

BUCHANAN COUNTY, MISSOURI

NUISANCE ORDER

Effective _____, 2012

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ARTICLE I. GENERAL PROVISIONS

Sec. 1101. Short Title.

This Chapter may be known and cited as the Nuisance Order of Buchanan County, Missouri.

Sec. 1102. Purpose.

- (1) The Commission of Buchanan County, Missouri is authorized by R.S.Mo. §§ 67.402, 67.400 *et seq.*, 192.300 and 226.720 to abate nuisances and enhance public health.
- (2) The Commission finds that unkempt, unsafe, unsanitary, and otherwise improperly maintained premises and structures, sidewalks, and easements within the County, in addition to the obvious hazards which these conditions pose to the public health, safety, and welfare adversely effect the value, utility, and habitability of property within the County as a whole and cause substantial damage to adjoining and nearby property.
- (3) This Chapter conveys to the Commission and Code Enforcement Officer all necessary and proper powers to abate nuisances in order to protect and promote the public health, safety, and welfare and to charge the costs of their abatement to those responsible, the owners and occupants of the property upon which nuisances exists, and those properties themselves. This Chapter is an exercise of the County's police power, and it shall be liberally constructed to effect this purpose.

Sec. 1103. Area Governed By Chapter.

The area governed by the Nuisance Order is hereby declared to be the entire unincorporated area of Buchanan County, Missouri excluding property used as Agricultural and Horticultural property.

Sec. 1104. Definitions.

Certain terms used herein are defined as set forth in this section. All words in the present tense include the future tense; the plural number includes the singular; and all words in the singular include the plural unless the natural construction of the sentence indicates otherwise. The word "shall" is mandatory, not discretionary. In the event that words are not defined in this section, but are defined in the Buchanan County, Missouri Zoning Order, the definition in the Buchanan County, Missouri Zoning Order applies to the terms used in this Chapter. Unless the context specifically indicates otherwise, the following terms, as used in this Chapter, are defined as follows:

- (1) *Agricultural Property* shall mean agricultural property as defined in R.S.Mo. § 137.016.
- (2) *Board* shall mean the Buchanan County, Missouri Board of Zoning Adjustment.
- (3) *Commission* shall mean the Buchanan County, Missouri Commission.
- (4) *County* shall mean Buchanan County, Missouri.

- (5) *Code Enforcement Officer* shall mean the Buchanan County Code Enforcement Officer appoint and designated by the Commission to enforce the provisions of this Nuisance Order.
- (6) *District* shall mean the Buchanan County Zoning Districts established by the Buchanan County, Missouri Zoning Order, as amended.
- (7) *Enforcement Officer* shall mean the Code Enforcement Officer or his authorized representative thereof.
- (8) *Health Department* shall mean the City of St. Joseph, Missouri Health Department.
- (9) *Horticultural Property* shall mean horticultural property as defined in R.S.Mo. § 137.016.
- (10) *Occupant* shall mean any person who has a legal or equitable interest in a parcel of real property other than a fee interest, including a life tenant, tenant, lessee, tenant at will, tenant at sufferance, or adverse possessor, as well as a person in possession or a person who has charge, care, or control of the parcel of real property as the agent or personal representative of the person holding legal title to a fee interest.
- (11) *Order* shall mean an order issued by the Enforcement Officer, the Board or Commission to abate a nuisance.
- (12) *Owner* shall mean any person who alone, in common, jointly or severally with others, shall have legal title to a fee interest in the parcel of real property, with or without accompanying actual possession thereof, or any other person with legal, financial, or equitable interest in the property who establishes his or her interest before the Commission. The land records filed in the office of the Recorder of Deeds of Buchanan County, Missouri, any other official office of the County, and any other official record of cities within the County, may be used to determine the identity of such owners.
- (13) *Person* shall mean and include any individual, firm, corporation, association, partnership, cooperative agency, governmental agency, or legal entity.
- (14) *Premises* shall mean any public or private property, lot, plot, parcel of land, street, sidewalk, alley, boulevard, highway, right-of-way, park, parkway, public square, or viaduct, including the structures or buildings thereon.
- (15) *Property* shall mean any real property, premises, structure, or location on which a public nuisance is alleged to exist.
- (16) *Refuse* shall mean unwanted or discarded waste materials in a solid or semisolid state consisting of garbage, rubbish, or a combination thereof.
- (17) *Rubbish* shall mean solid waste consisting of combustible and noncombustible waste materials from residential apartments, commercial, industrial, institutional establishments, including yard waste and items commonly referred to as "trash".

