

ORDINANCE NO. 14- 06

AN ORDINANCE TO THE CITY OF SOMERSET, KENTUCKY, REPEALING IN FULL ORDINANCE NUMBERS 89-16, 83-7, AND 431; AND ANY AND ALL AMENDMENTS ENACTED REGARDING SAID ORDINANCES HEREBY ARE REPEALED; AND SETTING FORTH THE NEW RULES AND REGULATIONS REGARDING CERTAIN TYPES OF PROPERTY NUISANCES EXISTING AND LOCATED ON PROPERTY WHICH IS WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF SOMERSET;

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET, KENTUCKY AS FOLLOWS:

I. NUISANCE(S).

A. Definition.

“Nuisance” shall mean, for purposes of this Ordinance: a problem structure, any condition or use of public or private property or premises, or of building exteriors which substantially annoy, injure or endanger the comfort, health, repose or safety of the public which is detrimental to the property of others, or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located, or which creates a stench or odor noxious and offensive to those in the neighborhood or passers-by on the public streets or ways.

B. Common Law and Statutory Nuisances.

In addition to what is declared in this Ordinance to be a public nuisance, those offenses which are known to the common law and in the statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this Ordinance or in accordance with any other provisions of law.

C. Duty of Maintenance of Private Property.

No person and/or entity owning, leasing, occupying, or having care, custody and/or control of any property or premises shall maintain or keep any nuisance thereon, nor shall any such person and/or entity keep or maintain such property or premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such property or premises are located. For the purposes of this Ordinance, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or persons having care, custody and/or control, or management of the property or premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware.

D. Duty of Maintenance of Streets, Sidewalks, Drainage Areas and Public Ways.

No person and/or entity shall place, throw, deposit or allow to accumulate or grow or cause to be erected or placed on any street, alley, sidewalk, gutter, storm sewer, public or private drainage ditch or drainage structure or any other public right-of-way, easement or public property, any rubbish, garbage, construction or demolition debris, landscaping debris, furniture, signs, large rocks or boulders, fences, posts, stakes, weeds, inoperative or unlicensed motor vehicle, junk or scrap metal as hereinabove declared to be a public nuisance, or any other obstruction or encroachment of any nature, except for premises authorized by the City for such purposes. The presence of such liquids or substances in or upon any street, alley, sidewalk, gutter, storm sewer, public or private drainage ditch or any public right-of-way or easement or property shall constitute a nuisance and is a violation of this Ordinance. Every person and/or entity owning, occupying or having care, custody, and/or control or management of any building or lot in the City shall also keep the sidewalk adjacent to such building or lot open and free from all ice, snow and other obstructions, barriers, and impediments of every description. In addition to any other remedies in this Ordinance, any materials in violation of this Ordinance found on City streets, sidewalks, public ways, public or private drainage areas and other public property may be removed immediately by the City with or without notice to the property owner. Notwithstanding the above provisions, temporary signs advertising the sale or lease of real estate shall be allowed in City rights-of-way. ***This Ordinance shall be read and construed in conjunction with the City's Sign Ordinance, Planning & Zoning Ordinances, Building Code and Enforcement Ordinances, Storm Water Ordinances, and/or Erosion and/or Sediment Control Ordinances, and if any of said Ordinance(s) are in conflict with this present Ordinance, the more specific and strict shall have precedent over the lesser.***

E. Certain Conditions Declared a Nuisance.

It shall be unlawful for the owner, occupant or person having care, custody, and/or control or management of any public or private land within the City to permit a public nuisance to develop thereon. Public nuisances include, but are not limited to, the following conditions:

1. Junk; scrap metal.

The storage of junk motor vehicles, motor vehicle parts, including tires, storage tanks, dumpsters, refuse/trash containers not being served by the City's Garbage/Sanitation Department, junk machinery, machinery parts, abandoned, discarded or unused appliances, objects or equipment, or scrap metal (whether recyclable or unrecyclable) within the City limits, except on premises authorized by the City for such purposes; ***(This Section should be read in conjunction with the City's Ordinance(s) addressing such items as set forth in Ordinance 07-25, and thereafter amended in Ordinance 10-04, and as thereafter may be amended by proper action of the City Council.)***

