

Ordinance 15 - 2015

AN ORDINANCE OF THE CITY OF FORT WRIGHT, IN KENTON COUNTY, KENTUCKY, AMENDING ITS NUISANCE CODE

WHEREAS, the City of Fort Wright, Kentucky has authority to enact ordinances for the public health, safety and welfare of its citizens,

WHEREAS, KRS 82.705 allows the City of Fort Wright, Kentucky to enact a nuisance code and impose penalties for violation of the nuisance code;

WHEREAS, KRS 381.770 and KRS 82.715 allow the City of Fort Wright, Kentucky to abate nuisances and collect abatement costs incurred by the City

BE IT ORDAINED BY THE CITY OF FT. WRIGHT, KENTUCKY:

SECTION 1

Chapter 92.01 STATUTORY AUTHORITY

This chapter is a nuisance code within the meaning of the "Local Government Nuisance Code Enforcement Act" at KRS 82.700 through 82.725.

SECTION 2

Chapter 92.02 DEFINITIONS

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

"ABATEMENT COSTS." Has the meaning provided in KRS 82.700(1).

"ANYBODY." Any human being, or any organization or combination thereof, in the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

"BANNER SIGN." Any commercial sign composed of any pliable plastic or cloth, without a rigid supporting frame.

"BUILDING." Any relatively permanent enclosure consisting of no less than three connected walls covered by a roof.

"CITY." The City of Fort Wright.

"CODE ENFORCEMENT OFFICER." Has the same meaning provided in KRS 65.8801.

"COMMERCIAL SIGN." Any sign which includes any information, message or identification which is, in any way, related to the promotion of any business or commerce.

“CONTROL.” To exercise restraint or direction over.

“DELIVER.” Includes any manner of delivery that conforms to the federal and state constitutional requirements for procedural due process.

“EVERYBODY.” Every human being, and every organization or combination thereof, in the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

“FOWL.” Any hen, rooster, chicken, duck, turkey, pheasant or any of several other, usually gallinaceous, birds.

“FRONT YARD.” That portion of a lot or parcel of real estate that extends from the street upon which the principle building on that lot or parcel fronts, for the full width of that lot or parcel, back to every part of the front (as distinguished from the sides and back) of that principle building.

“GRAFFITI.” Any display of words, letters, numbers, design or symbols scrawled, by hand or otherwise, in any ink, paint, chalk, dye or any other medium on any building or structure, without the consent or authority of the owner thereof, and which is within view from any public property or right of way.

“IMMINENTLY DANGEROUS.” A condition which could cause serious or life-threatening injury or death.

“INOPERABLE MOTOR VEHICLE.” A motor vehicle that is:

- (1) Wrecked or otherwise in a state of disrepair or disassembly;
- (2) Mechanically inoperable; or
- (3) Legally inoperable on public streets and highways.

“LIVESTOCK.” Animals of the bovine, ovine, porcine, caprine, equine, camelide and cervid species, including, without limitation, horses, cattle, sheep, swine and goats.

“MUNICIPAL SOLID WASTE.” Has the same meaning provided in KRS 224.01-010(31)(a)(4).

“MUNICIPAL SOLID WASTE CONTAINER.” A clean, covered, rigid metal or plastic container with a capacity of no less than 30 gallons and no more than 96 gallons.

“NOBODY.” No human being, or any organization or combination thereof, in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

“OUTSIDE.” An area of a lot or parcel of real estate that is not enclosed within a building.

“RECREATIONAL VEHICLE.” Has the same meaning provided in KRS 227.550(12).

“RUBBISH.” Worthless, discarded material, including dead trees, shrubs and grasses.

“UNLEASHED ANIMAL.” Any animal that is not secured and controlled by the owner or custodian of that animal by means of a leash.

“UNSOLICITED WRITTEN MATERIAL.” Any written material that is distributed to any lot or parcel of real estate in the city without the affirmative express invitation or permission of an owner or occupant of that lot or parcel of real estate.

SECTION 3

Chapter 92.03 NUISANCES DESCRIBED AND PROHIBITED

Pursuant to the requirements of KRS 82.710(1), the following actions, omissions, behavior, conditions and occurrences upon any lot or parcel of real estate within the city are hereby declared to be public nuisances and violations of this chapter; and nobody, including, without limitation, landlords and tenants, shall, by either act or omission, conspire, cause, permit, encourage, aid, assist, allow or engage in any of them, or fail to exercise any authority to prevent the occurrence thereof, including, without limitation, the eviction of tenants who cause, permit, encourage, aid, assist, allow or engage in any of them.