- (18) *Sewer Disposal System* shall mean any arrangement of devices and structures used for receiving, transporting, treating, and disposing of sewage, including private and community sewer lines.
- (19) *Thickets* shall mean a dense growth of wild shrubbery having stems or trunks less than one inch in diameter, and briar patches.
- (20) *Vehicle* shall mean every device or implement in, upon, or by which persons or property may be transported, moved, or carried, over land or water, whether self-propelled, pushed, or drawn, by any mode of power whatever, except devices moved exclusively by human power, or moving exclusively upon fixed rails or tracks.
- (21) *Weeds* shall mean all vegetation capable of emitting unpleasant or noxious odors or transmitting pollen into the air; any vegetation declared a nuisance by the Missouri Department of Agriculture; all vegetation, regardless of height, including thickets, which may conceal or invite filthy deposits, harbor rodents, refuse or vermin, or create a fire hazard. Vegetation which shall be planted, cultivated and maintained for the production of grain, forage, commercial products, or for beauty and aesthetic purposes, shall not be considered weeds.
- (22) *Zoning Officer* shall mean the individual appointed to administer and enforce the provisions of the Zoning Order, or his or her authorized representative, as provided for in R.S.Mo. § 64.150.
- (23) *Zoning Order* shall mean the Buchanan County, Missouri Zoning Order as amended.

Sec. 1105. Enumeration Of Nuisances.

A nuisance includes any condition on property that by reason of its condition shall or may endanger the health, safety, life, limb, or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the County and are determined by the Commission as dangerous to the public's health, welfare, and/or safety and are hereby declared, defined, and deemed to be nuisances for purposes of this Chapter; provided, however, that the following enumeration shall not be deemed to be exclusive:

- (1) A building, structure, or property maintained as a menace, threat and/or hazard to the general health and safety of the community.
- (2) A building, structure, or property maintained as a fire hazard.
- (3) A building, structure, or property unsafe for occupancy or use.
- (4) A building, structure, or property by reason of lack of sufficient or adequate maintenance of the property, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such conditions exists.

- (5) Animals.
- a. Carcasses of animals remaining exposed twenty-four (24) hours after death.
 - b. The keeping of any horse, cattle, sheep, swine, goats, mules, or other livestock or fowl except that this subsection shall not apply in Agricultural Districts where animal husbandry is permitted, except subject to the permitted use regulations of the District.

(6) Dangerous Buildings Or Structures.

Any building, structure, or portion thereof is dangerous when it exhibits a condition identified as a Dangerous Building in the Zoning Order or a building, structure, or portion thereof when conditions or defects exist to the extent that they are detrimental to the life, health, property, safety, or welfare of the public, or its occupants are endangered. A building, structure, or portion thereof is dangerous whenever:

- a. The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- b. Because of dilapidation, deterioration, decay, vandalism, or fault construction, or the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building or structure, or deterioration, decay, or inadequacy of its foundation, or any other cause is likely to partially or completely collapse.
- c. The enclosing or outside wall coverings, foundation, roofs, eaves, or soffits show substantial damage or deterioration or are open to the elements.
- d. Gutters and downspouts that are damaged and not directing rainwater runoff as appropriate.
- e. Any exterior opening that is not fitted with a window, door, basement hatchway cover, or crawl space cover, as appropriate and is open to unlawful entry.
- f. Exterior wall surfaces that are not sheathed with weather resistant and durable materials consistent with those permitted under the County's building codes.
- g. Attachments to structures, including but not limited to porches, landings, fire escapes, decks, railings, chimneys, and exterior stairs that likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- h. Fencing that is in disrepair, deteriorated or collapsed or does not function as intended.

- i. A portion of a building or structure remains on a site when construction or demolition work is abandoned.
 - j. The building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence
- (7) Debris.
- a. Abandoned, discarded or unused objects, or equipment such as: vehicles, furniture, stoves, refrigerators, freezers, toilets, water heaters, air conditioners, sinks; all ashes, cinders, slops, filth, excrement, boards, lumber scraps, sawdust, wood or metal shavings, rubber, old tires, plastic containers, bags, wrappers, oil, coal, gasoline, paint, dirt, dust, straw, soot, sticks, boxes, barrels, buckets, kegs, crates, cans, bottles, cartons, paper, trash, leavings, rubbish, manure, broken ware, iron or other metal, rags old wearing apparel, sweepings, refuse, debris, vehicle parts, broken concrete, slag, garbage, offal, putrid fish, meat entrails, decayed fruits or vegetables, wastewater, animal or vegetable products or matter, broken glass, bones, tacks, nails, wire, dead limbs, brush, logs, weeds, foliage or shrub cuttings or clippings, or any other offensive or disagreeable substance or things thrown, cast dropped, blown, spilled, poured, discharged, or swept, left or deposited by anyone in or upon any premises.
 - b. Building material abandoned or stored in an area where construction is not in progress and in an area not properly zoned for such storage; however, such storage shall be permitted in an area where construction is in progress and a valid building permit issued by the County is in effect. Such permitted storage shall not extend more than thirty (30) days beyond the expiration of the building permit or completion of construction, whichever first occurs. Usable building materials for use on the premises may be temporarily stored in the open.
 - c. Except that this subsection shall not apply to sanitary landfills operating pursuant to a valid permit issued by the Commission.

(8) Inoperable, Junked, Etc., Vehicles.

