

CHAPTER 92: NUISANCES

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GENERAL

§ 92.01 DEFINITIONS.

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

"AGRICULTURAL PURPOSES." A tract of land of five (5) acres or more, which is used as a commercial enterprise for the growing of crops or keeping of domestic animals or has a crop quota.

"AUTOMOBILE PARTS." Includes, but is not limited to, junked vehicles, machines, implements, tools, equipment, used parts for same; batteries, hub caps, scrap; discarded, abandoned and idle metal products; rubber or similar products; tires; tubes; pasteboard; paper

or any nonbiodegradable products and also wood, wood products, tree parts, and limbs.

"INOPERATIVE CONDITION." Unable to move under its own power due to defective or missing parts, and which has remained in such condition for a period of not less than ten consecutive days.

"MOTOR VEHICLE." Any style or type of motor driven vehicle used for the conveyance of persons or property.

"NUISANCE." Public nuisance.
(Ord. 92-12, passed 10-5-92)

§ 92.02 COMMON LAW AND STATUTORY NUISANCES.

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

Penalty, see § 92.99

§ 92.03 CERTAIN CONDITIONS DECLARED A NUISANCE.

It shall be unlawful for the owner, occupant, or person having control or management of any land within the city to permit a public nuisance to develop thereon. The following conditions are declared to be public nuisances:

(A) Dangerous trees or stacks adjoining street. Any tree, stack, or other object standing in such a condition that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property upon the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.

(B) Accumulation of rubbish. An accumulation on any premises of filth, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents, or insects, or blow rubbish into any street, sidewalk, or property of another.

(C) Storage of explosives. The storage of explosive material which creates a safety hazard to other property or persons in the vicinity.

(D) Weeds and grass. The excessive growth of weeds, grass, or other vegetation. Unless otherwise provided, "EXCESSIVE" shall mean growth to a height of 12 inches or more.

(E) Open wells. The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private premises in any open or unfenced lot or place.

(F) Trees and shrubbery obstructing streets, sidewalks, and drainage. The growing and maintenance of trees or shrubbery which in any way interferes with the use, construction, or maintenance of streets or sidewalks, causes injury to streets or sidewalks, or constitutes an obstruction to drainage.

(G) Keeping of animals. The failure to keep an animal's pen, yard, lot, or other enclosure in a sanitary condition and free from preventable offensive odors.

(H) Junk; debris. It is unlawful for the owner, occupier, or possessor of any real property in the city to allow the accumulation of junk or debris thereon.

(I) Automobiles and machinery. It is unlawful for the owner, occupier, or possessor of real property in the city to keep, maintain, or allow to be kept or maintained thereon one or more wrecked, scrapped, or otherwise inoperable automobiles, trucks, boats, trailers, or any other type of machinery or implements or any other type of machinery or implements other than on the premises of a licensed automobile dealer, wrecker service operator, recycler or used parts broker under the laws and regulations of the state. In the case of such licenses, no more than ten of the described items may be kept, maintained, or allowed to

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be kept or maintained on the premises except as provided for sites licensed by the state.

(Ord. 92-12, passed 10-5-92)

§ 92.04 ABATEMENT PROCEDURE.

(A) It shall be unlawful for the owner, occupant, or person having control or management of any land within the city to permit a public nuisance, health hazard, or source of filth to develop thereon.

(B) Whenever a nuisance situation is discovered, the authorized city official shall give ten (10) days' written notice to remedy the nuisance situation. The notice shall be mailed to the last known address of the owner of property, as it appears on the current tax assessment roll. Upon the failure of the owner of the property to comply, the authorized city official is authorized to send employees upon the property to remedy the situation.

(C) The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the nuisance situation. The affidavit of the authorized city official shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 381.770 and this section, and shall be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the annual rate established by the city Council from time to time until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding. In addition to this remedy or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

(KRS 381.770) (Ord. 92-12, passed 10-5-92)

§ 92.05 NUISANCE CREATED BY OTHERS.

For the purposes of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the 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 of.

(Ord. 92-12, passed 10-5-92)

§ 92.06 SUSPENSION OF LICENSE.

(A) Whenever it is brought to the attention of the City Council that a nuisance exists and the City Council deems that there is an immediate threat to the public health, safety, welfare, the City Council

may by majority vote suspend the license of any person conducting business upon the premises where the nuisance exists.

(B) The City Clerk/Treasurer shall cause notice of the suspension to be served personally upon the licensee or at the premises where the nuisance exists.

(C) Upon application of the licensee, the City Council may approve the suspension upon such terms as it may direct.
(Ord. 92-12, passed 10-5-92)

§ 92.07 EXEMPTION.

The provisions of this chapter shall not apply to real estate used for agricultural purposes.
(Ord. 92-12, passed 10-5-92)

§ 92.08 LOUD AND UNNECESSARY NOISE.