Public nuisances include, but are not limited to:

- (A) Any condition or use of any lot or parcel of real estate in the city or any structure thereon that is detrimental to the value, use or enjoyment of the property of others in the vicinity of that lot or parcel of real estate, including, without limitation:
 - (1) Those in violation of the provisions of the International Property Maintenance Code, published by the International Code Council, Inc. as amended from time to time and enacted by city ordinance.
 - (2) Those structures that are designed and intended for human habitation, occupancy or use that become unfit and unsafe for human habitation, occupancy or use or have conditions in them that are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures or other residents of the city;
 - (3) Those in violation of the standards of safety promulgated pursuant to KRS 227.300, which are hereby adopted by the city pursuant to the requirements of KRS 227.320; and
 - (4) Those in violation of the provisions of the NFPA 1 Uniform Fire Code published by the National Fire Protection Association, as amended from time to time and enacted by city ordinance.
- (B) The accumulation of any rubbish on any portion of any lot or parcel of real estate outside of any building.
- (C) Use of any portion of a residential lot or parcel of real estate outside of a building for the location of any broken, inoperable or otherwise non-functional vehicles,

equipment, machinery or furniture or any parts thereof, or the location of any scrap or salvage material, or the location of any other tangible personal property.

- (D) The location of one or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or non-operative and which are not inhabited.
- (E) The growth of weeds or grass in excess of ten inches above the surface of the ground on any lot or parcel of real estate that is less than four acres in area and developed with the public utilities of water, electricity and sewers.
- (F) The parking of any recreational vehicle, boat or trailer anywhere in any residential area except for only one of any such vehicles:
- (1) In the rear yard of any lot or parcel of real estate;
 - (2) In any area of a side yard that is continuously paved with blacktop or concrete, provided that no part of such vehicle is within one foot of any point in the nearest boundary line; or
 - (3) In any driveway during the period after May 1 and before October 15 in any calendar year, provided that:
 - (a) The area thereof occupied by any such vehicle is in addition to all off street parking areas required by this chapter;
 - (b) There is no more than one of any such vehicles parked, stored or otherwise located in any portion of any driveway on any one lot or parcel of real estate at any one time; and
 - (c) No part of any such vehicle is within one foot of any point in the nearest boundary line.
 - (4) Under no circumstance may any recreational vehicle, boat, or trailer be permitted to remain in a residential area more than five consecutive days and no more than a total of 25 days per year.
 - (5) However, a recreational vehicle, boat or trailer less than twenty feet in length from tongue to bumper may remain indefinitely provided it rests on a paved surface behind the front-most portion of the home. The paved surface may also be in the rear of the house.
- (G) The accumulation of any municipal solid waste anywhere unless it is enclosed within a covered municipal solid waste container.
- (H) The location of any municipal solid waste container in the front yard of any lot or parcel of real estate in the city at any time other than that period of time that begins at 6:00 p.m. on the day before the day that municipal solid waste is scheduled by the city for collection from that real estate and ends at 6:00 a.m. on the following day.
- (I) The occurrence of any unleashed animal anywhere in the city other than on a lot or parcel of real estate enclosed by a fence:

- (1) In which the owner or custodian of the unleashed animal has an ownership or possessory interest; or
- (2) Upon which the unleashed animal has been authorized by someone who has an ownership or possessory interest in that lot or parcel of real estate.
- (J) The occurrence of any sound, odors or anything else from any animal or animals on any lot or parcel of real estate in the city that unreasonably interferes in any way with the occupation, use or enjoyment of any other lot or parcel of real estate in the city by any owner, tenant, occupant, resident or user thereof.
- (K) The location of any rubbish on any public sidewalk and the failure of those with any ownership or possessory interest in any lot or parcel of real estate abutting thereon to remove it within a reasonable period of time after such rubbish has been deposited thereon.
- (L) Any commercial sign that isn't in a condition of good repair, and in a clean, neat and safe and functional condition in compliance with all applicable laws, including, without limitation, all building and property maintenance codes.
- (M) The occurrence, existence or continuation of any graffiti.
- (N) The outside storage or other location of any equipment in any front or side yard where it may be seen from a public street, while that equipment is in a position or condition in which the design and purpose of that equipment may not be accomplished.
- (O) Any outdoor swimming pool in which:
 - (1) The water in the pool is contaminated with dangerous disease causing pathogens, including bacteria; however
 - (2) Water may be retained and impounded in the pool to a depth of 24 inches or more at any one point so long as the pool area is surrounded by a fence that is at least four feet in height. The fence must limit access to the pool, except that it may have one or more gates. Each gate must have an automatic self-closing mechanism.
- (P) Any fowl or livestock within 500 feet of any neighboring residence. Roosters are entirely prohibited.
- (Q) The distribution or accumulation of any unsolicited written material on any portion of any lot or parcel of real estate in the city outside of a building other than:
 - (1) On a porch, if one exists, nearest to the front door;
 - (2) Securely attached to a door;
 - (3) Between an exterior door and an interior door; or
 - (4) Personally with any occupant of the lot or parcel of real estate.

