

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 TO KRS 65.8839, AND MORE SPECIFICALLY AMENDING SUBSECTION 12-1(A) OF THE CODE TO PROVIDE THAT THE PROPERTY MAINTENANCE CODE IS ADOPTED PURSUANT TO STATE LAW AND IS TO BE INTERPRETED IN ACCORDANCE WITH CHAPTER 2B OF THE CODE; AMENDING SUBSECTIONS 12-1(B) PM-106.4.1(B), PM-107.1, PM-111.2, AND PM-302.8 TO PROVIDE FOR REFERENCES TO THE APPROPRIATE SECTIONS OF CHAPTER 2B OF THE CODE, CIVIL FINES BASED UPON CITATIONS RANGING FROM \$100 TO \$10,000 NOTICES OF VIOLATION, AND ASSIGNED HEARING OFFICERS; REPEALING SUBSECTION 12-1(B) PM-107.2 OF THE CODE; 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; CREATING A NEW SECTION 12-2 OF THE CODE DEFINING NUISANCES AND INCLUDING JUNKED VEHICLES RUBBISH, EXCESSIVE WEED OR GRASS GROWTH, ASHES, DEBRIS, GARBAGE, ABANDONED EQUIPMENT OR APPLIANCES, INDOOR FURNITURE OUTDOORS, AND ICE ON SIDEWALKS; RENUMBERING SECTION 12-7 OF THE CODE TO SECTION 12-3 OF THE CODE AND AMENDING TO PROVIDE ENFORCEMENT BY THE COMMISSIONER OF PLANNING, PRESERVATION, AND DEVELOPMENT, NOTICES OF VIOLATION AND CITATIONS, ABATEMENT, HEARINGS, APPEALS, AND LIENS; RENUMBERING SECTION 12-8 OF THE CODE TO SECTION 12-4 OF THE CODE 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 OF THE CODE TO 12-5 OF THE CODE AND AMENDING TO PROVIDE FOR CIVIL FINE BASED UPON THE NUMBER OF CITATIONS RANGING FROM \$100 TO \$1,000; RENUMBERING SECTION 12-13 OF THE CODE TO 12-6 OF THE CODE AND AMENDING TO PROVIDE THAT THE CODE ENFORCEMENT BOARD IS CREATED PURSUANT TO KRS 65.8801 TO KRS 65.8839 AND OPERATES PURSUANT TO CHAPTER 2B OF THE CODE; AMENDING SECTIONS 12-60 AND 12-62 OF THE CODE TO REFERENCE THE CORRECT SECTION NUMBERS; AMENDING SECTIONS 12-63 AND 12-64 OF THE CODE PERTAINING TO PUBLIC NUISANCES TO PROVIDE FOR NOTICES, ABATEMENT, CITATIONS, CLOSURES, HEARINGS, APPEALS AND LIENS PURSUANT TO CHAPTER 2B OF THE CODE AND CIVIL FINES RANGING FROM \$500 TO \$5000; AND AMENDING SUBSECTION 14-10(F)(4) OF THE CODE TO REFERENCE TO THE CORRECT SECTION NUMBERS; ALL EFFECTIVE JANUARY 1, 2017.

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, and effective method of ensuring compliance with the property standards contained in Chapter 12 of the Code of Ordinances;

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

* * * * *

(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 fines 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 fines are imposed. Such fines may be assessed on each separate structure or dwelling unit located on a parcel of real property, pursuant to the civil 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 through citations in conformity with section 2B-6 of the code.

Number of Citations					
Number of Violations at Time of Citation	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

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 a code enforcement officer 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. If the owner of the property cannot be ascertained from the tax rolls in the exercise of reasonable diligence, the commissioner of 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.

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 Chapter 2B of the Code of Ordinances through the use of assigned hearing officer(s).

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 12-2 of the Code of Ordinances.

Section 7 – That 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 be and hereby are repealed in their entirety.

Section 8 – That Section 12-2 of the Code of Ordinances be and hereby 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 created pursuant to KRS 65.8801 to KRS 65.8839, as further provided in Section 12-6, utilizing 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.

(c) 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 an 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 (c), 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 9 - That Section 12-7 of the Code of Ordinances be and hereby is renumbered to Section 12-3 of the Code and is amended to read as follows:

Sec. 12-3. - Abatement of nuisance.

(a) *Notice of Violation and Citation.* It shall be the duty of the commissioner of planning, preservation, and development, citation officers as specifically authorized by ordinance, or others authorized by ordinance to act as code enforcement officers 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. If issued, such notice of violation 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 prescribed time. If the violation is not abated within the prescribed time, the urban county government may proceed to abate the nuisance at the expense of the owner, keeping an account of the expense of the abatement; and such expense, including an administrative fee, if any, shall be charged to and paid by the owner.

(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.

Section 10 – That Section 12-8.1 of the Code of Ordinances be and hereby is renumbered to Section 12-4 of the Code and is amended to read as follows:

Sec. 12-4 - Authority of commissioner.

The commissioner of the department of planning, preservation and development 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, including the following powers in addition to any others herein granted:

(a) 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.

- (b) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter.
- (c) To delegate any of his functions or powers under this article to such officers, agents and employees as he may designate.
- (d) To promulgate regulations which may be necessary to carry out and effectuate the provisions of this article.

Section 11 – That Section 12-8.2 of the Code of Ordinances be and hereby is renumbered to Section 12-5 of the Code, and is amended to read as follows:

Sec. 12-5 - Penalties.

- (a) Every person failing to perform the duties required of him by or to comply with the provisions of section 12-2 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 section 12-2 and has been previously issued at least one (1) nuisance citation for a violation or violations on the same property within a twelve-month period, may also be assessed civil fines of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), pursuant to the civil fine guidelines as set forth herein.
- (c) Civil fines assessed for violations of section 12-2 shall be based on the number of citations issued within a twelve-month period, as follows:

	1	2	3	4+
Number of Citations	\$100.00	\$250.00	\$500.00	\$1,000.00

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

Sec. 12-6. - Administrative hearing board; establishment.

- (a) A five (5) member administrative hearing board is hereby created pursuant to KRS 65.8801 to KRS 65.8839 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 using the process and procedures provided in chapter 2B. 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.

Section 13 – 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, 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.

Section 14 – 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 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 15 – 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 that a public nuisance exists in or upon 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.* 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 upon the owner of the premises upon which there is kept or maintained a public nuisance in violation of section 12-61. 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 prescribed time. If the violation is not abated within the prescribed time, the urban county government may 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 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) *Service of citation order to close and vacate.* A citation issued under this section shall conform with Section 2B-6 of the Code of Ordinances. An order to close and vacate shall be served in the same manner as the citation, and shall also 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.

Section 16 – 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, the code official may take any, or any combination of, the following remedial actions:

- (a) Issue a citation assessing a civil fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) per violation;
- (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 17 - That subsection 14-10(f)(4) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 14-10. – Citation officers.

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(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 12-4, 14-105, article IV of chapter 17; and subsections 17-4(g) and (j) of the zoning ordinance (per Ordinance No. 349-2005).

Section 18 - 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 19 - That this Ordinance shall become effective on January 1, 2017.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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