2. Accumulation of construction, demolition or landscaping debris.

All exterior property and premises shall be free from any accumulation of combustible and noncombustible waste materials, including any material resulting from maintenance, demolition, repair, alteration or construction of buildings, structures or grounds, or

landscaping or natural damage of grounds, including, but not limited to, fallen trees, tree branches, brush and yard trimmings;

3. Exterior use or storage of indoor furniture.

The use or storage of furniture which is upholstered or not designed for outdoor use in an uncovered or exposed area in which it is likely to decay, decompose or retain moisture causing a health hazard or diminution in the value of neighboring properties;

4. Compost piles.

Any compost pile which is of such a nature as to spread or harbor disease, emit unreasonable, unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects, provided that the presence of earthworms in a compost pile shall not constitute a nuisance;

5. Nauseous substances or odors.

The permitting of any offal, manure, rubbish or filth, decaying animal or vegetable matter, excessive animal excrement or any foul or nauseous substance, or nauseous or offensive odor to be emitted or to be discharged out of or flow from the premises;

6. Dangerous trees or stacks adjoining streets.

The permitting of any tree, shrubbery, hedge or other object adjoining public rights-of-way to grow or stand in such a condition that it interferes with the use, construction or maintenance of streets or sidewalks, that could cause injury to streets or sidewalks, or that causes an obstruction to drainage or poses a danger to life, limb or property of persons using the sidewalks or rights-of-way. No such person shall allow any dead tree adjoining public sidewalks or rights-of-way to stand more than three (3) feet in height;

7. Obstructions of storm water and drainage facilities.

The permitting of any limbs, leaves, grass clippings or other objects to be placed in a manner that interferes with the use or maintenance of any storm water and drainage facilities;

8. Visual obstructions of streets.

The permitting of any hedge, shrubbery, fence or other visual obstruction on any corner lot to attain a height which prohibits proper sight distance;

9. Dilapidated structures.

All buildings, walls and other structures which have been damaged by fire, decay or otherwise and which are in a state of dilapidation, deterioration or decay so as not to provide shelter, sufficient sewer, plumbing, electrical or heating facilities or which are unsound or in danger of collapse or failure and which are a danger to the safety of the public or which are vacant or abandoned and open or accessible to vagrants or passersby or which are otherwise built, erected or maintained in violation of any Ordinance;

10. Obstructions over streets.
All hanging signs, awnings, canopies, wires and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety or to be contrary to the City's applicable Ordinances, unless approved in writing by the City of Somerset;
11. Stagnant water.
All stagnant water in which mosquitoes, flies or other insects can multiply;
12. Accumulation of refuse/trash containers.
The storing or permitting the accumulation of refuse, unless such refuse is kept separately in standard refuse/trash containers or dumpsters which can be covered by solid, tight fitting lids and which have no uncovered holes, and the storing or permitting the accumulation of refuse and trash for which removal of refuse and trash is not provided;
13. Scattering garbage, etc.
The throwing, placing, or scattering of any garbage, rubbish, trash, or other refuse over or upon any premises, street or alley, either public or private, or adjacent thereto, and either with or without the intent to later remove or burn;
14. Attractive nuisances.
The allowing of any physical condition, use or occupancy of any property or premises to be an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, standing pools of water, basements, excavations, retaining walls, unsafe fences and refrigerators, freezers, ice chests, ice boxes or similar airtight box or container which has a locking device inoperable from within, without first unhinging and removing the door or lid and detaching the locking device from the door or lid;
15. Graffiti.
The allowing of any graffiti which is defined as any inscription, drawing or design that is scratched, painted, sprayed or placed on any surface of any structure that has no redeeming artistic, moral or social value;
16. Hoarding of pet animals.
The keeping of more pet animals than can be properly maintained in a healthy condition without presenting a health or safety hazard to the owners or others and without constituting a nuisance to the occupants or neighboring properties, characterized by failure to provide proper food, water, shelter, veterinary care and sanitation to the animals and resulting in squalid living conditions for the animals and the keeper and by complaints from neighbors including, but not limited to, mistreated or neglected animals, stench from the property and rodent and insect infestations; and,
17. Hoarding of materials.
The accumulation of combustible materials, trash, food, newspapers, magazines, old clothes and other items that create a serious fire and health hazard that can cause disease, contribute to vermin and/or insect infestations, affect the occupants of the building,