(A) No person shall make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the limits of the city.

(B) The following acts are declared to be loud, disturbing, and unnecessary noises in violation of this section, but shall not be deemed to be exclusive:

(1) Radios, phonographs. The using, operating, or permitting to be played, used, or operated of any radio receiving set, televisions, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine, or device at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, dwelling, hotel, or other type of residence, or of any persons in the vicinity or in such a manner as to be plainly audible at a distance of one hundred (100) feet from the building structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(2) Yelling, shouting. Yelling, shouting, hooting, whistling, or singing on the public streets at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, dwelling, hotel, or other type of residence, or of any persons in the vicinity.

(C) The operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this section and which causes discomfort of annoyance to reasonable persons of normal

sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction, in addition to any other penalty imposed by this section. (Ord. 99-12, passed 10-11-99)

CODE ENFORCEMENT BOARD

§ 92.20 PURPOSE, DEFINITIONS, AND CREATION.

(A) Purpose. The Code Enforcement Board is hereby created and charged with the authority to enforce Chapter 92 by use of any means permitted pursuant to KRS Chapter 65 (HB 814).

(B) Definitions. The following words, terms and phrases, when used in this subchapter shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

"CODE ENFORCEMENT BOARD." An administrative body created and acting under the authority of the city.

"CODE ENFORCEMENT OFFICER." A safety officer, citation officer or other public law enforcement officer with the authority to issue a citation.

(C) Creation. There is hereby created, pursuant to KRS 65.8801 to KRS 65.8839, a Code Enforcement Board which shall be composed of three members, all of whom shall be residents of the city for a period of at least one (1) year prior to the creation of the Board and shall reside in the city throughout their term of office. (Ord. 96-9, passed - - ; Am. Ord. 2002-08, passed - - ; Am. Ord. 2011-02, passed 5-9-11)

§ 92.21 BOARD MEMBERSHIP, QUALIFICATIONS.

(A) The Code Enforcement Board shall consist of five (5) members which shall be appointed by the Mayor and subject to the approval of the City Council.

(B) The initial appointments to this board shall be as follows:

- (1) One member appointed for a term of one year;
- (2) Two (2) members appointed for a term of two (2) years each;
- (3) Two (2) members appointed for a term of three (3) years each.

(C) Each member of the Board shall have resided within the boundaries of Horse Cave for a period of at least one year prior to the date of the member's appointment and shall reside there throughout the term in office.

(Ord. 96-9, passed - - ; Am. Ord. 2002-08, passed - -)

§ 92.22 VACANCY.

Any vacancy on the Board shall be filled within sixty (60) days by the Mayor, subject to the approval of the City Council. If a vacancy is not filled by the Mayor within sixty (60) days, the remaining members of the Code Enforcement Board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.

(Ord. 96-9, passed - - ; Am. Ord. 2002-08, passed - -)

§ 92.23 REMOVAL OF BOARD MEMBERS.

Any member of the Board may be removed by the Mayor for misconduct, inefficiency, or willful neglect of duty. If the Mayor exercises the power to remove a member of the Board, the Mayor shall submit a written statement to the member and to the City Council setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.

(Ord. 96-9, passed - -)

§ 94.24 OATH.

All members of a Code Enforcement Board shall, before entering upon their duties, take the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky.

(Ord. 96-9, passed - - ; Am. Ord. 2002-08, passed - -)

§ 92.25 COMPENSATION AND REIMBURSEMENT.

The members of the Board may be reimbursed for expenses or compensated, or both, as may be established by the City Council, from time to time.

(Ord. 96-9, passed - -)

§ 92.26 ELECTION OF PRESIDING OFFICER.

The Board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the Board shall select one of the number to preside in place of the chair and exercise the powers of the chair.

(Ord. 96-9, passed - -)

§ 92.27 MEETINGS.

(A) The meetings of the Board shall be held from time to time as necessary for the performance of its duties as set forth herein. The chair of the Board shall set the meetings. In the absence of the chair, any member of the Board can call a meeting.

(B) The presence of three (3) or more members shall constitute a quorum of the Board. The affirmative vote of the majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of the Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for the purposes of establishing a quorum.

(C) Minutes shall be kept for all proceedings of the Code Enforcement Board and the vote of each member on any issue decided by the Board shall be recorded in the minutes.

(D) All meeting and hearings of the Code Enforcement Board shall be open to the public.
(Ord. 96-9, passed - - ; Am. Ord. 2002-08, passed - -)

§ 92.28 POWERS OF THE BOARD.

The Board shall have the power to:

(A) Adopt rules and regulations to govern its operation in the conduct of its hearings:

(B) Conduct hearings to determine whether there has been a violation of Chapter 92.

(C) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the Board may be served by any code enforcement officer.