- a. Any unlicensed, inoperable, partially dismantled, junked, wrecked, discarded motor vehicle, motor boat or machinery or major parts of such vehicle, boat or machinery parked on a private yard, public street, road, or alley for a period in excess of seventy-two (72) hours.
- b. Farm machinery parked in a residential area or on public streets.
- c. Except that this section shall not apply to any vehicle, or machinery in an enclosed building or so located upon the property as not to be readily visible from any public place or from any surrounding private property; or with regard to a vehicle or machinery in an appropriate storage place or depository maintained in a lawful place and manner by the County or

any other public agency or entity, or in a zoning district permitting such use.

- (9) Insect And Rodent Harborage.
 - a. Maintenance of grounds, buildings, and structures with insect or rodent harborage and/or infestation.
 - b. Maintenance of an accumulation of debris, which may provide rodent harborage or breeding places for flies, mosquitoes, and other pests.
 - c. Storage of lumber, pipe, and other building materials stored less than one foot above ground to prevent rodent harborage.
 - d. Maintenance of exterior openings in or beneath any structure or building without wire mesh or other suitable screening material.
 - e. Growth of brush, weeds, undergrowth, and grass allowing harborage of ticks, chiggers, and other noxious insects.
 - f. Storage of refuse outside containers or in containers that are not fly-tight, watertight, and rodent proof.
 - g. Stagnant pools of water allowed to accumulate.
- (10) Land Conditions.
 - a. Any pit, basin, hole, or other excavation which is unguarded and dangerous to life, or has been abandoned, or is no longer used for the purpose for which it was construction, or is maintained contrary to law.
 - b. Any use that produces vibration, concussion, dust, fly-ash, odor, noxious gases, heat, or glare at any point on the lot line.
 - c. Any use that produces a noise level greater than that level produced by the average traffic of the area discernible at the property and road boundaries.
 - d. Any use in a home occupation of mechanical equipment which makes any loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others.
- (11) Sewage Disposal Systems.
 - a. Malfunctioning Sewage Disposal Systems which allow polluted, raw or partially treated waste water or effluent to be deposited or stand upon any premises or result in contamination of surface waters, groundwater, or waters of the State, except when allowed by prior approval of the Health Department.

- b. Malfunctioning Sewage Disposal Systems which allow emission of any offensive, noxious or disagreeable odor.
- c. Discharge of effluents from sewage treatment facilities into waters of the State.
- d. Disposal of sewage, chemicals, grease, oil, antifreeze, explosive, radioactive material, poisons, or other materials that may result in the contamination of surface waters or groundwater or present a nuisance or imminent health hazard.

(12) Swimming Pools.

- a. Private swimming pools not enclosed in protective fence or other permanent structure at least four feet in height with a locked gate.
- b. Private swimming pools located within ten (10) feet from overhead electrical conductors.
- c. The discharge of water from swimming pools or swimming pool backwashes onto adjoining property. Such discharge shall be directed and channeled into the public storm sewer system. If no sewer is available, such discharge shall remain on owner's property.

(13) Vegetation.

- a. A tree that constitutes a hazard to the safety of persons or of property.
- b. Weeds that emit noxious odors, any plant capable of poisoning, or noxious plants allowed to stand any season of the year.
- c. The following are declared noxious plants:
 - i. Musk thistle, Scotch thistle, or Canadian thistle;
 - ii. Multiflora rose unless cultivated or used for understock for cultivated roses;
 - iii. Bindweed;
 - iv. Cut-leaved teasel and common teasel;
 - v. Kudzu vine;
 - vi. Spotted knapweed;
 - vii. Purple loosestrife (*Lythrum salicaria*), and any hybrids thereof;
 - viii. Johnson grass;
 - ix. Marijuana;
 - x. Any other weed designated as noxious by rules and regulations promulgated by the director of the Missouri Department of Agriculture.
- d. Except that this section shall not apply to compost piles including grass, dead limbs, leaves, brush, logs, weeds, foliage, shrub cuttings or clippings which are permitted as part of a compost pile located on a lots or tracts in or used for single-family residential purposes. On single family residential lots or tracts, the compost piles:

- i. Shall be located in the rear yard only. No compost piles are allowed in front or side yards. Compost piles may be no less than fifteen (15) feet from any other building on the premises.
- ii. May contain the aforementioned materials as well as manure, straw, hay, sawdust, and soil.
- iii. Shall be no larger than one hundred fifty (150) cubic feet. A pile shall not exceed four (4) feet in height. Only one compost pile is permitted on any residential premises up to one acre. On residential premises of more than one acre, no more than two (2) compost piles are permitted.
- iv. Shall be maintained in an enclosure and must be in moist condition. Permitted enclosure materials include woven wire or wood slat fence, cement blocks or bricks, and boards of lumber.
- v. If a property owner cannot meet the placement, size, or quality standards, he or she may establish other reasonable compost piles with the written approval of the Enforcement Officer.