- (R) The use of any portion of any residential lot or parcel of real estate outside of a building for the storage or other location of any inoperable motor vehicles or any motor vehicle parts.
- (S) The use of any lot or parcel of real estate, or any portion thereof, including, without limitation, any building or any portion thereof located on that lot or parcel of real estate, for any criminal activity to such an extent that there have been documented responses to any of them by peace officers or other personnel of the city on five (5) or more separate occasions within any one (1) period of twelve (12) consecutive calendar months; provided that an owner of that lot or parcel of real estate has been notified at least once during that period of twelve (12) consecutive calendar months of the occurrence of any such criminal activity; and provided further that the eviction of any tenants of that lot or parcel of real estate who were involved in such criminal activity shall be a defense to any civil or criminal prosecution for a violation of this section.
- (T) The use of any paved area other than sidewalks within the right-of-way of any street within the city for any athletic or other recreational activity.
- (U) The location of any apparatus for the athletic or other recreational use of any area within the right-of-way of any street within the city, whether that apparatus is located within or outside of that right-of-way.
- (V) Any tree, shrub, or bush located on private property, which endangers any public street or highway, any vehicle or person, any public sidewalk or any public property.
- (W) The location of any motor vehicle in any manner that any portion of it is on or above any portion of any sidewalk in the city, potentially blocking the pedestrian use thereof.
- (X) The location of any inoperable motor vehicle anywhere within the right-of-way of any street in the city.

SECTION 4

Chapter 92.04 HEARING BOARD AND HEARING OFFICERS

Pursuant to the requirements of KRS 82.710(3):

- (A) There is hereby established a hearing board consisting of one person appointed by the Mayor of the city for the purpose of conducting hearings pursuant to KRS 82.710, which shall be named and known as the Fort Wright Nuisance Hearing Board; which shall be identified and referred to hereinafter simply as the "Board."
- (B) The Board may appoint hearing officers; and any action of a hearing officer shall be deemed to be the action of the Board.

SECTION 5

Chapter 92.05 RESPONSIBILITY FOR ENFORCEMENT

Pursuant to the requirements of KRS 82.710(4), the responsibility for the enforcement of this nuisance code is delegated to a code enforcement officer as designated by the City Council.

SECTION 6

Chapter 92.06 STANDARDS AND PROCEDURES FOR THE ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER

Pursuant to the requirements of KRS 82.710(2), there are hereby established the following standards and procedures for the enforcement of this chapter.

(A) Enforcement proceedings before the Board shall be initiated by the issuance of a notice of violation and civil citation (citation) by a person who is a code enforcement officer.

(B) Whenever a code enforcement officer either:

(1) Observes or otherwise personally senses a violation of this nuisance code ordinance; or

(2) Has reason to believe that a violation of this nuisance code ordinance has occurred or is occurring;

the code enforcement officer is hereby authorized to issue a citation to everyone who the code enforcement officer has reason to believe has, by either act or omission, conspired, caused, permitted, encouraged, aided, assisted, allowed or engaged in that violation.

(C) The citation issued by the code enforcement officer shall be in a form prescribed by the executive authority of the city; but it shall include at least the following information:

(1) The date and time of issuance;

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

(3) The date and time the violation occurred;

(4) The facts constituting the violation;

(5) The section of this nuisance code ordinance that has been violated;

(6) The name of the code enforcement officer;

- (7) The civil fine that will be assessed for the violation if that person does not contest the citation;
 - (8) The maximum civil fine that may be imposed if that person elects to contest the citation;
 - (9) The procedure for the person to follow in order to pay the fine or to contest the citation; and
 - (10) A description of the circumstances in which the determination of the code enforcement officer becomes final; and that, thereupon, the City shall cause the violations described in the Citation to be abated; and that the cost thereof shall be assessed upon the person to whom the citation was issued; and that the owner of the property upon which those violations occurred shall also be liable therefor and for all fines, penalties, charges abatement costs and fees assessed for those violations, for which the city shall possess a lien on that property.
- (D) After issuing a citation, the code enforcement officer shall cause the citation to be served upon the person to whom it was issued either by personal delivery, or by any other means that conforms to the due process provisions of the federal and state constitutions.
- (E) After issuing and serving a citation upon the person to whom it was issued, the code enforcement officer shall notify the Board thereof by delivering a copy of the citation to the Board.
- (F) When a citation is issued and served upon the person to whom the citation was issued, that person shall respond to the citation within seven calendar days after the date the service of the citation, by either paying the civil fine set forth in the citation or delivering to the Board a written request for a hearing to contest the citation. If there is no response to the citation by the person to whom it was issued within seven days after the service thereof on that person, then that person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.

