

ORDINANCE NO. _____-2017

AN ORDINANCE AMENDING SUBSECTION 2B-9(A) OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO REMOVE THE WORD SUBSEQUENT; AMENDING SUBSECTION 10-14.1(E)(8) OF THE CODE TO REFERENCE CHAPTER 12 OF THE CODE; AMENDING SUBSECTIONS 14-105 (C) AND (D) OF THE CODE TO PROVIDE FOR AN ASSIGNED HEARING OFFICER AND THE CIVIL ENFORCEMENT PROCESS, ISSUANCE OF CITATIONS, ADMINISTRATIVE HEARINGS, AND APPEALS AS PROVIDED IN CHAPTER 2B OF THE CODE, DELETING SUBSECTIONS 14-105(E) AND (F) OF THE CODE IN THEIR ENTIRETY; RENUMBERING SUBSECTIONS 14-105 (G) AND (H) OF THE CODE TO SUBSECTIONS 14-105 (E) AND (F) OF THE CODE, AND AMENDING THE CIVIL FINES FOR A FIRST VIOLATION TO \$100, OF A SECOND VIOLATION TO \$250 AND OF A THIRD OR SUBSEQUENT VIOLATION TO \$500, TO REFERENCE THE CORRECT CODE SECTIONS; AMENDING SUBSECTIONS 16-8(E) AND 16-8(G) OF THE CODE TO REFERENCE STATE LAW AND CHAPTERS 12 AND 2B OF THE CODE; AMENDING SUBSECTION 17-148(B) OF THE CODE TO PROVIDE FOR APPEALS OF CITATIONS TO AN ASSIGNED HEARING OFFICER, SEVEN DAYS TO APPEAL AND TO REFERENCE CHAPTER 2B OF THE CODE; AND AMENDING SUBSECTION 17-152(C) OF THE CODE TO PROVIDE FOR THE FILING OF A LIEN IN SEVEN DAYS IF NOT APPEALED AND TO REFERENCE CHAPTER 2B OF THE CODE, ALL EFFECTIVE UPON DATE OF PASSAGE.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That subsection 2B-9(a) of the Code of Ordinances be and hereby is amended to read as follows:

- (a) The urban county government shall possess a lien on property owned by the person found by a final order, or by a final judgment of the court, to have committed a violation of a local government ordinance for all civil fines assessed for the violation and for all charges and fees incurred by the government in connection with the enforcement of the ordinance including abatement costs. An affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 65.8801 to KRS 65.8839. 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 liens, except state, county, school board, and city taxes unless otherwise provided by law, and may be enforced by judicial proceedings.

Section 2 - That subsection 10-14.1(e)(8) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 10-14.1 Gardens.

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- (e)(8) The parcel shall be maintained in an orderly manner throughout the year. Storage tools and supplies shall be indoors or removed daily from the site when unattended. The site must be maintained free of high weeds, grass and litter in compliance with Chapter 12 of the Code of Ordinances. The parcel shall be winterized, such as cleaning the site, and cutting, composting or removing stalks after harvesting.

Section 3 – That subsections 14-105(c) and (d) of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 14-105. Littering.

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- (c) Code enforcement board. The environmental hearing board or its assigned hearing officer shall have the authority to determine whether there has been a littering violation.
- (d) Enforcement. Proceedings before the environmental hearing board or its assigned hearing officer to determine whether there has been a littering violation shall be initiated by the issuance of a civil citation by a citation officer. The civil enforcement process and the issuance of citations, administrative hearings, and appeals shall be as provided in Chapter 2B of the Code of Ordinances. The issuance of a citation must be based upon the citation officer having reasonable cause to believe that a person committed a littering violation based upon personal observation or investigation, and the officer may, in his or her discretion, issue a warning or notice of violation in lieu of a citation if the person immediately remedies the violation.

Section 4 – That subsections 14-105(e) and (f) of the Code of Ordinances be and hereby are deleted in their entirety.

