

ORDINANCE NO. \_\_\_\_-2016

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO COMPLY WITH THE PROVISIONS OF KRS 65.8801 ET SEQ., AND MORE SPECIFICALLY AMENDING SECTION 12-1 TO PROVIDE THAT THE PROPERTY MAINTENANCE CODE SHALL BE ENFORCED THROUGH A CODE ENFORCEMENT BOARD PURSUANT TO CHAPTER 2B OF THE CODE OF ORDINANCES AND THAT VIOLATORS SHALL RECEIVE A PRELIMINARY NOTICE OF VIOLATION PRIOR TO CITATION; FURTHER REPEALING SECTIONS 12-2, 12-4, 12-5, 12-6, 12-8, 12-8.3, 12-14, 12-15, 12-16, 12-68, 12-69, AND 12-70 OF THE CODE OF ORDINANCES; CREATING A NEW SECTION 12-2 DEFINING NUISANCES; RENUMBERING SECTION 12-7 AS 12-3 AND AMENDING TO PROVIDE THAT SECTION 12-2 SHALL BE ENFORCED BY THE COMMISSIONER OF PLANNING, PRESERVATION, AND DEVELOPMENT, TO PROVIDE THAT VIOLATORS OF SECTION 12-2 SHALL RECEIVE A PRELIMINARY NOTICE OF VIOLATION PRIOR TO CITATION, TO PROVIDE THAT SECTION 12-2 SHALL BE ENFORCED PURSUANT TO CHAPTER 2B OF THE CODE OF ORDINANCES, AND TO AUTHORIZE THE URBAN COUNTY GOVERNMENT TO ABATE SUCH NUISANCES AT THE EXPENSE OF THE OWNER; RENUMBERING SECTION 12-8 AS 12-4 AND AMENDING TO AUTHORIZE THE COMMISSIONER OF PLANNING, PRESERVATION, AND DEVELOPMENT TO ENFORCE CHAPTER 12 OF THE CODE OF ORDINANCES; RENUMBERING SECTION 12-8.2 AS 12-5 AND AMENDING REFERENCES TO SECTION NUMBERS; RENUMBERING SECTION 12-13 AS 12-6 AND AMENDING TO PROVIDE THAT THE CODE ENFORCEMENT BOARD CREATED THEREUNDER SHALL FUNCTION PURSUANT TO KRS 65.8801, ET SEQ. AND CHAPTER 2B OF THE CODE OF ORDINANCES; AMENDING REFERENCES TO SECTION NUMBERS IN SECTIONS 12-60 AND 12-62; AMENDING SECTION 12-63 TO PROVIDE THAT PUBLIC NUISANCES VIOLATIONS SHALL BE ENFORCED PURSUANT TO CHAPTER 2B OF THE CODE OF ORDINANCES AND AUTHORIZING THE URBAN COUNTY GOVERNMENT TO ABATE SUCH NUISANCES AT THE EXPENSE OF THE OWNER; AMENDING SECTION 12-64 TO CLARIFY THAT THE URBAN COUNTY GOVERNMENT MAY ABATE A PUBLIC NUISANCE BY ISSUING AN ORDER TO CLOSE AND VACATE THE PREMISES; AND AMENDING REFERENCES TO SECTION NUMBERS IN SECTION 14-10.

WHEREAS, House Bill 422 was enacted during the 2016 General Legislative Session and requires the Lexington-Fayette Urban County Government to make certain changes to its existing ordinances related to administrative hearing boards; and

WHEREAS, Lexington-Fayette Urban County Government wishes to conform to the requirements of House Bill 422 in order to continue to utilize civil fines and remedial orders and to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with certain ordinances in force within Lexington-Fayette County;

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

**Section 1 – That subsection 12-1(a) of the Code of Ordinances be and hereby is amended to read as follows:**

(a) Adopted; filed. The International Code Council, Inc., International Property Maintenance Code, 1998 Edition (hereinafter referred to as "this code"), with the revisions shown in paragraph (b) herein, is hereby approved and adopted as the existing structures code of the urban county government. A copy of said code is incorporated herein by reference and filed with the urban county council clerk as a part of the public records of this government. This code is adopted pursuant to KRS 65.8801 to KRS 65.8839 and unless otherwise provided shall be interpreted in accordance with the provisions of Chapter 2B of the Code of Ordinances.

