thirty (30) days of filing the appeal, affirm, reverse or modify the decision of the Mayor.

(3) The provisions of this Chapter do not apply to the construction, repair, or excavation during prohibited hours as may be necessary for the preservation of life or property, when such necessity arises during such hours as the offices of the city are closed, or where such necessity requires immediate action prior to the time at which it would be possible to obtain a permit pursuant to this division (D). The person doing such construction, repair or excavation shall obtain a permit therefor within one (1) business day of such construction, repair or excavation.

(E) Outdoor gatherings, festivals, public dances, shows and sporting events. Provided the events are conducted pursuant to a permit issued by the Mayor.

(F) Church bells. Sounds created by church bells or chimes.

(G) Lawn mowers and yard equipment. Sounds created by lawn mowers, manual and power tools and household appliances in use between the hours of 8:00 a.m. and 8:00 p.m.

(H) Public utilities. Sounds created by public utilities in carrying out the operations of the city.

## **XXIII. CITATION PROCEDURE.**

(A) Any person who violates this chapter may be cited for the appropriate violation and assessed the fine as set out in this Chapter. If any structure, parcel of land or tract of real estate is found to be in violation of this chapter, the owner or owners of the tract or parcel of land as reflected in the Property Valuation Office may be cited for the appropriate violation and fined as set out in this Chapter.

(B) The form of the notice of violation of this chapter shall contain in substance the following information:

(1) A statement that the notice represents a determination that a violation of this chapter has been committed by the individual or owner of the structure or property and that the determination shall be final unless contested as provided for herein;

(2) A statement of the specific violation for which the citation is issued;

(3) A statement of the monetary fine established for the violation; and

(4) A statement of options for responding to the notice and the procedures necessary to exercise these options.

(C) A citation issued pursuant to this chapter represents a determination that a violation thereof has been committed, and such determination shall be final unless contested as provided for herein.

(D) The notice of violation shall be hand-delivered or mailed to the violator, or mailed to the last known address of the owner or violator as listed in the P.V.A. Office.

(E) (1) Any person who receives notice of a violation shall respond to such notice as provided in this section within seven (7) days of the date of the notice, by either paying the fine set forth in the notice or requesting a hearing pursuant hereto.

(2) If the individual cited for violation of this chapter or the property owner of the structure or real property cited for violation of this chapter has not responded to the notice within seven (7) days as provided for in division (E)(1) above, the city shall send a second notice by certified mail to the last known address of the individual or registered owner of the property as listed in the P.V.A. Office. Such notice shall state that if the individual or owner does not respond to the notice by either paying the fine or by requesting in writing with the City Clerk a hearing pursuant to this chapter, within seven (7) days of the receipt of the notice, the individual or owner shall be deemed to have waived his or her right to a hearing and the determination that a violation was committed shall be considered final. Any person who fails to request a hearing and fails to pay the fine within seven (7) days shall be deemed to have refused to pay the fine levied by the citation.

#### **XIV. PENALTY.**

Violation of any provision of this Chapter is declared to be a civil offense. Any person violating any provision shall be fined not more than two hundred (\$200). Any person electing not to contest citation for said offense shall be fined two hundred (\$200). Each day of violation shall constitute a separate offense.

**SECTION TWO:** This ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published, and become law at the earliest possible time.

PASSED by City Council of the City of Dayton, Kentucky assembled in regular session.

First Reading:  
Second Reading:

#### **CITY OF DAYTON, KENTUCKY**

by: \_\_\_\_\_  
Kenneth E. Rankle  
its Mayor

#### **CITY OF DAYTON, KENTUCKY**

2013 - #3

#### **AN ORDINANCE ADOPTING A NEW CHAPTER OF THE DAYTON CODE OF ORDINANCES REGULATING CRIMINAL ACTIVITY NUISANCE PROPERTIES WITHIN THE CITY.**

**WHEREAS**, the current provisions of the Dayton Code of Ordinances do not provide an adequate tool for abating criminal activity nuisance properties within the City; and

**WHEREAS**, the City Council desires to supplement the Dayton Code of Ordinances pertaining to nuisances by providing a new process for enforcement and abatement of Criminal Activity Nuisances that repeatedly occur or exist on properties;

**WHEREAS**, when the persons responsible for criminal activities nuisances on real property within the City fail to take corrective action to abate the continuing criminal activity nuisances, it presents grave health, safety and welfare concerns. Criminal Activity Nuisance properties within the City have a negative impact upon the quality of life, safety, neighbors and health in the neighborhoods where they are located. This Ordinance is enacted to address criminal nuisance activities that are particularly disruptive to the quality of life and repeatedly occur or exist at properties within the City by providing a process for abatement. This remedy is intended to be in addition to any remedy available under any state or local laws and may be used in conjunction with such other laws.