Section 5 – That subsections 14-105(g) and (h) of the Code of Ordinances be and hereby are renumbered to subsections 14-105(e) and (f) of the Code, and are amended to read as follows:

- (e) Civil penalty. A person found to have committed a littering violation proscribed by KRS 512.070(1) and enforced pursuant to KRS 512.070(4) and this section shall be subject to the following civil fines:
 - First Violation \$100.00
 - Second Violation \$250.00
 - Third or Subsequent Violation \$500.00
- (1) Time period for subsequent violations. If a person commits a second, third, or subsequent littering violation within a twenty-four-month period, he or she shall pay the appropriate civil fine stated herein. A violation occurring more than twenty-four (24) months after a previous violation shall be treated as a first violation for the purpose of determining the appropriate civil fine.
- (2) Designated uses. Civil fines collected pursuant to this section shall be designated for the following uses:
 - a. Keep Lexington Beautiful. Seventy-five (75) percent of the amounts collected as civil fines for littering violations shall be designated for Keep Lexington Beautiful for its use in litter education and abatement.
 - b. Issuing division or agency. Twenty-five (25) percent of the amounts collected as civil fines for littering violations shall be designated for those divisions or agencies charged with enforcement of the littering ordinance.
- (f) Costs of enforcement; liens; personal liability. The urban county government shall be entitled to all civil fines imposed and all charges and fees incurred by the local government in enforcing this section. The urban county government shall be entitled to enforce this section against persons found to have committed a violation of this section by resort to all remedies described in section 2B-9 of the Code, including a lien on property owned by the person and/or a civil action against the person responsible for the violation for all civil fines, fees, charges, and costs of enforcement. All amounts collected by the urban county government in the enforcement of this section shall be designated as provided in subsection (e)(2).

Section 6 - That subsections 16-8(e) and 16-8(g) of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 16-8. Procedure for using roll cart containers.

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(e) When refuse is not properly prepared in accordance with this section or subsection 16-9(a), or properly prepared and scheduled for special collection pursuant to section 16-14, it shall be deemed a nuisance pursuant to state law and Chapter 12 of the Code of Ordinances, and a notice of violation shall be affixed to the front door of the residence or structure by the director, division of waste management or his designee, listing the date and time the notice was issued and the defect to be cured before collection is continued and directing the abatement of the defect, either by proper preparation or removal of the refuse from the curb, within forty-eight (48) hours. The time period to abate shall commence upon attachment of the notice. A copy of this notice shall also be mailed, via regular mail, or transmitted by fax to the owner of the property as determined by reference to the records of the property valuation administrator, or to the owner's designee if the owner has filed notice of a designee pursuant to subsection 16-10(e). This notice shall state that a civil fine pursuant to article XII may be assessed if the violation continues or two (2) or more notices to abate have been issued to the same owner on the same property within any twelve-month period.

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(g) The citation shall be served in the manner specified in Chapter 2B of the Code of Ordinances. A copy may also be provided to the subsection 16-10(e) designee.

Section 7 - That subsection 17-148(b) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-148. Notice; appeal.

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(b) Any person affected by a civil penalty assessed pursuant to section 17-152 shall have the right to appeal to an assigned hearing officer acting on behalf of the administrative hearing board created by chapter 12 of the Code; provided that a written application for appeal is filed within seven (7) days after the notice to repair or the notice of civil penalty was served as further provided in Chapter 2B of the Code. The proceeding before the administrative hearing board shall be governed by Chapter 2B of the Code and the board's rules, regulations and bylaws and shall include the right to appeal the decision of the board to a court of competent jurisdiction.

Section 8 - That subsection 17-152(c) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-152. Penalty; lien.

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(c) The urban county government shall have a lien against property for any unpaid civil penalty (fine) if it has not been appealed within seven (7) days or is otherwise final as further provided in Chapter 2B of the Code of Ordinances. The lien shall operate and be served in the manner provided in Section 2B-9 of the Code.

Section 9 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 10 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:

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