**Section 2 – That subsection 12-1(b), PM 106.4.1(b) of the Code of Ordinances be and hereby is amended to read as follows:**

*PM-106.4.1*

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(b) As an alternative remedy to subsection (a), any person, firm or corporation who violates any provision of this code may be subject to civil finer penalties of not less than one hundred dollars (\$100.00) nor more than ten thousand dollars (\$10,000.00) per parcel of real property for each separate instance in which civil penalties fines are imposed. Such finer penalties may be assessed on each separate structure or dwelling unit located on a parcel of real property, pursuant to the civil penalty fine guidelines as set forth below. In addition, the urban county government may assess the administrative cost involved with any inspection(s), in an amount not to exceed two hundred fifty dollars (\$250.00). Each day that a violation continues after due notice has been served, as provided herein, shall be deemed a separate offense. All such civil fines shall be issued in conformity with section 2B-6 of the code.

<del>Number of Citations Inspections After Time Provided By Code Enforcement to Come into Compliance Elapses</del>					
Number of Violations at Time of <u>Citation</u> Inspection	1	2	3	4	5+
1—5	\$100.00	\$200.00	\$300.00	\$400.00	\$500.00
6—10	\$200.00	\$300.00	\$400.00	\$500.00	\$750.00
11—15	\$300.00	\$400.00	\$500.00	\$750.00	\$1,000.00
16—20	\$400.00	\$500.00	\$750.00	\$1,000.00	\$1,500.00

21 or more	\$500.00	\$750.00	\$1,000.00	\$1,500.00	\$2,000.00
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**Section 3 – That subsection 12-1(b), PM 107.1 of the Code of Ordinances be and hereby is amended to read as follows:**

*PM-107.1*

~~*Notice to owner or to person or persons responsible:* Whenever the a code enforcement officer official determines that there has been a violation of this section, the official may issue a preliminary notice of violation, which carries no penalty and is non-appealable. Should the owner of the premises fail to correct the violation, a code official shall issue a citation containing the information and in the manner required by Section 2B-6 of the Code of Ordinances. code or has grounds to believe that a violation has occurred, notice in the form prescribed in PM 107.2 shall be given to 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 commissioner of public safety planning, preservation, and development or his designated officer 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. If the property owner employs or utilizes a management company or other agent for the maintenance of the property, the owner may designate in writing, on a form provided by and filed with the division of code enforcement, the name and address of the company or agent to which said notices shall also be provided; however, it shall remain the responsibility of the property owner to comply with the provisions of this code. The property owner shall be responsible for updating any such information filed with the division of code enforcement as necessary. Notices for condemnation procedures shall also comply with section PM-108.3. In addition to the notice of violation, a separate notice of the assessment of a civil penalty shall also be made in the manner prescribed in sections PM-107.2 and PM-107.3.~~

**Section 4 – That subsection 12-1(b), PM 107.2 of the Code of Ordinances be and hereby is repealed in its entirety.**

**Section 5 – That subsection 12-1(b), PM 111.2 of the Code of Ordinances be and hereby is amended to read as follows:**

*PM-111.2*

~~*Appeals board:* The administrative hearing board established in Section 12-6 of the Code of Ordinances shall be responsible for enforcing the provisions of this code in accordance with the procedures of Section 2B of the Code of Ordinances through the use of assigned hearing officer(s). In order to protect existing structures in the jurisdiction by vigorous enforcement of the provisions of this code, there shall be and is hereby created an administrative hearing board, hereafter referred to as the board, as provided in section 12-13 of the Code of Ordinances, Lexington-Fayette Urban County Government. The powers and conduct of the board and the membership thereof shall be as set forth in sections 12-13 through 12-16 of the Code of~~

~~Ordinances, and those provisions shall supersede and replace sections PM-111.2. through and including PM-111.8 of this International Property Maintenance Code.~~

**Section 6 – That subsection 12-1(b), PM 302.8 of the Code of Ordinances be and hereby is amended to read as follows:**

*PM-302.8*

*Vehicles:* The keeping, parking or storing of vehicles on any premises shall conform with and be subject to section 12-26 of the Code of Ordinances.