**WHEREAS**, in addition, properties where Criminal Activity Nuisances occur create a financial and social burden on the City due to from the nature of the activities involved. They consume a disproportionate amount of City services due to repeated calls for

service to those properties. The City Council desires to ameliorate those conditions and hold accountable those persons responsible for such properties;

**BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY:**

**SECTION ONE:** That a new Chapter of the City of Dayton, Kentucky Code of Ordinances is hereby adopted as follows:

**I. DEFINITIONS**

For the purposes of this Chapter, the definitions are as set forth herein:

**1. Criminal Activity Nuisance.** The occurrence on more than two (2) occasions in the preceding twelve (12) month period of a Criminal Nuisance Violation at any building, premises or parcel of real property located in the City.

**2. Criminal Nuisance Violation.** A criminal citation, arrest, or court-issued search warrant, leading to a conviction, for crimes involving prostitution, controlled substances, alcohol, gambling, or criminal theft.

**II. PROHIBITIONS**

**(A) Unlawful Use of Property.** No owner of real property ("Owner") located in the City shall allow his or her real property ("Property") to become or be a Criminal Activity Nuisance after having received Notice that the Property has been used for the commission of a Criminal Nuisance Violation( s). An Owner of Property is deemed to have knowledge of such activity upon receipt of a Notice from the City.

**(B) Destroying Orders or Notices.** No person or owner shall destroy, remove, or deface any Order or Notice posted by the Code Enforcement Officer.

**(C) Disobeying Orders.** No person or owner shall disobey an Order issued hereunder, or use or occupy or permit any other person to use or occupy any Property ordered closed hereunder.

**III. DEFENSES AND EXCEPTIONS**

**(A) Owner Reported Violation.** If an Owner (or legal tenant) reports an illegal activity that leads to a criminal citation, arrest or court-ordered search warrant leading to a conviction, for crimes involving prostitution, controlled substances, alcohol, gambling, or criminal theft, such citation or warrant shall not be considered a Criminal Nuisance Violation for purposes of this Ordinance.

**(B) Owner Victim of Violation.** If an Owner (or the legal tenant) is the victim of a crime that would otherwise be considered a Criminal Nuisance Violation, that particular crime shall be excluded for purposes of determining Criminal Activity Nuisance and any violation under Section 2(A) above.

**(C) Eviction of Offenders.** If an Owner institutes an eviction proceeding against the offending tenant or occupant(s) within 30 days of a qualifying Criminal Activity Nuisance or Criminal Nuisance Violation(s) and that Owner completes the eviction within 60 days of commencement or as soon thereafter as court procedures allow, that particular crime shall be excluded for purposes of determining Criminal Activity Nuisance and any violation under Section 2(A) above. In the event that judicial or quasi-judicial proceedings prohibit an Owner from proceeding with an eviction, abatement of the Criminal Activity Nuisance or Criminal Nuisance Violation(s) will be stayed until the judicial or quasi-judicial proceeding is resolved. In the case of a Criminal Activity Nuisance or Criminal Nuisance Violation(s) at a Property that contains a multi-unit dwelling of multi-tenant building, the only parties necessary to name in an eviction proceeding hereunder are the occupants of the actual unit involved with the Criminal Activity Nuisance or Criminal Nuisance Violation.

**IV. ABATEMENT PROCEDURE FOR CHRONIC NUISANCE PROPERTIES**

**(A) Duty of Police Department.** The Dayton Police shall, as soon as possible but not less than every 30 days after a conviction pursuant to a criminal citation or arrest of persons or execution of court issued search warrants for crimes included in the definition of a Criminal Nuisance Violation, notify the Code Enforcement Officer in writing of the specific violation investigated, the address of the Property on or in which the violations occurred, and the circumstances of the violation. After the police notify the Code Enforcement Officer of the Criminal Nuisance Violation at a Property for the first time, the Code Enforcement Officer shall notify the Owner of the Criminal Nuisance Violation by regular U.S. mail.

**(B) Notice.** Whenever the Code Enforcement Officer receives information that a Criminal Activity Nuisance exists in or upon a Property, i.e., a third Criminal Nuisance Violation has occurred at the Property, the Code Enforcement Officer shall notify the Owner that the Property is a Criminal Activity Nuisance and that the nuisance must be abated ("Notice"). The Notice shall be served personally or mailed by certified mail, and by regular mail. If the whereabouts of the Owner are unknown and cannot be ascertained by the Code Enforcement Officer in the exercise of reasonable diligence, or if the whereabouts of the Owner are known and he or she refuses to accept the Notice, then the Code Enforcement Officer shall make an affidavit to that effect, and thereafter may serve the Notice by posting a copy of it in a conspicuous place on the Property, and by sending a copy of the Notice by regular U.S. mail to the Owner's last known mailing address, and by newspaper publication, pursuant to KRS Chapter 424.

**(C) Abatement.**

**(1)** Should the Criminal Activity Nuisance not be abated at the time stated in the Notice, or by any extension granted by the City or its agencies, the Code Enforcement Officer shall be authorized at any time thereafter to

issue an order closing and vacating the Property, or portions thereof, to the extent necessary to abate the Criminal Activity Nuisance ("Order"). Such closing and vacating shall be for such period as the Code Enforcement Officer reasonably may direct, but in no event shall the closing and vacating be for a period of more than one year from the date of the Order. An Order issued hereunder is not an act of possession, ownership, or control by the City.

(2) If the Property contains multi-unit dwellings, multiple tenants, or mixed uses and the Criminal Activity Nuisance has occurred solely within a unit or units, the Order shall be restricted to the unit(s) in which the Criminal Activity Nuisance has occurred, and shall not extend to any other unit on the Property.

(3) Upon the issuance of an Order, a copy of the Order shall be served on the Owner in the same manner as the Notice and a copy shall be conspicuously posted on the Property.

(4) If an Owner fails to comply with an Order issued hereunder, the Code Enforcement Officer may:

(a) Prohibit the furnishing of utility service, including but not limited to gas, electric, water, and heating oil, to the Property by any public utility holding a franchise to use the streets and public ways of the city;

(b) Revoke the Certificate of Occupancy of the Property or the Occupational License of a business occupying or operating the Property; or

(c) Use any other legal remedy available under the laws of the Commonwealth and the City's ordinances.

(5) The Code Enforcement Officer may vacate or suspend the provisions of an Order upon a showing by clear and convincing evidence that the Criminal Activity Nuisance has been abated and the Owner has taken steps to insure that additional violations will not be permitted at the Property.

(6) Actions taken by an Owner to abate a Criminal Activity Nuisance shall not be deemed to be violations of any fair housing laws or other landlord/tenant statutes or ordinances.

(7) Enforcement of this Ordinance does not impair or restrict the ability of the City to bring a separate action to revoke the occupational license of a landlord or business that allows a Criminal Activity Nuisance to exist on the Property or to bring an action before the Code Enforcement Board for the imposition of civil fines. No civil fines will be assessed by the Code Enforcement Board until after notice is sent pursuant to subsection (B) of this section or if an eviction proceeding has been instituted pursuant to Section 3(C) of this Ordinance.

(8) All Orders and civil fines may be appealed to the Code Enforcement Board in the manner provided for and within the deadlines provided elsewhere in this Code for appeals to such Board

## **VI. PENALTY.**

Violation of any provision of this Chapter is declared to be a civil offense. Any person violating any provision shall be fined not more than two hundred (\$200). Any person electing not to contest citation for said offense shall be fined two hundred (\$200). Each day of violation shall constitute a separate offense.

**SECTION TWO:** This ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published, and become law at the earliest possible time.

**PASSED** by City Council of the City of Dayton, Kentucky assembled in regular session.

First Reading:  
Second Reading:

**CITY OF DAYTON, KENTUCKY**

by: \_\_\_\_\_  
Kenneth E. Rankle  
its Mayor

**CITY OF DAYTON, KENTUCKY**

2013 - #4

**AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE DAYTON CODE OF ORDINANCES REGULATING NUISANCES WITHIN THE CITY.**

**BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY:**

**SECTION ONE:** That Chapter 150 of the City of Dayton, Kentucky Code of Ordinances is hereby amended adding a new Section 150.04 as follows:

It shall be unlawful for any person to interfere with the duties of the Code Enforcement Officer as required hereunder or to refuse entry upon any premises or into any structure in which the Code Enforcement Officer is authorized to enter pursuant to this chapter.

**SECTION TWO:** That Chapter 110 of the City of Dayton, Kentucky Code of Ordinances is hereby amended adding a new Section 110.14 as follows:

A. The Code Enforcement Officer is hereby empowered to revoke the license of a person engaged in the business of leasing or renting real property or portions thereof if it is discovered that the applicant has:

(1) Misrepresented himself or herself or the estate of his or her property;

(2) Refused access to premises for inspection as required by law; or

(3) Unabated violations or more than three (3) repeated violations on a same property in a twelve (12) month period.

**SECTION THREE:** This ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published, and become law at the earliest possible time.

PASSED by City Council of the City of Dayton, Kentucky assembled in regular session.

First Reading:  
Second Reading:

**CITY OF DAYTON, KENTUCKY**

by: \_\_\_\_\_  
Kenneth E. Rankle  
its Mayor

**ATTEST:**

\_\_\_\_\_  
Donna Leger, its Clerk

**CITY OF DAYTON, KENTUCKY**

2013 - 1-R

**AN ORDER AUTHORIZING THE CITY TO ENTER INTO A CONTRACT FOR PROFESSIONAL SERVICES WITH JOHN C. FISCHER, ATTORNEY.**

**BE IT ORDERED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY:**

**SECTION ONE:** That the City of Dayton, Kentucky is hereby authorized to enter into a contract for professional services with John C. Fischer, Attorney as City Attorney. A copy of the contract is attached hereto and made part hereof by reference.

**SECTION TWO:** The Mayor and any other necessary official is authorized to sign all documents necessary to effect the above provisions.

**SECTION THREE:** This order shall be signed by the Mayor, attested by the City Clerk, recorded, and shall be in effect at the earliest time provided by law.

**PASSED** by City Council of the City of Dayton, Campbell County, Kentucky assembled in regular session this \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF DAYTON, KENTUCKY**

by \_\_\_\_\_  
**KENNETH E. RANKLE**  
its Mayor

**ATTEST:**

\_\_\_\_\_  
**DONNA LEGER**, its Clerk

**PROFESSIONAL SERVICES CONTRACT**

This **Contract**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, at Dayton, Kentucky, by and between the **CITY OF DAYTON, KENTUCKY**, by and through Kenneth E. Rankle, its Mayor, as authorized by City Council of the **CITY OF DAYTON, KENTUCKY** in Order 2013 - \_\_ R, passed of even date herewith, said party to be hereinafter referred to as "City"; and **JOHN C. FISCHER**, Attorney, hereinafter referred to as "Attorney";

**WITNESSETH**, that, in consideration of the payments, promises covenants, agreements, and services rendered as required herein by the Parties hereto, said Parties agree as follows:

1. That Attorney shall provide the following: legal advice and legal counsel to the Mayor, City Council, Board Members, Commission Members, Officers, and Employees of the City when they are acting in their respective official capacities, on all legal matters pertaining to the operation of the City; to represent the City, its elected and appointed officials and employees in their official capacities, in all litigation to which the City is a party and in which the Attorney has expertise; to seek and retain, with approval of the City Council and Mayor, other qualified representation for all litigation or legal matters in which the Attorney does not have expertise, and to assist such other qualified representative; to draft all ordinances, resolutions, orders, executive orders, contracts, deeds, mortgages, leases, and any and all other documents or instruments as requested by the Mayor and City Council; to request Opinions of the Attorney General of the Commonwealth of Kentucky on matters necessary to the operation of the City, all as requested by the Mayor and City Council; to collect all delinquent taxes, fees, commissions, or other funds due to the City when such collection is referred to Attorney; to review as required by law, the City's Code of Ordinances; to recommend any and all action necessary to the legal operation of the City; and to do any and all other activities with regard to legal matters affecting the City as required by law or by the Mayor and City Council.

2. Attorney warrants that he is and will be at all times during the operation of this contract, licensed to practice law in the Commonwealth of Kentucky, and if, at any time during the operation of this contract, Attorney is not licensed to practice law in the Commonwealth of Kentucky, this Contract shall cease at such time.

3. City shall pay to the Attorney during the term of this contract the sum of Two Thousand Five Hundred Dollars (\$2,500.00) monthly. Further, as part and parcel of consideration for this contract, the City shall maintain health insurance through the City's carrier as an individual, however, this benefit shall be renegotiated upon passage of any state or federal law regarding health insurance which makes such benefit taxable. Further, the Attorney shall be paid an hourly rate of One Hundred Twenty-five Dollars (\$125.00) per hour for all hours engaged in time spent regarding litigation in which the City or its officials/employees (acting in their official capacities) are involved and time spent regarding any other matter over and above those which are done in the usual course by a city attorney, the City to pay all court costs. In addition, City Council may authorize other compensation as it may deem equitable.

4. Further, Attorney shall be paid the following for services rendered which are those services which, previously, would have been rendered by the Urban Renewal and Community Development Agency of the City of Dayton, Kentucky: title searches, \$300; closings, \$150.00; deeds, mortgages and other real estate documents, \$150.00;

5. The term of this Contract shall be from January 1, 2013 until December 31, 2014.

**WHEREFORE**, the Parties hereto affix their signatures on the day and date first above written.

**CITY OF DAYTON, KENTUCKY**

by \_\_\_\_\_  
**KENNETH E. RANKLE**  
its Mayor

\_\_\_\_\_  
**JOHN C. FISCHER**  
Attorney

Motion by Member Boruske, seconded by Member Hurtt to approve order 2013#1R as read. Comments: Member Burns questioned why this contract was on a calendar year and not a fiscal year like the city budget. City Attorney Fischer said it's because council can only contract for the length of council's term and council's term is on a calendar year. Mayor Rankle said City Attorney Fischer has been a City Attorney the second longest of any other City Attorney in Northern Kentucky, great job.

ROLL CALL:

Member Boruske	Aye	Member Hurtt	Aye
Member Allen	Aye	Member Burns	Aye
Member Gifford	Aye	Member Volter	Aye

Motion carried--so ordered.

DEPARTMENT HEAD'S REPORT:

Sergeant John Eddy reported that New Years Eve was a busy night. Mayor Rankle said the Police Department is doing a good job.

Mike Auteri, Fire Chief, submitted a copy of his report. This is the 20th year the Fire Department has been working with the Hensley Family to give food and gifts to families of Dayton and Bellevue for Christmas. Since 1992 they have helped over 600 children. This is a good program. The Fire Dept. will be working on inspections and training this year. We have a lot of Fireman with degrees, they like to teach and 100 hours of training is required. Chief Auteri said the ambulance is fixed and running great. Mayor Rankle entertained a motion to appoint Member Volter and Member Hurtt to the Fire Board. Motion by Member Gifford, seconded by Member Burns to appoint Member Volter and Member Hurtt to the Fire Board. Motion carried--so ordered.

Michael Giffen, Main Street Manager, invited everyone to an open house on Jan. 16, 7:00 p.m. at Tharp's Building. This will be the first museum in Dayton. The Safe Route to School Grant has been a long process. The appraisal came back at \$116,000, now we can move forward. Michael reported that he is currently working on a museum grant, Cincinnati community grant, crumb rubber grant using recycled waste tires for athletic fields & playgrounds and a small business development grant. We had four companies bid on the city's new web site and decided on U.S. Digital Partners in downtown Cincinnati. What is the price and what line item in the budget will be used? Michael said the cost is \$9,400 which includes training and a one time fee. Ben Baker will help with the training. Ben said it will cost about \$30.00 a month to host the website. City Adm. Redmond said the city will also have video streaming and suggested using money in Economic Development to pay for the new web site. Mayor Rankle suggested using cable money. Member Boruske and Member Gifford would like City Att. Fischer to review the contract. Motion by Member Volter, seconded by Member Hurtt to contract with U.S. Digital Partners for an amount not to exceed \$10,000 pending City Att. Fischer's approval. Motion carried--so ordered.