Sec. 1106. Prohibition Of Nuisances.

- (1) It shall be unlawful for any owner or occupant of any lot, tract, or parcel of land to cause or permit any nuisance as defined in this article to be created or remain upon his property and it shall be the duty of owner or occupant to abate and remove any such nuisance from such premises.
- (2) No owner or occupant shall permit, cause, keep, maintain, or do any nuisance, as defined by the laws of the state, the common law, or ordinances of the County, or cause to be committed, caused, kept, maintained, or done any such nuisance within the unincorporated limits of the County.

Sec. 1107. Applicability Of Article To Legal Entities.

When the owner or occupant of the premises on which a nuisance has been determined to exist is a legal entity, any officer or member of such entity or the person in charge of the local office of such corporation shall be guilty of violating the provisions of this chapter.

Sec. 1108. Penalty.

- (1) Failure to comply with the notice of declaration of nuisance within a reasonable time or failure to proceed continuously without unnecessary delay is a misdemeanor. Upon conviction, violators may be fined in an amount not to exceed \$1,000.00 per day for which any nuisance remains on any premises.
- (2) Each day on which any nuisance shall remain on any premises after the duty of the owner or occupant thereof arises to remove or abate the same, shall constitute a separate offense, for which the owner or occupant thereof may be arrested, tried, and punished separately.

Sec. 1109. Severability.

If any section, subsection, sentence, clause, phrase, or portion of the Chapter is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction,

such decision shall not affect the validity of the remaining portions of this Chapter. The Commission declares that it would have adopted this Chapter and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

ARTICLE II. ABATEMENT OF NUISANCES

Sec. 1201. Enforcement Through Civil Action.

In addition to the abatement procedure provided hereinafter, the County may apply to a court of competent jurisdiction for injunctive relief to either prohibit the continuance of any nuisance or for an order to abate any nuisance. Such application for relief may be made by seeking a temporary restraining order, temporary injunction and/or permanent injunction.

Sec. 1202. Duties Of Enforcement Officer.

- (1) Administration. The Enforcement Officer is hereby authorized to enforce the provisions of this Chapter. The Enforcement Officer shall have the power to render interpretations of this Chapter and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this Chapter.
- (2) Inspections. The Enforcement Officer is hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this Chapter.
- (3) Supervision.
 - a. The Enforcement Officer shall supervise all inspectors of Sewage Disposal Systems.
 - b. The Enforcement Officer shall supervise all inspectors of fire hazards.
 - c. Except as provided herein, all other inspections under this Chapter shall be supervised by the Zoning Officer.

Sec. 1203. Inspection Of Work.

All buildings or structures within the scope of this Chapter and all construction or work for which a permit is required shall be subject to inspection by the Enforcement Officer in accordance with and in the manner provided by this Chapter.

Sec. 1204. Right To Entry.

When it is necessary to make an inspection to enforce the provisions of this Chapter, or when the Enforcement Officer has reasonable cause to believe that there exists in a building or structure or upon a premise a condition which is contrary to or in violation of this Chapter which makes the building, structure, or premise unsafe, dangerous or hazardous, the Enforcement Officer may enter the building, structure, or premises at reasonable times to inspect or to perform the duties imposed by this Chapter, provided that if such building, structure, or premises be occupied that

credentials be presented to the occupant and entry requested. If such building, structure, or premise be unoccupied, the Enforcement Officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the Enforcement Officer shall have recourse to the remedies provided by law to secure entry.

Sec. 1205. Notice To Abate Nuisances.

Whenever the Enforcement Officer shall have determined that a nuisance exists on any premises within the unincorporated County limits, but that is not immediately necessary for the protection of the health and welfare of the inhabitants of the County, the Enforcement Officer shall give at least thirty (30) days written notice to the owner, occupant, or agent of the premises where such nuisance exists and order immediate abatement of the nuisance and include the following:

- (1) The nature of such nuisance and that same constitutes a nuisance upon such property;
- (2) Describe the premises where the nuisance is alleged to exist or to have been committed;
- (3) Specify that the property is to be vacated, if such be the case, reconditioned, repaired, or removed;
- (4) Provide a reasonable time for completion of abatement of the nuisance;
- (5) Order the owner/occupant to commencing abatement within thirty (30) days of Notice; and
- (6) Advise the owner/occupant of his right to request a hearing within thirty (30) days of the date of the notice to abate nuisances.

Sec. 1206. Service Of Notice To Abate Nuisances.

Notices to abate nuisances shall be served upon the owners or occupants of the premises by delivery of a notice to them personally or by leaving such copy at their usual place of abode with a member of the family over the age of fifteen (15) years or by certified mail, return receipt requested, addressed to the owner, occupant or agent. If one or more persons to whom such notice is addressed cannot be found after diligent effort to do so, service may be made upon such person by causing such notice to be published in a newspaper of general circulation. If the owner or occupant is a corporation, notice shall be served upon an officer, a person in charge of any local business office or its registered agent or any agent authorized by appointment or required by law to receive service of process.

Sec. 1207. Duty To Abate.

It shall be the duty of the owner or occupant of private property, his agent, or the person causing or maintaining any nuisance thereon to abate the same after order by the Enforcement Officer or the Board.

Sec. 1208. Hearing.

Upon failure to commence abatement of nuisances within the time specified in the notice to abate the nuisance, or upon failure to proceed continuously with the work without unnecessary delay, the Enforcement Officer shall provide a hearing upon the matter, giving the affected parties at least ten (10) days written notice of the hearing. Any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearings, if the evidence supports a finding that the property is a nuisance or detrimental to the health, safety, or welfare of the residents of the County, the Enforcement Officer shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the property to be a nuisance and detrimental to the health, safety, or welfare of the residents of the County and ordering the nuisance abated. If the evidence does not support a finding that the property is a nuisance or detrimental to the health, safety, or welfare of the residents of the County no order shall be issued.

Sec. 1209. Failure To Abate.

If the owner fails to begin abating the nuisance within seven days of receiving notice that the nuisance has been ordered removed, the Enforcement Officer shall cause the condition which constitutes the nuisance to be removed. If the Enforcement Officer causes such condition to be removed or abated, the cost of such removal shall be certified to the county clerk or officer in charge of finance who shall cause the certified cost to be included in a special tax bill, or added to the annual real estate tax bill, at the county collector's option, for the property and the certified cost shall be collected by the county collector in the same manner and procedure for collecting real estate taxes. If the certified cost is not paid, the tax bill shall be considered delinquent, and the collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property until paid.

Sec. 1210. Enforcement Of The Order Of The Enforcement Officer Or The Board.

- (1) *General.* After any order of the Enforcement Officer or the Board made pursuant to this Chapter shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.
- (2) *Failure To Obey Order.* If, after any order of the Enforcement Officer or Board made pursuant to this Chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Enforcement Officer may (i) cause such person to be prosecuted under subsection 1 of this section, (ii) institute any appropriate action to abate such building, structure, or property as a public nuisance, or (iii) the Enforcement Officer may cause such nuisance to be abated forthwith by any appropriate means.
- (3) The Enforcement Officer, or one contracted to do work, may enter the premises upon which such nuisance is situated for the purpose of abating same with or without the consent of the owner thereof without being guilty of trespass.

Sec. 1211. Extension Of Time To Perform Work.

Upon receipt of an application from the person required to conform to an order and by agreement of such person to comply with the order if allowed additional time, the Enforcement Officer may

grant an extension of time within which to complete said repair, rehabilitation, or demolition if the Enforcement Officer determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Enforcement Officer's authority to extend time is limited to the physical abatement, repair, rehabilitation, or demolition of the premises and will not in any way affect the time to appeal the notice and order.

Sec. 1212. Interference With Repair Or Demolition Work Prohibited.

No person shall obstruct, impede, or interfere with any officer, employee, contractor, or authorized representative of this County, or with any person who owns or holds any estate or interest in any building, structure, or lot which has been ordered to be abated, repaired, vacated, or demolished under the provisions of this Chapter; or with any person to whom such building has been lawfully sold pursuant to the provisions of this Chapter, whenever such officer, employee, contractor, or authorized representative of the County, person having an interest or estate in such building, structure, or lot, or purchaser is engaged in the work of abating, repairing, vacating, or demolishing any such building, structure, or lot pursuant to the provisions of this Chapter, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Chapter.

ARTICLE III. SPECIAL RULES FOR ABATEMENT OF DANGEROUS BUILDINGS AND STRUCTURES

Sec. 1301. Purpose And Scope.

- (1) *Purpose.* It is the purpose of this Article to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by the Zoning Order, or otherwise available by law to be required to be repaired, vacated, or demolished whereby such buildings or structures which from any cause are detrimental to the health, safety or welfare of the general public or their occupants.

The purpose of this Article is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Article.

- (2) *Scope.* The provisions of this Chapter shall apply to all dangerous buildings and structures as defined, in Section 714.1.1 of the Zoning Order, under this Chapter, or which may hereafter become dangerous in this jurisdiction.

Sec. 1302. Proceedings.

- (1) *Commencement of proceedings.* When the Enforcement Officer has inspected or caused to be inspected any building or structure and has found and determined that such building or structure is a dangerous building or structure, the Enforcement Officer shall commence proceedings to cause the repair, restoration, vacation, or demolition of the building or structure.
- (2) *Parties.* The record owner, occupant, lessee, mortgagee, agent and other persons having an interest in the building or structure as shown by the land records of the County Recorder of Deeds shall be made parties.

- (3) *Notice.* The Enforcement Officer shall issue a notice of the determination of a dangerous building or structure directed to the record owner, occupant, lessee, mortgagee, agent and other persons having an interest in the building or structure as shown by the land records of the County Recorder of Deeds.
- a. The notice shall contain:
- i. The street address and a description sufficient for identification of the premises upon which the building or structure is located;
 - ii. A statement that the Enforcement Officer has declared the building or structure to be a nuisance, with a brief and concise description of the conditions found to render the building or structure a nuisance;
 - iii. A statement that the property is to be vacated, if such be the case, reconditioned, or removed; and
 - iv. A reasonable time for commencement of repair or demolition.
- (4) *Service Of Notice.* The notice, and any amended or supplemental notice, shall be served upon the owner of record; and one copy thereof shall be served on each of the following if known to the Enforcement Officer or disclosed from official public records; the occupant, lessee, mortgagee, agent and any others having an interest in the property as per the recorder of deeds records. The failure of the Enforcement Officer to serve any person required herein to be served shall not invalidate any proceedings thereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.
- (5) *Method Of Service.* Service of the notice shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice by personal service or certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county. If no address is known, then a copy of the notice shall be mailed to the person at the address of the building or structure involved but if service cannot be had by either method then service may be had by publication. The failure of any person to receive such a notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.
- (6) *Proof Of Service.* Proof of service of the notice shall be certified to at the time of service by written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to a copy of the notice and order retained by the Enforcement Officer.

Sec. 1303. Repair, Vacation And Demolition.

The following standards shall be followed by the Enforcement Officer (and by the Board of Adjustment if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure.

- (1) Any building or structure declared a dangerous building or structure under this Chapter shall be made to comply with one or more of the following:
 - a. The building or structure shall be repaired in accordance with, and in the manner provided by this Chapter, applicable to the type of substandard conditions requiring repair; or
 - b. The building or structure shall be demolished at the option of the building owner; or
 - c. If the building or structure does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.
- (2) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

Sec. 1304. Notice To Vacate.

- (1) *Posting.* Every notice to vacate shall, in addition to being served as provided in Section , be posted at or upon each exit of the building or structure and shall be in the following form:

DO NOT ENTER
UNSAFE TO OCCUPY
It is a misdemeanor to occupy this building (or structure) or to
remove or deface this notice.
ENFORCEMENT OFFICER
COUNTY OF BUCHANAN
Date: _____
Enforcement Officer: _____
Property Address: _____

- (2) *Compliance.* No person shall remain in or enter any building or structure which has been so posted, except that entry may be made to repair, demolish or remove such building or structure under permit. No person shall remove any such notice after it is posted until the required repairs, demolition or removal have been completed and a "Certificate of Occupancy" issued pursuant to the provisions of the Building Code.

THIS CHAPTER

Sec. 1305. Penalty.

- (1) Entry into any building or structure which has been so posted, except to repair, demolish or remove such building or structure under permit is a misdemeanor.
- (2) Removal of a posted notice to vacate before the required repairs, demolition or removal have been completed and a "Certificate of Occupancy" issued is a misdemeanor.

- (3) Upon conviction, violators shall be fined in an amount not to exceed \$1,000.00 and/or one year of imprisonment.

Sec. 1306. Failure To Comply With Notice.

Upon failure to commence work of reconditioning or demolition of a dangerous building or structure within the time specified or upon failure to proceed continuously with the work without unnecessary delay, the Enforcement Officer shall call and have a full and adequate hearing upon the matter, giving the affected parties at least ten (10) days written notice of the hearing. Any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearings, if the evidence supports a finding that the building or structure is a nuisance or detrimental to the health, safety, or welfare of the residents of the County, the Commission shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the building or structure to be a nuisance and detrimental to the health, safety, or welfare of the residents of the County and ordering the building or structure to be demolished and removed, or repaired. If the evidence does not support a finding that the building or structure is a nuisance or detrimental to the health, safety, or welfare of the residence of the County no order shall be issued.

Sec. 1307. Emergency Abatement of Dangerous Buildings or Structures Without Notice.

- (1) Whenever it reasonably appears that there is an immediate danger to the health, safety, or welfare of any person, the Enforcement Officer may take emergency measures to vacate and repair or demolish a dangerous building or structure immediately in order to secure the general health of the County, or any of its inhabitants.
- (2) The Enforcement Officer is authorized to abate the dangerous building or structure without notice, and he may use any suitable means or assistance for that purpose, whether employees of the County or day laborers specially employed for that purpose, or any other help or assistance necessary therefor.
- (3) The Enforcement Officer shall certify the cost of abating such dangerous building or structure to the County Collector of Revenue as set forth in Section (Special County Assessment).
- (4) The Enforcement Officer may, in addition to any other remedy herein provided, cause the dangerous building or structure to be repaired, secured, demolished or the property cleaned up and the cost of performance shall be certified to the County Collector of Revenue who shall cause a special tax bill or assessment against the property to be prepared and collected by the county collector unless the dangerous building or structure is demolished, secured, or repaired by a contractor pursuant to an order issued by the County and such contractor files a mechanic's lien against the property where the dangerous building or structure is located. The contractor may enforce this lien as provided in R.S.Mo. §§ 429.010 to 429.360.
- (5) At the request of the owner the tax bill may be paid in installments over a period of not more than ten (10) years. The tax bill from date of its issuance shall be deemed a personal debt against the property owner and shall also be a lien on the property until paid.

- (6) Except if there are proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure caused by or arising out of any fire, explosion, or other casualty loss, the payment of up to 25% of the insurance proceeds shall be paid to the County and the money shall be placed in an interest bearing account and these proceeds shall be used to pay for work performed to bring the building into compliance with the order. If the covered claim payment is less than 50% of the face value of the insurance policy covering the building or structure then no such payment shall be made to the County. The County shall release any insurance moneys and interest proceeds to the insured within thirty (30) days after receipt of such insurance moneys, unless the County has instituted legal proceedings pursuant to Subsection 4 of this Section. This order does not make the County a party to any insurance contract, and the insurer is not liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy. If there be no insurance moneys nor any contractor willing to perform the work by mechanic's lien and the owner does not agree to the tax billing method then the building or structure may be sold and the moneys from the sale used to perform the order with any surplus moneys being paid to the person or persons lawfully entitled thereto. Any named mortgagee on the insurance policy shall maintain priority over any obligation under this chapter.

Sec. 1308. Special County Assessment.

Upon the order of the Enforcement Officer or Board causing a dangerous building or structure to be abated as aforesaid, the Enforcement Officer shall determine the cost of such abatement, including as a portion thereof the reasonable cost of administering the provisions of this Chapter with respect to the property affected. The Enforcement Officer shall certify a statement of such costs, and of service of notice on the owner, describing the real property upon which such abatement was accomplished, to the County Collector as a special assessment upon such real property. Provided, however, that if any appeal shall have been filed of the order from the Enforcement Officer within the period allowed by law therefor, such costs of abatement shall not be so certified to the County Collector unless and until final judgment shall have been rendered on such appeal confirming such order. Upon receipt of such certification, the County Collector shall immediately enter such property in appropriate books kept for that purpose, and shall cause a copy of such statement to be sent to the owner of such property by regular United States mail, and the original thereof to be retained in that office appropriately filed. Each such special assessment shall constitute a lien upon the real property described thereon and shall be payable within sixty (60) days after the date of issuance without interest and thereafter, with interest from the date of its issue until paid at the rate of one percent (1%) per month. Such lien shall remain in effect for a period of five (5) years from the date of verification to the County Collector, at which time it shall automatically terminate unless legal proceedings to enforce such a lien shall have been instituted. Such lien may be enforced by any lawful method, action or procedure.

Sec. 1309. Notice Of Lien.

If such special assessment shall not be paid in full within sixty (60) days after date of issuance thereof, the County Collector shall cause to be filed in the office of the Recorder of Deeds of Buchanan County, Missouri, a "notice of lien," which shall state the following information:

- (1) The name and last known address of the owner.

- (2) The description of the land subject to lien.
- (3) The amount and date of issuance of said special assessment, and that the same bears interest at the rate of one percent (1%) per month until paid.
- (4) A statement that such amount and interest constitutes a lien upon the land, under the Buchanan County Code of Buchanan, Missouri, until said special assessment with such interest from the date of issuance be paid in full.
- (5) Is certified as correct by the County Collector.

Sec. 1310. Recordation Of Notice And Order.

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the Enforcement Officer shall file in the County Recorder of Deeds Office a certificate describing the property and certifying (i) that the building or structure is a dangerous building or structure and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building or structure demolished so that it no longer exists as a dangerous building or structure on the property described in the certificate, the Enforcement Officer shall file a new certificate with the County Recorder of Deeds Office certifying that the building or structure has been demolished or all required corrections have been made so that the building or structure is no longer dangerous, whichever is appropriate.

ARTICLE IV. JUNKYARDS

Sec. 1401. General.

- (1) No junkyard as defined in the Zoning Order shall be established, maintained or operated within two hundred feet of any other state or county road in this state unless such junkyard is fully screened from the state or county road by a permanent tight board or other screen fence not less than ten feet high, or of sufficient height to fully screen the wrecked or disabled automobiles or junk kept therein from the view of persons using the state or county road on foot or in vehicles in the ordinary manner.
- (2) Any person, firm or corporation who establishes, conducts, owns, maintains or operates a junkyard without complying with the provisions of this section shall, upon their first conviction, be guilty of a class C misdemeanor and shall be ordered to either remove the junk from the property or build a fence as described in this section. Any person, firm or corporation who establishes, conducts, owns, maintains or operates a junkyard without complying with the provisions of this section shall, upon their second or subsequent violations, be guilty of a class A misdemeanor and shall be ordered to either remove the junk from the property or build a fence as described in this section.

ARTICLE V. APPEALS

Sec. 1501. General.

- (1) *General.* The Board shall hear and decide appeals of orders, decisions or determinations made by the Enforcement Officer relative to the application and interpretations of this Chapter, except as otherwise provided herein.

Sec. 1502. Form Of Appeal.

Any person entitled to notice under Section 1205., Notices to Abate Nuisances, may appeal from any notice and order or any action of the Enforcement Officer under this Chapter to the Board by filing at the office of the Enforcement Officer a written appeal on forms provided by the Enforcement Officer. At minimum the written appeal shall contain:

- a. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
- b. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
- c. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
- d. The signatures of all parties named as appellants and their official mailing addresses.
- e. The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.

Sec. 1503. Time Of Appeal.

- (1) The appeal shall be made in writing as provided in this Chapter and filed with the Enforcement Officer within thirty (30) days from the date of service of such notice and order. However, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated, the Enforcement Officer make take emergency measures to vacate and repair or demolish a building or structure to abate a nuisance immediately in order to secure the general health of the County, or any of its inhabitants while the appeal is pending.
- (2) If such hearing is requested in writing and delivered to the Enforcement Officer within said thirty (30) day period of time, the Board shall conduct a hearing as soon as may be practicable, but not earlier than ten (10) days after notification to the owner/occupant of the hearing date, place, and time, by personal service or by certified or registered mail.
- (3) Appeals arising from notices and orders related to Sewerage Systems shall be filed within forty-five (45) days of the date of the decision of the Zoning Officer

or Commission. Appeals arising from a Sewerage System nuisance shall be conducted no less than ten (10) days after notification of such alleged owner/occupant of the hearing date, place and time, by personal service or by certified or registered mail.

- (4) Hearings for nuisances arising from Dangerous Buildings shall be initiated by the Enforcement Officer pursuant to the Special Rules For Abatement Of Dangerous Buildings And Structures in Article III of this Chapter.

Sec. 1504. Scheduling And Noticing Appeal For Hearing.

As soon as practicable after receiving the written appeal, the Board shall fix a date, time and place for the hearing of the appeal by them. Such date shall not be less than ten (10) days from the date the appeal was filed with the Enforcement Officer. Such notice is to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

Sec. 1505. Effect Of Failure To Appeal.

Failure of any person to file an appeal in accordance with the provisions of Section 1503., Time of Appeal, shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

Sec. 1506. Scope Of Hearing On Appeal.

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

Sec. 1507. Staying Of Order Under Appeal.

Except for vacation orders and emergency orders to repair or demolish a building or structure to abate a nuisance immediately in order to secure the general health of the County, or any of its inhabitants, enforcement of any notice or order of the Enforcement Officer issued under this Chapter shall be stayed during the pendency of an appeal which is properly and timely filed.

Sec. 1508. Form Of Notice Of Hearing.

The notice to appellant shall contain the following information:

- (1) Caption and number of the case;
- (2) A statement that a hearing has been requested, the date of the request, and the name of the person requesting the hearing;
- (3) A brief statement of the matter involved;
- (4) A statement that no answer is required;
- (5) That a copy of the notice and order to abate nuisance may be obtained from the Enforcement Officer, unless a copy of the request is accompanied with the notice; and

- (6) A statement substantially in the following form:

"You are hereby notified that a hearing will be held before the Board of Appeals at _____ on the _____ day of _____, 20_____, at the hour of _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit with the Board of Zoning Adjustment."

Sec. 1509. Subpoenas.

- (1) *Filing of Affidavit.* The Board may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.
- (2) *Penalties.* Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

Sec. 1510. Procedures For Conduct Of Hearing Appeals.

- (1) *Record.* A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Board.
- (2) *Continuances.* The Board may grant continuances for good cause shown.
- (3) *Oaths-Certification.* In any proceedings under this chapter any Board member has the power to administer oaths and affirmations and to certify to official acts.
- (4) *Reasonable Dispatch.* The Board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- (5) *Rights Of Parties.* Each party shall have these rights, among others:
- a. To call and examine witnesses on any matter relevant to the issues of the hearing;

- b. To introduce documentary and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - d. To impeach any witness regardless of which party first called the witness to testify;
 - e. To rebut the evidence; and
 - f. To be represented by an attorney.
- (6) *Inspection Of Premises.* The Board may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the Board shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn. Each party then shall have a right to rebut or explain the matters so stated by the Board.

Sec. 1511. Method And Form Of Decision.

- (1) *Hearing Before Board.* When a case is heard before the Board, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.
- (2) *Form Of Decision.* The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and its Order, if it finds such nuisance to exist, that the same be abated within said period of thirty (30) days, and shall cause such findings, conclusions, and order to be served upon such owner/occupant in the same manner as provided for notice of such hearings, or by mailing a copy thereof to counsel for such owner/occupant if any such appeared at the hearing.
- (3) *Effective Date Of Decision.* The effective date of the decision shall be as stated therein.

Sec. 1512. Appeal To Circuit Court.

Any aggrieved person may appeal a final decision of the Board to the Circuit Court within thirty (30) days of the mailing or delivery of letter advising the parties of the decision of the Board as provided for in R.S.Mo. § 536.110.