

ORDINANCE NO. ____-2013

AN ORDINANCE AMENDING SECTION 12-60 OF THE CODE OF ORDINANCES OF THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT RELATED TO PUBLIC NUISANCES TO AMEND THE DEFINATION TO INCLUDE ASSAULT, SEXUAL OFFENSES AND WEAPONS OR ANY OTHER FELONY AND TO PROVIDE AN EXCEPTION WHEN THE OWNER OR OCCUPANT IS THE VICTIM OF THE CRIME AND HAD NO CONTROL OVER THE CRIMINAL ACT; AMENDING SECTION 12-61 CODE OF THE ORDINANCES RELATING TO PUBLIC NUISANCES TO DELETE THE WORD RESIDENTIAL; AMENDING SECTION 12-63 OF THE CODE OF ORDINANCES RELATING TO PUBLIC NUISANCES TO DELETE THE WORD RESIDENTIAL.

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

Section 1 - That section 12-60 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

Sec. 12-60. - Definition.

For purposes of sections 12-60 through 12-70, the term public nuisance is hereby defined as any premises or place where law enforcement officers have, on more than two (2) occasions in a twelve (12) month period, criminally cited or arrested a person for violation of the laws governing assault, sexual offenses, prostitution, controlled substances, weapons, gambling on the premises or any felony or executed a court-issued search warrant for violation of the laws governing assault, sexual offenses, prostitution, controlled substances, weapons, gambling on the premises or any felony. Instances in which the owner or occupant is the victim of the crime and had no control over the criminal act shall not be considered in the number of occasions including domestic violence calls for service.

Section 2 - That section 12-61 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

Sec. 12-61. - Prohibition.

No owner of property located within the urban county shall allow his or her property to be used as the site for any public nuisance after having received notice pursuant to section 12-63 that the property has been used for the commission of a public nuisance. This prohibition shall apply to both rental and owner-occupied property. A legal or equitable owner of the property is deemed to have knowledge of such activity upon receipt of the notice as set forth in this Code.

Section 3 - That section 12-63 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

Sec. 12-63. - Abatement procedure.

(a) Duty to notify owner. Whenever the code official receives information that a public nuisance exists in or upon the property, he shall notify the owner of the property, and any representative designated by the owner pursuant to subsection (d) below, that the property is being used in a manner so as to constitute a public nuisance and that the public nuisance must be abated.

(b) Notice to abate. It shall be the duty of code official to serve or cause to be served a notice upon the owner of any premises upon which there is kept or maintained a public nuisance in violation of sections 12-60 through 12-70. Such notice shall describe the nuisance so maintained and

shall demand abatement of such nuisance. The notice shall be mailed by certified mail, return receipt requested, or may be personally served upon the owner. The notice shall include a statement to the effect that civil penalties of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) may be imposed if the public nuisance is not abated and shall state the procedure and time frame established by section 12-68 for appealing the notice to abate or the imposition of civil penalties, when applicable.

(c) Order to close and vacate. Should the public nuisance not be abated by or before the date stated in the notice to abate, the code official shall be authorized at any time thereafter to issue an order closing and vacating the premises to the extent necessary to abate the public nuisance. Such closing and vacating shall be for such period of time as the code official reasonably may direct, but in no event shall the closing and vacating be for a period of more than one (1) year from the date of closing. An order to close and vacate issued pursuant to this section is not an act of possession, ownership or control by the urban county government. An order to close and vacate order shall be rescinded within fourteen (14) days of an abatement, unless such premises is the site of repeated orders to close and vacate.

(d) Service of notice to abate or order to close and vacate. A notice to abate or an order to close and vacate shall be personally served upon the owner or shall be mailed by certified mail, return receipt requested, to the last-known address of the owner of the property as it appears on the current tax assessment roll. If the owner of the property cannot be ascertained from the tax rolls in the exercise of reasonable diligence, the code official shall make an affidavit to that effect; and the serving of such notice upon such owners may be made by publication in a newspaper of general circulation for two (2) consecutive days. A copy of such notice or order shall be posted in a conspicuous place on the premises affected by the notice. Any property owner may voluntarily file with the division of police a completed certificate, on a form provided by the division, that provides the name and address of a management company or designated representative with authority over the subject property or an alternative address of the property owner to which all notices issued under this article also shall be served.

(e) Lien. The urban county government shall have a lien against the property for any civil penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the public nuisance if necessary. This lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes pursuant to KRS 82.720. This lien shall be evidenced by a notice of lien claimed, filed in the county clerk's office, which notice shall include the affidavit of the code official, setting forth the property in question, the amount of the urban county government's cost and date of abatement, if any, and the amount of the civil penalty, if any, and shall recite that the notice provisions of this section were complied with before abatement or assessment of civil penalty. The code official shall bill the property owner of such premises at least once and no notice of lien claimed shall be filed against the property until twenty (20) days have elapsed since the bill is sent. If the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill. A copy of the notice of lien claimed shall be mailed to the owner of the premises, or published in a newspaper of general circulation, as required by statute, where the owner of the property cannot be ascertained. However, the failure of the clerk to record such notice of lien claimed or the failure to mail the owner a copy of such notice or publish same, or the failure of the owner to receive such notice shall not affect the right to foreclose the lien for such charges as provided in subsection (f).

(f) Property to be sold. Property subject to a lien for unpaid public nuisance abatement costs or civil penalties shall be sold for nonpayment of

the same, and the proceeds of such sale shall be applied to pay the charges after deducting costs as is the case in the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the urban county government.

(g) Court proceedings. The commissioner of law is hereby authorized and directed to institute such proceedings, in the name of the urban county government, in any court having jurisdiction over such matter, against any property for which a bill for public nuisance abatement or civil penalty remains unpaid for twenty (20) days after it is mailed. If the property is the subject of litigation, the proceedings may be initiated immediately upon the mailing of the bill.

(h) Release of lien. The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (e) upon payment in full of the nuisance abatement cost or civil penalty evidenced by the lien or upon conclusion of court proceedings resulting in the sale of the property regardless of whether any portion of the costs were paid from the proceeds of the sale. The lien release shall be filed in the county clerk's office.

Section 4 - That this Ordinance shall become effective upon passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

Published:

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