

ORDINANCE NO. _____ - 2016

AN ORDINANCE CREATING SECTION 14-106 OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, REQUIRING THAT THE DELIVERY OF UNSOLICITED WRITTEN MATERIALS TO A PREMISES BE PLACED ON THE FRONT PORCH, THROUGH A MAIL SLOT, SECURELY ATTACHED TO THE FRONT DOOR, BETWEEN THE EXTERIOR AND INTERIOR FRONT DOOR, IN A DISTRIBUTION BOX, OR PERSONALLY WITH THE OWNER; CLASSIFYING A VIOLATION OF THIS ORDINANCE AS A CIVIL OFFENSE; ESTABLISHING ADMINISTRATIVE REVIEW PROCEDURES TO CONTEST CITATIONS; FIXING A MAXIMUM CIVIL PENALTIES FOR VIOLATIONS IN THE ~~FOLLOWING AMOUNTS OF FIFTY DOLLARS (\$50.00) PER VIOLATION, IF UNCONTESTED;~~ TWO HUNDRED DOLLARS (\$200.00) PER VIOLATION, ~~IF CONTESTED;~~ DESIGNATING THE ~~ENVIRONMENTAL HEARING BOARD~~ ADMINISTRATIVE HEARING BOARD AS THE CODE ENFORCEMENT BOARD HAVING AUTHORITY TO DETERMINE WHETHER A VIOLATION HAS OCCURRED; AND AMENDING SUBSECTION 14-10(f)(4) TO DESIGNATE CITATION OFFICERS; ~~AND AMENDING SECTION 16-76 OF THE CODE OF ORDINANCES TO AUTHORIZE THE ENVIRONMENTAL HEARING BOARD TO HEAR MATTERS RELATING TO ENFORCEMENT OF THIS ORDINANCE;~~ ALL EFFECTIVE SIXTY (60) DAYS FROM PASSAGE.

WHEREAS, the Lexington-Fayette Urban County Council (“Urban County Council”) is concerned about the proliferation of litter and visual blight within the community; and

WHEREAS, the Urban County Council finds that deliveries of unsolicited written materials are being haphazardly made throughout Fayette County, including by distributing such materials on sidewalks, yards, and driveways, with no means to ensure that such items do not add to the litter problem and/or visual blight; and

WHEREAS, the Urban County Council finds that these unsolicited written materials have contributed to the litter and visual blight of private premises, public streets, sidewalks, and other public places, and that these materials, haphazardly delivered, are damaging to private property and/or interfere with private property; and

WHEREAS, the Urban County Council desires to ensure that these unsolicited written materials do not litter the streets, sidewalks, or other public places, or yards or driveways of private premises; do not cause visual blight in our neighborhoods; do not damage private property; and do not interfere with private property; and

WHEREAS, this Ordinance is an effort to reduce unwanted litter and visual blight caused by unsolicited written materials on public property and the yards and driveways of private premises; to prevent damage to private property; and to further prevent interference with private property; and

WHEREAS, this Ordinance does not in any way deprive or diminish a private property owner's right to protect his or her premises from unsolicited or unwanted written materials.

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

Section 1 – That Section 14-106 of the Code of Ordinances be and hereby is created to read as follows:

Section 14 - 106. – Unsolicited Written Materials

- (a) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) *Citation Officer.* A person authorized by state law or local ordinance to issue a citation for a violation of this ordinance.
 - (2) *Front Door.* The street-facing entrance(s) to a principal structure. In the event no door faces the street, then any other door of a principal structure nearest the street shall be considered a front door for purposes of this ordinance.
 - (3) *Porch.* An exterior appendage to a principal structure leading to a doorway, including any stairway attached thereto.
 - (4) *Premises.* A lot, plot, or parcel of land including any structures, driveways, or other impervious surfaces thereon.
 - (5) *Principal Structure.* A structure, or combination of structures of primary importance on the premises, and that contains the primary use associated with the premises. The primary use is characterized by identifying the main activity taking place on the premises.
 - (6) *Unsolicited written materials.* Any written materials delivered to any premises without the express invitation or permission, in writing or otherwise, by the owner, occupant, or lessee of such premises.
- (b) *Placement of Unsolicited Written Materials.* Unsolicited written materials delivered to premises shall be placed:
- (1) On a porch, if one exists, nearest the front door; or
 - (2) So that such materials are securely attached to the front door; or
 - (3) Through a mail slot on the front door or principal structure, if one exists, as permitted by the United States Postal Service Domestic Mail Manual, Section 508 Recipient Services, Subsection 3.1.2; or

- (4) Between the exterior front door, if one exists and is unlocked, and the interior front door; or
 - (5) Where permitted, in a distribution box located on or adjacent to the premises; or
 - (6) Personally with the owner, occupant, and/or lessee of the premises.
- (c) Notwithstanding subsection (b) above, an owner, lessee, or occupant maintains the right to restrict entry to his or her premises.
- (d) Unsolicited written materials placed at a premises create a rebuttable presumption that the materials were placed at the premises by the owner, agent, manager, and/or authorized distributor of the business, product, good, service, message, or idea, which is being advertised, promoted, endorsed, or conveyed in such materials.
- (e) The provisions of this ordinance do not apply to the United States Postal Service.
- (f) Any placement of unsolicited written materials in areas on or adjacent to a premises other than as set forth in subsection (b) of this ordinance shall be a violation of this ordinance, classified as a civil offense, and may be enforced by issuance of a civil citation by a citation officer, consistent with Chapter 2B of the Code, or as it may be amended.
- (g) *Civil Penalty.* The civil penalty for each violation of this ordinance shall be ~~a maximum of fifty dollars (\$50.00) per violation if the citation is not contested and~~ two hundred dollars (\$200) per violation ~~if the citation is contested.~~
- (h) *Code Enforcement Board.* The ~~Environmental Hearing Board~~ **administrative hearing board established in Section 12-6 of the Code of Ordinances** shall be the code enforcement board having authority to determine whether there has been a violation of this ordinance. Administrative review of citations shall adhere to those procedures set forth in Chapter 2B of the Code **through the use of assigned hearing officer(s).**
- (i) *Severability.* If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidation shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

Section 2 – That subsection 14-10(f)(4) of the Code of Ordinances be and hereby is amended to read as follows:

(f) *Issuance of Citations.* The mayor may designate certain officers, agents, and employees, holding the positions listed below, to issue citations with respect to the ordinances set out for their respective positions.

TABLE INSET:

Subsection	Position Title	Ordinances To Be Enforced
(4)	Code enforcement officer, nuisance control officer, code enforcement supervisor, and director of code enforcement	Code of Ordinances sections 12-1 through 12-58, 14-105, <u>14-106</u> , article IV of chapter 17, and subsections 17-4(g) and (j) of

	employed in the division of code enforcement.	the zoning ordinance (per Ordinance No. 349-2005).
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Section 3 – ~~That Section 16-76 of the Code of Ordinance be and hereby is amended to read as follows:~~

~~Two (2) hearing boards are hereby created pursuant to KRS 65.8801 through 65.8839, one (1) to be known and referred to as the infrastructure hearing board and one (1) to be known and referred to as the environmental hearing board. The infrastructure hearing board shall hear matters regarding enforcement of ordinances by the divisions of engineering, water quality, planning, traffic engineering, and streets, roads and forestry, as specified in applicable code sections, and those portions of the zoning ordinance and subdivision regulations subject to enforcement through civil citations. The environmental hearing board shall hear matters regarding enforcement of ordinances by the division of solid waste and shall also hear matters relating to the enforcement of Section 14-105 of the code which classifies littering as a civil offense and Section 14-106 of the code which relates to the placement of unsolicited written materials. The boards shall operate under and be subject to the provisions of chapter 2B of the code.~~

~~Section 4—~~ That this Ordinance shall become effective sixty (60) days from passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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