SECTION 7

Chapter 92.07 BOARD HEARINGS

- (A) When a hearing before the Board has been requested by a person to whom a citation has been issued, the Board shall schedule a hearing. Not less than seven days before the date set for the hearing, the Board shall cause to be delivered to the person who requested the hearing a written notice of the

date, time, and place of the hearing. Any person requesting a hearing before the Board who fails to appear at the time and place scheduled for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination of the code enforcement officer that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.

- (B) All testimony before the Board shall be under oath and shall be recorded. The Board shall receive testimony from the code enforcement officer, the person to whom the citation was issued, and any other witnesses to the facts identified in the citation or any other relevant facts offered by the code enforcement officer or the person to whom the citation was issued. Formal rules of evidence shall not apply, but constitutional procedural due process shall be observed and shall govern the proceedings.
- (C) At the hearing, the Board shall determine from the evidence presented whether or not a violation of this chapter was committed by the person to whom the citation was issued. When the Board determines from that evidence that no such violation was committed, the contrary determination of the code enforcement officer shall be reversed and an order dismissing the citation shall be signed and entered into the record of the proceedings of the Board. When the Board determines that a such violation was committed, the Board shall issue an order sustaining the citation and assessing the person to whom the citation was issued for a civil fine in an amount as provided in Section 11 of this ordinance. In its discretion, the Board may issue a fine less than permitted in Section 11 of this ordinance.
- (D) Every final order of the Hearing Board shall be written and signed on behalf of the Board; and it shall include the date the order was issued, and a copy of the order shall be delivered to the person to whom the citation was issued. If the person to whom the citation was issued is not present at the time of the final order of the Hearing Board, the final order shall be delivered to that person by postage pre-paid first class U.S. mail to the address identified in the citation or a different address identified by that person.

SECTION 8

Chapter 92.08 ELIMINATION OF VIOLATIONS BY THE CITY

In the event that a determination of the code enforcement officer that the violations described in a citation were committed by the person to whom the citation was issued becomes final, and the violation(s) identified therein continue thereafter, the city shall cause those violations to be abated through either employees of the city or contracts with others.

SECTION 9

Chapter 92.09 VIOLATIONS

A violation of this chapter occurs whenever anybody, by either act or omission, conspires causes, permits, encourages, aids, assists, allows or engages in any of the acts, actions, behavior, conditions and occurrences prohibited by this chapter; and each and every separate non-continuing occurrence thereof, and each and every day of each continuing occurrence thereof is a separate violation of this chapter.

SECTION 10

Chapter 92.10 OWNERS LIABILITY AND LIEN OF THE CITY

- (A) Pursuant to KRS 82.715(3), the owner(s) of the property at the time of the occurrence of violations of this chapter on that property shall be liable for all civil fines, penalties, charges, abatement costs and fees assessed for those violations.
- (B) Pursuant to KRS 82.720, the City of Fort Wright shall possess a lien on all property on which violations of this chapter have occurred for all civil fines, penalties, charges, abatement costs, fees and penalties imposed for those violations pursuant to KRS 82.700 to 82.725 and this chapter. The lien shall also include attorneys' fees incurred as an additional penalty imposed by the City under KRS 82.710(5). The lien shall be superior to and have priority over all other liens on the property, except state, county, school board and city taxes.

SECTION 11

Chapter 92.11 PENALTY

- (A) Civil offense. Each separate violation of this chapter is hereby classified as a civil offense; and, pursuant to the authority of KRS 82.710, the penalties to be imposed upon persons determined to have violated this chapter are hereby established as follows:
 - (1) The maximum civil fine that may be imposed for each separate violation of this chapter is hereby established at \$500 for a first violation, \$750 for a second occurrence of the same violation, and \$1,000 for the third and each subsequent occurrence of the same violation plus the costs of collection, including, without limitation, court costs and attorney fees.
 - (2) The specific civil fine that shall be imposed for each separate violation of this chapter in the event that a citation for that violation is not contested is hereby established at \$100 for a first violation, \$250 for a second occurrence of the same violation, and \$500 for the third and each subsequent occurrence of the same violation, plus the costs of collection, including, without limitation, court costs and attorney fees.

(B) Criminal offense. Each violation of this chapter shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500 as set forth in KRS 534.050(2)(a) or a term of imprisonment not to exceed the maximum period of 12 months as set forth in KRS 532.090(1), or both.

SECTION 12

Chapter 92.12 ABATEMENT PROCEDURE FOR IMMINENTLY DANGEROUS CONDITIONS

- (A) Any property condition which the city reasonably determines to be imminently dangerous to the health and safety of city residents may be summarily abated in accordance with the procedures set forth in this section.
- (B) Actions taken to abate imminently dangerous property conditions may include, but are not limited to, repair, removal, or demolition of the condition creating the danger and/or the restriction from use or occupancy of the property on which the dangerous condition exists or any other abatement actions determined by the city to be necessary.
- (C) (1) Whenever the city determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the city shall give reasonable notice, not to exceed five business days, to the property owner as to the nuisance and prior to the demolition of any unfit or unsafe structure, the property owner shall be afforded the right to a hearing before the Mayor or his or her designee pursuant to KRS 381.770(5).
- (2) If the property owner cannot be located or the owner fails to take prompt appropriate action to abate the condition, the city may proceed to take abatement action authorized in this section to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing.
- (D) (1) Whenever the city takes action to abate imminently dangerous property conditions, the property owner shall be liable for all costs of such abatement. Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for 14 days after it has been rendered, the City Clerk/Treasurer may file with the County Clerk a statement of lien claims. This statement/affidavit shall contain a legal description of the premises, the expenses and costs incurred, the date the nuisance was abated, and a notice that the city claims a lien for this amount. The affidavit of the authorized city officer 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. The lien shall be notice to all persons from the time of the recording and shall bear interest at 6% per annum thereafter until paid. Notice of the lien shall be mailed to the owner of the premises if his or her

address is known. However, failure to record the claim or to mail the notice, or the failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges.

- (2) The lien shall take precedence over all other liens, except state, county, school board, and city taxes, and the city may bring a civil action against the owner and have the same remedies as provided for the recovery of a debt owed.
- (E) In addition to the lien to which reference is made in KRS 381.770, the city shall have a lien upon the land to which reference is made in KRS 381.770 for the costs incurred in all legal action necessary to foreclose the lien, which costs shall include reasonable attorneys' fees.
- (F) Property subject to a lien for unpaid imminent danger abatement charges shall be sold for nonpayment, and the proceeds of the sale shall be applied to pay the charges after deducting costs, as is the case in the foreclosure of statutory liens. This foreclosure shall be in equity in the name of the city.
- (G) The City Attorney is authorized to institute such proceedings in the name of the city in any court having jurisdiction over the matter against any property for which the bill has remained unpaid for 14 days after it has been rendered, upon direction by the Mayor.

SECTION 13

Chapter 92.01 DEFINITIONS is repealed in its entirety.

SECTION 14

Chapter 92.02 COMMON LAW AND STATUTORY NUISANCES is repealed in its entirety.

SECTION 15

Chapter 92.03 CERTAIN CONDITIONS DECLARED A NUISANCE is repealed in its entirety.

SECTION 16

Chapter 92.04 ABATEMENT PROCEDURE is repealed in its entirety.

SECTION 17

Chapter 92.05 NUISANCE CREATED BY OTHERS is repealed in its entirety.

SECTION 18

Chapter 92.06 SUSPENSION OF LICENSE is repealed in its entirety.

SECTION 19

Chapter 92.07 LIEN ON PROPERTY; COST IN ENFORCING LIEN is repealed in its entirety.

SECTION 20

Chapter 92.08 NOTICE; FORM TO BE USED is repealed in its entirety.

SECTION 21

Chapter 92.09 FORWARDING COPY OF AFFIDAVIT is repealed in its entirety.

SECTION 22

Chapter 92.10 PRECEDENCE OF LIEN; PERSONAL LIABILITY OF PROPERTY OWNER is repealed in its entirety.

SECTION 23

Any and all Ordinances in conflict with this Ordinance shall be, and hereby are, repealed to the extent of said conflict.

SECTION 24

If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 25

This Ordinance shall take effect and be in full force from and after its passage, publication, which may be in summary form, and recording, according to law.

CITY OF FORT WRIGHT, KENTUCKY

By: _____
Dave Hatter, Mayor

ATTEST:

Joyce Woods, City Clerk

FIRST READING: _____

SECOND READING: _____

PUBLICATION: _____