neighbors, public safety personnel and the general public, or violate any other City safety code.

18. **Unkempt Growth of Ground Cover.**

Weeds and/or grass cover which is in excess of twelve (12) inches in height is considered a Nuisance under this Ordinance, with exception to parcels being used for agricultural purposes.

F. Criminal Activity as a Nuisance.

1. Any building or premises where law enforcement officers have on more than one occasion in the preceding twelve (12) month period criminally cited or arrested persons for crimes involving prostitution, controlled substances, or gambling on the premises, or executed a court-issued search warrant for violations of the laws governing prostitution, controlled substances, or gambling on the premises are hereby declared a nuisance.

2. The Somerset Police Department shall notify the appropriate Department Head and/or the Mayor after criminally citing or arresting persons for crimes involving prostitution, controlled substances, or gambling on the premises, or after executing court-issued search warrants for the same offenses by providing in writing the specific violation, the address of the property on or in which the violations, warrants, or search warrants occurred, and the circumstances of the violation or warrants to the extent permissible under law. The City of Somerset shall then notify the property owner by first class mail of this violation.

3. If the City of Somerset receives information that criminal citations or arrests involving prostitution, controlled substances, or gambling have occurred, or that court-issued search warrants were executed for the same offenses at the same location within twelve (12) months of the previous incidents, it shall send a notice of violation to the property owner describing the nuisance and requesting that the nuisance be abated within a specified time. If a property owner or tenant reports such criminal activity, such citations or arrests will not be considered a criminal nuisance.

4. Should the criminal activity not be abated, a citation may be issued pursuant to the procedures hereinbelow.

5. In addition to other remedies set out in this Ordinance, upon failure of the property owner to request a hearing before a hearing officer, designated by the City of Somerset, or the failure of the property owner to abate the nuisance pursuant to any orders of the Code Enforcement Officer and/or the City, the City of Somerset, and/or their designee is hereby authorized to order the closing and vacating of the premises or portions thereof to abate the criminal activity nuisance. Such closing and vacating shall be for a period of time as the City of Somerset reasonably may direct, but in no event may the closing and vacating be for a period of more than one year from the date of closing. If the premises consist of multi-unit dwellings, or mixed uses, and the criminal activity nuisance has occurred solely with a unit or units, the authority to close and vacate is restricted to the unit or units in which the criminal activity

nuisance has occurred and does not extend to any other unit in the premises. Upon the failure of the property owner to comply with an order to close and vacate, the City of Somerset may, at their discretion, prohibit the furnishing of utility services to the premises, and may use any other legal remedy available.

6. It shall be a defense to a violation of this subsection that the owner has instituted an eviction proceeding against the offending tenant or occupants of the offending premises within thirty (30) days of the date of the notice of violation and the owner completes the eviction within sixty (60) days of the date of commencement of the action or as soon thereafter as court procedures allow.

II. ABATEMENT.

A. Issuance of Notice of Violation or Citation.

1. Enforcement proceedings for this Ordinance shall be initiated by the issuance of a Notice of Violation by a Code Enforcement Officer, or a Citation by a Police Officer.

2. Except as provided below, if a Code Enforcement Officer and/or a Police Officer believes, based on his personal observation or investigation, that a person has violated this Ordinance, he/she is authorized to issue a Citation to the violator. In lieu of a citation, the Code Enforcement Officer and/or the Police Officer may give the violator a Notice of Violation stating that a violation has occurred, and allow the violator a specified period of time to remedy the violation without assessing a fine. The time allowed by the City shall depend on the nature of the violation and the time necessary to remedy the violation. If the violator fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer and/or a Police Officer are authorized to issue a Citation. Informal settlement/mediation of matters under this Ordinance is encouraged.

3. The Notice of Violation or Citation shall be delivered to the violator at his last known address as it appears from the current tax assessment roll. Such Notice of Violation or Citation shall be deemed to be properly served if given by certified mail, return receipt requested, by personal delivery, or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the Notice. Service by certified mail shall be presumed to have been served on the third day following mailing. A copy shall also be posted in a conspicuous place in or about the structure or premises affected by such Notice of Violation or Citation. When the Violation involves a fire damaged structure, a copy of the Notice of Violation or Citation shall also be delivered to any mortgage company and any insurance company with verified interest in the property. Every reasonable attempt shall be made to determine all verified interests through the City Attorney.

4. Notices of Violation or Citations involving streets, sidewalks and public ways shall be sent to the property owner or other person having control or management of the premises or property adjacent to or fronting the street, sidewalk or public way.

5. Notices of Violation or Citations involving motor vehicles shall be sent to the property owner or other person having control or management of the premises or property, and the motor vehicle owner if known. Upon the failure of the violator to comply with the directives of the citation or of any orders of the Code Enforcement Officer, the appropriate City official is authorized to send employees or authorized agents of the City upon the property to remedy the situation and to abate the nuisance by removing the vehicle. The vehicle must be reclaimed by the vehicle owner or authorized representative within thirty (30) days upon furnishing proof of ownership, payment of any civil penalty assessed, towing and storage charges, and an acceptable statement of vehicle disposal or relocation that would immediately comply with the laws of the Commonwealth and ordinances of the City. If the vehicle is not reclaimed within thirty (30) days following the date on which it was taken up, it is deemed abandoned and shall escheat to the City. This Section should be read in conjunction with Ordinances 07-25 and 10-04.

6. Any Notices of Violations and/or Citations issued by the proper City official shall contain the following information:

- a. A description of the real estate sufficient for identification;
- b. The name and address of the person to whom the Notice/Citation is issued;
- c. The date and time the violation was observed and the date and time of issuance of the Notice/Citation;
- d. The facts constituting the violation;
- e. The section of the Ordinance or other code violated;
- f. The name of the code official and/or officer issuing the Notice/Citation;
- g. The procedure for the person to follow in order to pay the civil fine or to contest the Notice/Citation;
- h. A notice that the civil fine may be imposed per day for the violation if the person does not contest the Notice/Citation;
- i. The maximum civil fine that may be imposed per day for the violation if the person elects to contest the Notice/Citation; and,
- j. A statement that if the person fails to pay the civil fine set forth in the Notice/Citation, or to contest the Notice/Citation within the time allowed, the person shall be deemed as having waived the right to a appeals hearing before a hearing officer as designated by the City, and the determination that a violation was committed shall be final.

7. Emergencies; Safety and/or Welfare of the Public Determined to be an Imminent Danger:

Nothing in this Section shall prohibit the City from correcting a violation through self help, or taking immediate action to remedy a violation of Ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible. The City may file liens on the property to recover the City's costs of labor and material, civil fines, and other expenses including reasonable attorney fees. In such cases, after issuing a Notice/Citation, the Code Enforcement Officer shall deliver a copy of the Notice/Citation to the City Attorney and

the Violator. Upon receipt of a said Notice/Citation, the violator shall respond to the Citation within seven (7) days by either paying the civil fine, or requesting in writing a hearing before a an approved mediator, or other qualified contract attorney, hereinafter referred to as the “hearing officer” as appointed by the City of Somerset, in order for the Violator to contest the Citation before a neutral third party. If the violator responds by paying the civil fine, the violator shall still be required to remedy the violation. If the violator fails to remedy the violation or to request a hearing within the designated time, the City is authorized to issue another Citation and to remedy the violation. After determining that compliance has been achieved in the allowed correction time, the Code Enforcement Officer shall report such to the City Attorney and/or the Mayor.

B. Permit to Repair Does Not Extend Compliance Time.

When abatement of a violation by repair requires approval to be obtained from the City of Somerset, the completion time shall correspond to the correction time allowed in the Notice of Violation issued by the City of Somerset, or the correction time established by this Ordinance. It shall be the duty of the violator to notify the City of Somerset that additional time is needed and to provide justification why the completion time is inadequate. The City may extend the completion time if it is determined that the completion time is not reasonable given the facts of a particular violation. Any cessation of the normal construction or repairs may cause the permitted extension of time to be revoked.

C. Required Permit to Demolish Does Not Extend Compliance Time.

When abatement of a violation is achieved through demolition, permission shall be obtained from the City of Somerset by and through the Code Enforcement Officer. The completion time shall correspond to the correction time allowed in the Notice of Violation issued by the City, or the correction time established by this Ordinance. Any cessation of the demolition may cause the permitted extension of time to be revoked.

D. City May Correct Violation.

If the violator does not request a hearing before a hearing officer as defined herein, and the property is not brought into compliance, or if the Code Enforcement Officer orders the property be brought into compliance and the violator refuses, failure to so comply shall constitute permission to an official, employee, or other authorized agent of the City to enter upon the property to remedy the situation and to abate the violation.

E. Lien, Fines, Charges and Fees.

1. The City shall possess a lien on property owned by the person found by a final, appealable order of a hearing officer as defined herein, or by a final judgment of a Court of Competent Jurisdiction, to have committed a violation of a City Ordinance for all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of the Ordinance, including Court Costs and reasonable attorney’s fees.

2. The lien shall be recorded in the office of the County Clerk and shall be a notice to all persons from the time of its recording, and shall bear interest at twelve (12%) percent per annum thereafter until paid.

3. The lien shall take precedence over all other subsequent liens except state, county, school board, and city taxes, and may be enforced by judicial proceedings as permitted under the laws of the Commonwealth.

4. In addition to the remedy prescribed above, the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of this Ordinance, including Court Costs and reasonable attorney's fees. The City may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

III. PENALTIES.

A. Property Code Fine Schedule.

Violations of this Ordinance shall be subject to the following schedule of civil fines:

1. If a Citation for a violation of this Ordinance is not contested by the person charged with the violation, the maximum penalties below shall apply; however, the City may waive any or all of a penalty for an uncontested violation, if in its discretion, the City determines that such waiver will promote compliance with this Ordinance. The penalties listed below are for each day a violation continues, beginning on the first day after the ending date of the correction period given in the Citation. A second offense is an offense that occurs within five (5) years of the determination by the City, and/or upon a determination through an Appeal of a Violation under this Ordinance, that there was qualifying prior offense(s). All others are those that occur within five (5) years of the determination by the City, and/or upon a determination through an Appeal of a Violation under this Ordinance, that there were two (2) or more qualifying prior offenses.

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
Property Maintenance and Nuisances			
Structural Violations	\$ 75.00	\$ 150.00	\$ 300.00
Non-Structural Violations	\$ 50.00	\$ 100.00	\$ 200.00

b. If the citation is contested and a hearing before a hearing officer as defined herein is required, the following maximum penalties may be imposed at the discretion of the ruling party:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
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Property Maintenance and Nuisances

Structural Violations	\$ 150.00	\$ 300.00	\$ 600.00
Non-Structural Violations	\$ 100.00	\$ 200.00	\$ 400.00

IV. REPEAT OFFENDER.

A. Designation.

A person shall be classified as a repeat offender only by the recommendation and finding by the Code Enforcement Officer. The repeat offender designation shall be determined at the sole discretion of the Code Enforcement Officer. Any person designated as a repeat offender shall remain in that status until the expiration of the time period leading to the designation or the payment of outstanding fines and remedy charges, whichever is applicable.

B. Enforcement.

In addition to all of the procedures set forth above, enforcement action shall be enhanced against designated repeat offenders. No personal contact or Notices of Violation shall be required of the Code Enforcement Officer, and the Officer may cite designated repeat offenders immediately upon confirmation of a code violation. The Code Enforcement Officer may also institute a program of regular inspections involving properties of repeat offenders without the necessity of complaints. The names of designated repeat offenders may be made public by use of the City's website or other appropriate means.

C. Penalties.

If a designated repeat offender is cited for a violation of the provisions set out hereinabove, and the citation is not contested, a maximum fine of six hundred (\$600) dollars shall apply; however, the City may waive any or all of that fine for an uncontested violation, if in its discretion, the City determines that such waiver will promote compliance with this Ordinance. If the designated repeat offender contests the citation and a hearing officer as defined herein is required, the City may impose a maximum fine of one thousand two hundred (\$1,200) dollars at the discretion of the City. The Code Enforcement Officer may also classify all such civil fines as daily fines until the violation is remedied. The Code Enforcement Officer's, and/or a hearing officer's findings, that assess civil fines and remedy charges against repeat offenders shall also be considered to authorize the City Attorney to file civil actions in the appropriate Pulaski County Court against the repeat offender to collect the civil fines and remedy charges, including foreclosure actions if deemed appropriate by the City. All Court costs and reasonable attorney's fees are recoverable by the City through such an action.

V. GENERAL ENFORCEMENT.

This Ordinance shall be enforced by any code enforcement official and/or code enforcement officer as designated by the City.

VI. APPEAL OF FINAL ORDERS/FINDINGS BY CODE ENFORCEMENT OFFICER/CITY OF SOMERSET OF VIOLATION(S)

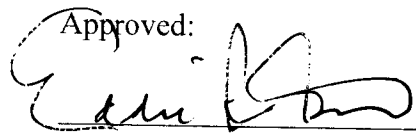
Any finding that a Violation has occurred, and/or other final Order, officially issued by the City of Somerset, may be appealed by the alleged Violator by submitting a written request to the City of Somerset asking that a hearing be held before a qualified attorney who shall serve as a hearing officer, and who shall be designated by the City of Somerset. Said qualified attorney may be the City Attorney, or at the choice of the City, may be another qualified attorney licensed to practice law in the Commonwealth of Kentucky, as determined by the City of Somerset. Any findings/orders issued by a hearing officer as set forth herein shall be deemed final and appealable Orders for purposes of seeking review by a Court of competent jurisdiction in Courts of Pulaski County, of the 28th Judicial Circuit. If the hearing officer's order/findings are upheld by the Court, or any Court thereafter acting in the capacity of an Appeals Court, then the violator may be responsible for the costs of the Court action, including, but not limited to, the City's reasonable attorney's fees, and any other costs and/or expenses incurred by the City as a result of the Violator's appeal(s).

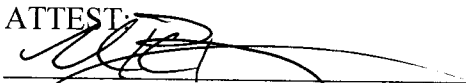
VII. SEVERABILITY; CONFLICTING ORDINANCES; REPEAL OF FORMER ORDINANCES; EFFECTIVE DATE

If any of this Ordinance is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provisions of this Ordinance shall continue in full force and effect. Any Ordinance in conflict with this Ordinance or any policies in conflict with the ones enacted herein are hereby repealed in so far as the same are in conflict herewith. This Ordinance shall hereby specifically **repeal City of Somerset Ordinances 89-16, 83-7, and 431**, and further **fully repeals any and all amendments to said former Ordinances**. This Ordinance shall be read in conjunction with Ordinances 07-25, 10-04, and any other related Ordinances not specifically repealed by this present Ordinance. This ordinance shall be in full force and effect upon passage, approval, and publication according to law.

FIRST READING 08/11/2014

SECOND READING 08/25/2014

Approved:

Mayor, Eddie Girdler

ATTEST:

City Clerk, Nick Bradley