Member Gifford said the Cincinnati Reds help with inner city programs. They've helped out the Bellevue Vets. Have we checked into this? City Adm. Redmond said yes. We should know something by May, we had an invitation to apply.

City Adm. Redmond wanted to briefly discuss the \$30,000 request from the Main Street Board. There has never been a motion to authorize the \$30,000 expenditure. Member Burns said it was discussed that before a motion was made the Main Street Board would come back to council with guidelines. Mayor Rankle would like to see the boards ideas. City Adm. Redmond suggested hiring a professional like Leslie Carr to design drawings of the buildings so the owners could see what the buildings could look like once completed. City Adm. Redmond said it's the opinion of council that a motion was made for \$30,000 as long as the board has the guidelines in place. Member Burns asked Michael Giffen if he knew of any business owners that would like a facade grant? Michael said yes. Member Burns thinks the city should pick the business owners that are interested first. Member Gifford and Member Volter will attend the next Main Street Board meeting.

Donna Leger, Clerk/Treas., submitted a copy of the current general fund financials and the financial disclosure papers that need to be turned in by the end of January.

Rick Lucas, Supt. Public Works, reported the city has the Christmas tree recycling program again this year. The trees can be dropped off in the parking lot of the public work's garage. The salt bin is completed.

CORRESPONDENCE:

None.

STANDING COMMITTEE REPORTS:

Public Safety (Member Volter):

The Committee met with Chief O'Brien on December 19th.

Mayor Rankle read the new committees:

Personnel Law & Printing: Member Gifford Chair, Member Boruske, Member Allen.

Park & Real Estate: Member Burns Chair, Member Gifford, Member Hurtt.

Economic Development: Member Hurtt Chair, Member Burns, Member Volter.

Public Works: Member Allen Chair, Member Gifford, Member Boruske.

Finance: Member Boruske Chair, Member Burns, Member Volter.

Public Safety: Member Volter Chair, Member Hurtt, Member Allen.



PETITIONS:

Member Boruske asked about the clock at the Town Center. Rick Lucas said the company that is going to fix the clock is waiting for a part. Hopefully it will be fixed by tomorrow.

Member Gifford reported a street plate sticking up on Ninth Avenue between Vine & Ervin Terrace. Rick Lucas will check this out tomorrow.

Mr. Klosterman reported people urinating in public at the bottom of Berry Avenue. People are running stop signs all over this town and he feels one way in and one way out will create less of a traffic jam in reference to the Riverfront Development.

UNFINISHED BUSINESS:

Member Hurtt would like to have a caucus meeting on February 19th to discuss Riverfront Development only. Mayor Rankle would like to see the plans that are due back from the developer on May 1st. Council agreed they have a better understanding of the development agreement and will wait to see the plans in May.

NEW BUSINESS:

Member Boruske asked about the new City Building. When will the new city building be started? Mayor Rankle said first Queen City Riverboats needs to be bought, then the Boulevard and some residential development will be started. After that no more land will be turned over to the developers until a proven building and plans are in place for the city building, said City Adm. Redmond.

EXECUTIVE SESSION:

Mayor Rankle entertained a motion to go into executive session to discuss KRS 61.810 (b) deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency (f) discussions or hearings which might lead to the appointment, discipline or dismissal of an individual employee, member or student without restricting that employee's, member's or student's right to a public hearing if requested, provided that this exception is designed to protect the reputation of individual persons and shall not be interpreted to permit discussion of general personnel matters in secret. Motion by Member Boruske, seconded by Member Hurtt to go into executive session. Motion carried--so ordered.

Motion by Member Boruske, seconded by Member Hurtt to go back into regular session. Motion carried--so ordered.

ADJOURNMENT:

Motion by Member Allen, seconded by Member Gifford to adjourn. Motion carried--so ordered.

Respectfully submitted,

Donna Leger  
Clerk/Treas.

ATTEST:

Kenneth E. Rankle  
Mayor