**Section 7 – That Sections 12-2, 12-4, 12-5, 12-6, and 12-8 of the Code of Ordinances be and hereby are repealed, and a new Section 12-2 of the Code is created to read as follows:**

Sec. 12-2. – Nuisances

Violations of this chapter of the Code of Ordinances shall be enforced through a code enforcement board pursuant to KRS 65.8801 to KRS 65.8839 through the use of assigned hearing officer(s).

(a) The definitions provided in Section 2B-2 of the Code of Ordinances shall apply to this chapter unless otherwise stated.

(b) No owner of any premises shall maintain or keep any nuisance thereon, nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located, and the owner shall not permit any structure upon his or her premises to become unfit and unsafe for human habitation, occupancy, or use or permit conditions to exist on the structure or premises which 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 urban county.

(b) Except as provided in subsection (f) of this section, it shall be unlawful for the owner, occupant, or person having control or management of any premises within the urban county to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:

(1) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;

(2) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or inoperative and which are not inhabited;

(3) Rubbish;

(4) The excessive growth of weeds or grass as follows:

a. Any weeds such as jimson, burdock, ragweed, thistle, cocklebur, poison ivy, poison oak or other weeds of a like kind are prohibited and unlawful. This section shall not apply to property for which a current riparian buffer area permit is in effect.

b. It shall be unlawful for the owner to permit any weeds, grass or plants, other than crops, trees, bushes, flowers or other ornamental plants, to grow to a height exceeding twelve (12) inches anywhere on such premises, including those portions thereof abutting any street, road, alley or other thoroughfare, and in the event such premises are crossed by a sidewalk, ditch, pathway, private roadway, fence or other natural or manmade boundary or divider, including those portions thereof between such boundary or divider and the edge of the thoroughfare; any such weeds, grass or plants exceeding such height are hereby declared to be a nuisance. This section shall not apply to property for which a current riparian buffer area permit is in effect.

c. It shall be unlawful for the owner or occupant of any premises to permit any tree, brush, hedge or other vegetation to grow in a manner which interferes with normal sidewalk traffic or vehicular traffic within the public right-of-way.

d. There is hereby exempted from the scope of the provisions of subsections (a) and (b) above property within the urban county zoned for agricultural uses, except that such exemption shall not apply when the property has been planned for development and a subdivision plat has been filed of record in the office of the county clerk reflecting the property as residential..

(5) Ashes, debris, garbage, lumber, bricks, cinder blocks, insulation material, building debris, refuse, trash or waste of any kind, whether liquid or solid.

(6) Abandoned, discarded or unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers.

(7) Water, which is directed or collected and discharged, by any person on or across any sidewalk, and which forms the accumulation of ice on the sidewalk so as to endanger the public health and safety by preventing safe or reasonable flow of pedestrian traffic.

(c) No owner of any premises shall allow the use or storage of furniture which is upholstered or not designed for outdoor use, or equipment or appliances which are not designed for outdoor use, in an outdoor area such as a porch, patio or yard.

(d) It shall be unlawful for any person, whether in person or by his agent, employee or servant, to cast, throw, sweep, sift or deposit, in any manner, any ashes, debris, garbage, refuse or waste of any kind, whether liquid or solid, in or upon any public way, public place, river, canal, public water, drain, sewer or receiving basin within the jurisdiction of the urban county government,. Nor shall any person cast, throw, sweep, sift or deposit any of the aforementioned items anywhere within the jurisdiction of the urban county government in such manner that it may be carried or deposited, in whole or in part, by the action of the sun, wind, rain or snow into any of the aforementioned places. This section shall not apply to the deposit of material under a permit authorized by any ordinance of the urban county government; or to

goods, wares or merchandise deposited upon any public way or other public place temporarily, in the necessary course of trade, and removed therefrom within two (2) hours after being so deposited; or to articles for things deposited in or conducted into the urban county government sewer system through lawful drains in accordance with the ordinances of the urban county government.

(e) It shall be unlawful for any person, whether in person or by his agent, employee or servant, to use any vehicle to haul any ashes, debris, garbage, refuse or waste of any kind, whether liquid or solid, unless such vehicle is covered to prevent any part of its contents from spilling or escaping the vehicle at all times while such vehicle is in motion on any street or alley in the urban county. However, the requirements herein for covering such vehicles shall not apply to vehicles carrying brush cuttings, tree trimmings, branches, logs and similar waste material if such matter is securely lashed to such vehicle to prevent spilling or escaping the vehicle.

(f) The provisions of subsection (b), above shall not apply to:

(1) Junked, wrecked, or inoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a:

a. Licensed automotive recycling dealer as described in KRS 190.010(8);

b. Used motor vehicle dealer as defined in KRS 190.010(6); or

c. Motor vehicle auction dealer as defined in KRS 190.010(11);

(2) Junked, wrecked, or inoperative motor vehicles, including parts cars, stored on private premises by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, or other means;

(3) Any motor vehicle as defined in KRS 281.010 that is owned, controlled, operated, managed, or leased by a motor carrier.

(4) Any vehicle on the premises of a business enterprise operated in a lawful place, other than in a residential district, and operated in a lawful manner, when the keeping or maintenance of such vehicle is necessary to the operation of such business enterprise; or with regard to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the urban county government or any other public agency or entity.

**Section 8 - That Section 12-7 of the Code of Ordinances be and hereby is renumbered as Section 12-3 of the Code and is amended to read as follows:**

Sec. 12-37. - Abatement of nuisance.

(a) *Notice of Violation and Citation. to abate:* It shall be the duty of the commissioner of planning, preservation, and development ~~public safety~~, citation officers as specifically authorized by ordinance, or others authorized by ordinance to act as code enforcement officers and to serve or cause to be served a notice of violation or citation upon the owner of any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter. Such notice shall describe the nuisance so maintained and shall demand abatement of such

nuisance within a prescribed time. The notice of violation shall carry no penalty and shall be non-appealable. Should the owner of the premises fail to abate the nuisance within the time set by the notice of violation, a citation may be issued for the violation in accordance with Chapter 2B of the Code of Ordinances. In addition to prescribing any civil fine authorized by the ordinance violated, the citation may demand that the violation be abated within a set time. If the violation is not abated within the set time, the urban county government may proceed to abate such nuisance at the expense of the owner, keeping an account of the expense of the abatement; and such expense, including an administrative cost fee, if any, shall be charged to and paid by the owner. ~~ten (10) days of notice, unless such nuisance constitutes an immediate danger to health and well-being of the community, in which case the notice shall demand abatement within twenty-four (24) hours of the notice. The notice shall also include the following:~~

- ~~(1) — A statement to the effect that if the situation is not remedied within the prescribed time, the urban county government will proceed to abate the nuisance;~~
- ~~(2) — A statement to the effect that the cost of abatement constitutes a lien against the property in favor of the urban county government;~~
- ~~(3) — A statement to the effect that if the urban county government is required to abate the nuisance, the commissioner of public safety will send a bill for the cost of the abatement, to include the administrative cost, not to exceed two hundred fifty dollars (\$250.00), to the property owner, and if the bill is not paid within seven (7) days following the mailing of the bill, that a notice of lien claimed for the cost of the abatement will be placed against the property. The property owner shall further be informed that in the event the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill;~~
- ~~(4) — A statement to the effect that civil penalties of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) may be imposed if more than one (1) notice to abate a nuisance has been issued to the same owner, on the same property, within a twelve-month period and that civil penalties so imposed will be added to the bill for the cost of abatement, if any; and~~
- ~~(5) — The procedure and time frame established by section 12-8.3 for appealing the notice to abate or the imposition of civil penalties, when applicable.~~

(b) *Right to a hearing and appeal.* Any person issued a citation under this section shall have the right to a hearing before an assigned hearing officer acting on behalf of the administrative hearing board established pursuant to Section 12-6 herein. The notices and procedures related to the hearing shall be as provided in Chapter 2B of the Code.

