

ORDINANCE NO. \_\_\_\_\_ - 2020

AN ORDINANCE REPEALING SECTION 14-96 OF THE CODE OF ORDINANCES IN ITS ENTIRETY AND CREATING AND ENACTING SECTION 12-68 OF THE CODE OF ORDINANCES TO ESTABLISH A PROCEDURE IN IDENTIFYING AND REMEDYING PROPERTIES CLASSIFIED AS "DISRUPTIVE PREMISES" WHEREBY EACH DWELLING OR RESIDENCE WITHIN FAYETTE COUNTY THAT IS IDENTIFIED BY THE DIVISION OF POLICE AS HAVING MULTIPLE DISTURBANCE COMPLAINTS REQUIRING ENFORCEMENT ACTION WITHIN A YEAR PERIOD TO BE CERTIFIED AS A DISRUPTIVE PREMISES AND PROVIDING FOR: DEFINITIONS; RECORD KEEPING, CERTIFICATION OF A PROPERTY AS A DISRUPTIVE PREMISES, NOTIFICATION OF CERTIFICATION OF A DISRUPTIVE PREMISES TO THE PROPERTY OWNER AND OCCUPANTS, A PETITION FOR REMOVAL OF CERTIFICATION OF DISRUPTIVE PREMISES, AND THE CONTINUED ENFORCEMENT OF OTHER REGULATIONS, PENALTIES; ALL EFFECTIVE ON THE DATE OF PASSAGE

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WHEREAS, the Lexington-Fayette Urban County Government's Division of Police has indicated that certain dwelling units or residences within Fayette County consistently generate disturbance complaints based on activities involving, but not limited to, excessive noise, unruly behavior, possession of alcohol by minors; and

WHEREAS, the citizens of Fayette County will benefit from the implementation of measures to decrease the number of such complaints generated by these properties; and

WHEREAS, the enactment of such measures will benefit the health, safety, and welfare of the community; and

WHEREAS, the enactment of such measures will allow the Urban County Government to efficiently use its existing resources to decrease the number of such repeat disturbance complaints.

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

Section 1 – That Section 14-96 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is repealed in its entirety.

Section 2 – That Section 12-68 of the Code of Ordinances be and hereby is created and enacted to read as follows:

**Sec. 12-68 - Disruptive Premises Plan**

- (a) For the purposes of this section, which shall be known as the "Disruptive Premises Plan" the following definitions shall apply:
1. *Disturbance complaint* means a complaint that is based upon a violation of the offenses as described in (a)(5) of this section.
  2. *Dwelling unit* shall have the same meaning as provided in section 14-70.
  3. *Enforcement action* means that the Division of Police, upon responding to a disturbance complaint and substantiating that unlawful activity is occurring, takes action to shut down the unlawful activity and issue any citation(s) or make any arrest(s), as appropriate.
  4. *Disruptive premises* means a dwelling unit that has been identified and certified by the Division of Police as being a disturbance problem.
  5. *Disturbance problem* means that a dwelling unit has generated at least two (2) enforcement actions where citations were issued or arrests made within a one-year period for the following offenses:
    - a. Lexington-Fayette Urban County Code of Ordinances 14-70 to 14-80
    - b. Disorderly Conduct 2<sup>nd</sup> (KRS 525.060)
    - c. Minor in Possession of Alcohol (KRS 244.085)
    - d. Unlawful Transaction with a Minor 3<sup>rd</sup> (KRS 530.070)
- (b) The Division of Police shall keep accurate and sufficient records such that it is able to readily ascertain the number of disturbance complaints associated with any dwelling unit located within Fayette County, any action taken by the Division of Police in response to said complaints and the final disposition of such action.
- (c) Upon determining that a dwelling unit is a disturbance problem, the Division of Police shall immediately certify that property as being a disruptive premises subject to the appeal process provided in subsection (e), below. A "Disruptive Premises" certification shall be in effect for a period of one (1) year from the date of the initial certification. If, during this one-year period, another disturbance complaint is received by the Division of Police and the Division of Police takes enforcement action in response to said complaint, the certification shall automatically be extended to run for a period of one (1) year from the date of the latest disturbance complaint.
- (d) Upon certifying a dwelling unit as a "Disruptive Premises", the Division of Police shall notify the property owner and occupant(s) by providing a notice of such certification, along with a copy of the provisions of this section, via personal service or by U.S. Mail, to the street address listed for said property. In the event that the property is not owner-occupied, the Division of Police shall also provide a notice of such certification, along with a copy of the provisions of this section, via personal service or by U.S. mail to the last-known address of the owner of the property as it appears on the current tax assessment rolls.