(D) Take testimony under oath. The chair of the Board shall have the authority to administer oaths to witnesses prior to their testimony before the Board on any matter.

(E) Make findings and issue orders that are necessary to remedy any violation of Chapter 92.

(F) Impose civil fines as authorized by Chapter 92 on any person found to have violated the Chapter.

(G) The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing the

city ordinances when a violation of the subchapter has been classified as a civil offense.

(Ord. 96-9, passed - - ; Am. Ord. 2011-02, passed 5-9-11)

§ 92.29 ENFORCEMENT RESPONSIBILITY.

(A) For the purpose of enforcing Chapter 92, any city police officer shall be considered a "code enforcement officer."

(B) Enforcement proceedings before the Board shall be initiated by the issuance of a citation by a code enforcement officer.

(C) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of Chapter 92, the officer is authorized to issue a citation to the offender. In lieu of immediately issuing a citation, the officer is authorized to give notice that a violation shall be remedied within a specific period of time. If the persons to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

(Ord. 96-9, passed - -)

§ 92.30 ISSUANCE OF CITATION.

The citation issued by the code enforcement officer shall contain in addition to any other information required by the rules of the Board:

(A) The date and time of issuance;

(B) The name and address of the person to whom the citation is issued;

(C) The date and time the offense was committed;

(D) The facts constituting the offense;

(E) The section of the code or the number of the section violated;

(F) The name of the code enforcement officer;

(G) The civil fine that will be imposed for the violation if the person does not contest the citation;

(H) The maximum civil fine that may be imposed for the violation if the person elects not to contest the citation;

(I) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(J) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the Board to contest the citation and that the determination that a violation was committed shall be final.

(K) After issuing a citation to an alleged violator, the code enforcement officer shall notify the Board by delivering the citation to the City Clerk/Treasurer.

(L) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date of the citation was issued by either paying the fine set forth in the citation or requesting, in writing, a hearing before a code enforcement board to contest the citation. If the person fails to respond within seven (7) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.
(Ord. 96-9, passed - -)

§ 92.31 HEARINGS.

(A) When a hearing before the Board has been requested, the Board, through its administrative staff, or the City Clerk/Treasurer, shall schedule a hearing. The hearing shall be conducted within fourteen (14) days of the date of the request, unless the person who requested the hearing requests or agrees to a continuance not to exceed fourteen (14) days. Not less than seven (7) days before the date set for the hearing, the Board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be 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 this notice. Any person requesting a hearing before the Board who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

(B) Each case before the Board shall be presented by the City Attorney or by a member of the administrative staff of the city. The Attorney shall either be counsel to the Board or shall represent the city by presenting cases before the Board, but in no case shall the attorney serve in both capacities.

(C) All testimony shall be under oath and shall be recorded. The Board shall take testimony from the code enforcement officer, the

alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(D) At the hearing, the Board shall determine, based on the evidence presented, whether a violation was committed. When the Board determines that no violation was committed, an order dismissing the citations shall be entered. When the Board determines that the violation has been committed, the Board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by Chapter 92, or may order the offender to remedy a continuing violation within a specific time to avoid the imposition of the fine, or both.

(E) Every final order of the Board shall be reduced to writing, which shall include the date the order was issued, and a copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the Board is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence within any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

(Ord. 96-9, passed - -)

§ 92.32 APPEALS.

Appeals from any final order issued by the Board may be made in the manner specified in KRS Chapter 65.

(Ord. 96-9, passed - -)

§ 92.33 LIEN.

The city shall possess a lien on property owned by the person found by a final, non-appealable order of the Board, or by a final judgment of the court, to have committed a violation of Chapter 92 for all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the Chapter. The lien shall be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid. 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.

(Ord. 96-9, passed - -)

§ 92.34 FINES, CIVIL ACTION.

In addition to the remedy prescribed in § 92.33, 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 the Chapter. The city may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.
(Ord. 96-9, passed - -)

§ 92.35 SERIOUS THREAT TO HEALTH AND SAFETY.

Nothing contained in this Chapter shall prohibit the city from taking immediate action to remedy a violation of Chapter 92 when there is reason to believe that the existence of the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the offense of the violation will be irreparable or irreversible. In addition, nothing contained herein shall prohibit the enforcement of Chapter 92 by any other means authorized.

(Ord. 96-9, passed - -)

§ 92.99 PENALTY.

(A) Whoever violates any provision of this chapter shall be fined one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense, and five hundred dollars (\$500.00) for the third and each subsequent offense. Each day's continued violation shall constitute a separate offense.
(Ord. 96-9, passed - -; Am. Ord. 2011-06, passed 9-12-11)

(B) Any person convicted of violating the provisions of § 92.08 shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for a period not to exceed one year or both.
(Ord. 99-12, passed 10-11-99)

Cross-reference:

Civil fines, see § 35.130

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