(c) *Lien.* The urban county government shall possess a lien on the violator's property pursuant to and in accordance with Section 2B-9 of the Code of Ordinances for all civil fines and the cost of any abatement, including a reasonable administrative fee, issued or incurred under this section.

~~(b) — *Service of notice to abate:* Notice to abate and/or a notice of civil penalty shall be personally served upon the owner or shall be mailed 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 commissioner of public safety or his designated officer 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. If notice is made by publication, a copy of such notice shall be posted in a conspicuous place on the premises affected by the notice. If the property owner employs or utilizes a management company or other agent for the maintenance of the~~

~~property, the owner may designate, in writing on a form provided by and filed with the division of code enforcement, the name and address of the company or agent to which said notices shall also be provided; however, it shall remain the responsibility of the property owner to comply with the provisions of this Code. The property owner shall be responsible for updating any such information filed with the division of code enforcement as necessary.~~

~~(c) — *Abatement by urban county government:* If the owner so served does not abate the nuisance or file a notice of appeal within ten (10) days, the urban county government may proceed to abate such nuisance, keeping an account of the expense of the abatement; and such expense, including an administrative cost fee and the cost of publication, if any, shall be charged to and paid by such owner or occupant. The ten-day period provided for in this subsection shall be deemed to commence as follows:~~

~~(1) — Where notice is personally served, on the day following service.~~

~~(2) — Where notice is by mail, on the third day following mailing.~~

~~(3) — Where notice is by publication and posting, on the third day following the initial day of publication.~~

~~(d) — *Lien:* The urban county government shall have a lien against the property for its costs incurred in such nuisance abatement and for any civil penalties assessed for violations of chapter 12. 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 commissioner [of] public safety or the citation officer, setting forth the property in question, the amount of the urban county government's cost of abatement, the date of abatement, and that the notice provisions of this section were complied with before abatement. The commissioner of public safety or his designee shall bill the property owner of such premises at least once following abatement or the assessment of a civil penalty. No notice of lien claimed shall be filed against the property in the case of abatement until seven (7) days have elapsed since the bill is sent, and in the case of a civil penalty, no notice of lien claimed shall be filed against the property until the time for appeal has expired. 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 (e).~~

~~(e) — *Property to be sold:* Property subject to a lien for unpaid nuisance abatement charges or unpaid 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.~~

~~(f) — *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 nuisance abatement or civil penalties remains unpaid for twenty-one (21) 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.~~

~~(g) — *Release of lien:* The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (d) upon payment in full of the nuisance abatement cost 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.~~

~~(h) — *Unenforceable liens:* The commissioner of law is hereby authorized to make the determination that liens shall not be filed for the cost of nuisance abatement if the cost of~~



~~nuisance abatement is five hundred dollars (\$500.00) or less and the cost of collection of the lien would be greater than the lien itself, or when intervening in existing litigation is not cost effective, or when the lien would not be enforceable as a matter of law. All liens now of record meeting these criteria may be released upon signature of the mayor and all prior releases of such liens are hereby ratified and adopted as an act of this council.~~

**Section 9 – That Section 12-8.1 of the Code of Ordinances be and hereby is renumbered as Section 12-4 and is amended to read as follows:**

~~Sec. 12-48.1. - Authority of housing and community development commissioner.~~

The commissioner of the department of planning, preservation and development ~~[public safety]~~ is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the provisions of this chapter of the code of ordinances section 12-4 through 12-8.2, including the following powers in addition to any others herein granted:

(1) To enter upon all properties within the urban county for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article.

(2) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter ~~article~~.

(3) To delegate any of his functions or powers under this article to such officers, agents and employees as he may designate.

(4) To promulgate regulations which may be necessary to carry out and effectuate the provisions of this article.

**Section 10 – That Section 12-8.2 of the Code of Ordinances be and hereby is renumbered as Section 12-5 of the Code, and is amended to read as follows:**

~~Sec. 12-58.2. - Penalties.~~

(a) Every person failing to perform the duties required of him by or to comply with the provisions of sections 12-24, ~~12-5, 12-6 or 12-8~~ shall, for every offense, be fined not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00), and each day's continuance of any such violation shall be a separate offense.

(b) As an alternative remedy to subsection (a), any owner who violates any provision of sections 12-24, ~~12-5, 12-6, or 12-8~~ and has been previously issued at least one (1) notice of violation ~~notice to abate a related to a nuisance violation or violations~~ on the same property within a twelve-month period, may also be assessed civil fines ~~penalties~~ of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), pursuant to the civil fine penalty ~~guidelines~~ as set forth herein. ~~Notice of the assessment of a civil penalty for a violation of sections 12-4, 12-5, 12-6 or 12-8 shall be made in the manner specified in~~

subsection 12-7(b) herein.

(c) Civil fines penalties assessed for violations of sections 12-24, 12-5, 12-6, or 12-8 shall be based on the number of citations ~~notices to abate~~ issued within a twelve-month period, as follows:

	<u>1</u> [2]	<u>2</u> [3]	<u>3</u> [4]	<u>4</u> [5]+
Number of <u>Citations</u> <del>Notices</del>	\$100.00	\$250.00	\$500.00	\$1,000.00

**Section 11 – That Section 12-8.3 of the Code of Ordinances be and hereby is repealed in its entirety.**

**Section 12 – That Section 12-13 of the Code of Ordinances be and hereby is renumbered as Section 12-6 of the Code, and is amended to read as follows:**

Sec. 12-613. - Administrative hearing board; establishment; ~~powers.~~

(a) ~~A five (5) member administrative hearing board is hereby created pursuant to KRS 65.8801, et seq. 82.700 through 82.725 and Chapter 2B of the Code of Ordinances to enforce those provisions of this chapter that are enforceable by civil remedy, including fines. All administrative hearings shall be heard by an assigned hearing officer appointed by the board. The board or its assigned hearing officers shall meet at least annually and on a regular basis as required for hearings and all such meetings shall comply with the applicable notice requirements of the law. KRS 381.770. The board shall be composed of five (5) members appointed by the mayor and confirmed by a majority of the urban county council. Board members may individually serve as hearing officers pursuant to this section. Any action of a hearing officer shall be deemed to be the action of the board.~~

(b) ~~Terms and qualifications: Appointed board members shall serve a term of four (4) years from the date of appointment, provided that the terms of those originally appointed shall be for two (2) years, three (3) years, and four (4) years so as to be staggered in the manner required by section 7.02 of the Urban County Charter. Vacancies shall be filled for an unexpired term in the manner prescribed for the original appointment. Board members shall either be licensed to practice law in Kentucky or have completed a course in mediation training, and shall have been a resident of Fayette County for a minimum of one (1) year prior to appointment.~~

(c) ~~Financial interest: A member of the board shall not participate in any hearings or vote on any appeal in which the member has a direct or indirect financial interest, or is engaged as a contractor, or is engaged in the preparation of plans and specifications, or in which that member has any personal interest. The board shall be subject to Article 16 of the Urban County Charter—Code of Ethics and Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances—Ethics Act.~~

(d) ~~The code official shall designate a staff person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the code official.~~

(e) ~~Meetings: The board shall meet on the fourth Thursday of each calendar month if written applications for appeal have been filed or other business is pending before the board, or at such other times as deemed necessary by the board. The board secretary shall give ten (10) days~~

~~public notice of board meetings. An application for appeal shall not be heard by the board until the required public notice has been given.~~

~~(f) The jurisdiction of hearing officers to conduct hearings, issue orders and impose civil penalties shall be only that specifically granted by ordinance or statute.~~

**Section 13 – That Sections 12-14, 12-15, and 12-16 of the Code of Ordinances be and hereby are repealed in their entirety.**

**Section 14 – That Section 12-60 of the Code of Ordinances be and hereby is amended to read as follows:**

Sec. 12-60. - Definition.

For purposes of sections 12-60 through 12-~~64~~ 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, including domestic violence calls for service, shall not be considered in the number of occasions ~~including domestic violence calls for service~~.

**Section 15 – That Section 12-62 of the Code of Ordinances be and hereby is amended to read as follows:**

Sec. 12-62. - Enforcement.

The division of police shall be responsible for enforcement of sections 12-60 through 12-~~64~~70 relating to public nuisances. The term code official as used in these sections shall refer to the chief of police or his or her designated representative.

**Section 16 – That Section 12-63 of the Code of Ordinances be and hereby is amended to read as follows:**

Sec. 12-63. - Abatement procedure.

(a) *Duty to notify owner.* Whenever the code official has reason to believe 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 (c) 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) Failure to Abate Notice to abate. Should the owner fail to abate the public nuisance after receiving the notice required by subsection (a), above, it shall be the duty of the code official to serve or cause to be served a citation notice upon the owner of the any premises upon which there is kept or maintained a public nuisance in violation of section 12-61s 12-60 through 12-70. In addition to prescribing a civil fine as authorized by Section 12-64, the citation may also demand that the violation be abated within a set time. If the violation is not abated within the set time, the urban county government may describe the nuisance so maintained and shall demand abatement of such nuisance. Notice to abate shall be personally served upon the owner or shall be mailed 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. If notice is made by publication, a copy of such notice shall be posted in a conspicuous place on the premises affected by the notice. 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 are is the site of repeated orders to close and vacate. The urban county government may take reasonable steps to enforce the order to close and vacate the premises to the extent necessary to abate the public nuisance should the owner fail to do so. The urban county government shall keep an account of the expense of the abatement, including the reasonable value of labor and materials used and a reasonable administrative fee, and such expense shall be charged to and paid by the owner.~~

~~(c)(d) Service of citation and notice to abate or order to close and vacate. A citation issued under this section notice to abate or an order to close and vacate shall conform with Section 2B-6 of the Code of Ordinances. 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. An order to close and vacate shall be served in the same manner as the citation, and shall also be 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.~~

~~(d) Right to a hearing and appeal. Any person issued a citation or order to close and vacate under this section shall have the right to a hearing before an assigned hearing officer acting on behalf of the administrative hearing board established pursuant to Section 12-6, as~~

further provided under chapter 2B of the Code, as well as any additional appeal provided thereunder.

(e) *Lien.* ~~The urban county government shall possess a lien on the subject property in accordance with Section 2B-9 of the Code of Ordinances for all civil fines and the cost of any abatement, including a reasonable administrative fee, issued or incurred under this section. 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 17 – That Section 12-64 of the Code of Ordinances be and hereby is amended to read as follows:**

Sec. 12-64. - Action on failure to comply.

If any person fails to comply with a notice to abate a public nuisance ~~or an order to close and vacate issued pursuant to section 12-63~~, the code official may take any, or any combination of, the following remedial actions:

(a) Issue a citation assessing a ~~Assess~~ civil fine penalties of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) per violation;

~~with notice of the assessment of a civil penalty for a violation to be made in the manner specified in section 12-63 herein;~~

~~(b) Issue an order to close and vacate the premises to the extent necessary to abate the public nuisance;~~

~~(c) Revoke the certificate of occupancy of the premises; or~~

~~(d) Use any other legal remedy available under the laws of the Commonwealth.~~

**Section 18 – That Sections 12-68, 12-69, and 12-70 of the Code of Ordinances be and hereby are repealed in their entirety.**

**Section 19 - That subsection 14-10(f)(4) be and hereby is amended to read as follows:**

Sec. 14-10. – Citation officers.

\* \* \* \* \*

(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 expressly set out for their respective positions.

\* \* \* \* \*

Subsection	Position Title	Ordinances To Be Enforced
(4)	Code enforcement officer, nuisance control officer, code enforcement supervisor, and director of code enforcement employed in the division of code enforcement.	Code of Ordinances sections 12-1 through 12-58, 14-105, article IV of chapter 17; and subsections 17-4(g) and (j) of the zoning ordinance (per Ordinance No. 349-2005).

**Section 20 - That this Ordinance shall become effective on January 1, 2017.**

PASSED URBAN COUNTY COUNCIL:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

X:\Cases\CODE\16-CC0251\LEG\00549475.DOCX