- (e) Any owner of a dwelling unit or residence that has been certified as a "Disruptive Premises" may appeal the designation to the Office of the Commissioner of Public Safety, by filing a written appeal of the certification within seven (7) days of the Issuance Date. Failure to appeal the certification shall result in the determination that the property owner has waived their right to appeal, the violations did occur on the property, and the issuance of certification was proper. Any appeal to the Commissioner of Public Safety provided under this section shall entail providing the owner with a hearing at which the owner may be heard and present any relevant evidence.
- (f) Any owner of record of a dwelling unit that has been certified as a "Disruptive Premises" by the Division of Police who allows unlawful activity at that property which results in a disturbance complaint leading to an enforcement action shall be in violation of this section.
- (g) In the event that a disturbance complaint is received by the Division of Police during the period of time that a dwelling is certified as a "Disruptive Premises", the Division of Police shall, upon substantiating that a violation is occurring, take enforcement action, including in addition to issuing any criminal citations, issuing any appropriate civil citation and fine for violation of this section.
- (h) The property owner of a dwelling unit certified as a "Disruptive Premises" may petition the Commissioner of Public Safety in writing at any time to have the certification removed. Upon a sufficient showing that the basis for the problem has been adequately addressed and that the property is not likely to be a disturbance problem in the future, the Commissioner of Public Safety shall remove the "Disruptive Premises" certification and notify the Division of Police.
- (i) Nothing contained in this section shall be construed to permit conduct prohibited by any other statute, ordinance, or regulation, or to prohibit the enforcement thereof.
- (j) When a police officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of subsection (f) of this section the officer is authorized to issue a civil citation by:
  - 1. Personal service to the alleged violator;
  - 2. Leaving a copy of the citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or
  - 3. Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator.
- (k) The citation issued by the Division of Police shall be in a form prescribed by the urban county government and shall contain, in addition to any other information required by ordinance or rule of the Code Enforcement Board:
  - 1. The date and time of issuance;
  - 2. The name and address of the person to whom the citation is issued;
  - 3. The date and time the offense was committed;
  - 4. The fact constituting the offense;
  - 5. The section of the Code or the number of the ordinance violated;
  - 6. The name of the police officer;

7. The civil fine that will be imposed for the violation if the person does not contest the citation (if the ordinance establishing the fine provides for such option);
  8. The maximum civil fine that may be imposed if the person elects to contest the citation;
  9. The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
  10. A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to an administrative hearing to contest the citation and that the determination that a violation was committed shall be final and the person shall be deemed to have waived his or her right to appeal.
- (l) After issuing a citation to an alleged violator, the police officer shall notify the Code Enforcement Board by delivering the citation to the administrative official designated by ordinance or by the board.
- (m) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued either by paying the civil fine set forth in the citation or requesting, in writing, an administrative hearing to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing to contest the citation and determination that a violation was committed shall be considered final. In the event, the citation, as issued, shall be deemed a final order determining that a violation was committed and imposing the civil fine set forth in the citation, and the person shall be deemed to have waived his or her right to an appeal. Notice of the final order shall be provided to the cited violator by personal service or U.S. Mail.
- (n) Any appeals to the Code Enforcement Board will be governed by Sec 2B-7 of the Code of Ordinances.
- (o) An appeal from any final order issued by a hearing officer may be made to the Fayette District Court within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.
1. A judgment of the district court may be appealed to the circuit court in accordance with the Kentucky Rules of Civil Procedure.
  2. If no appeal from a final order issued by a hearing officer is filed within the time period set forth in this section, the order shall be deemed final for all purposes.
  3. Pursuant to state law and this chapter, the failure to timely utilize the administrative hearing process to challenge a citation or to appear at the administrative hearing shall result in a final order which is not appealable.
- (p) 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 in accordance with Sec 2B-9 of the Code of Ordinances.

(q) Any person, firm or corporation, who violates any provision of this code may be subject to civil fines as follows:

1. First Offense: \$250
2. Second Offense: \$500
3. Third and subsequent offenses: \$1,000

Section 3 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL

ATTEST:

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MAYOR

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CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: