

## **ORDINANCE 07-2022**

**AN ORDINANCE OF THE CITY OF FORT WRIGHT, IN KENTON COUNTY, KENTUCKY, AMENDING VARIOUS SECTIONS OF TITLE IX, CHAPTER 92 OF THE CITY OF FORT WRIGHT CODE OF ORDINANCES ENTITLED "NUISANCES" TO ELIMINATE THE CITY NUISANCE BOARD, IMPLEMENT NUISANCE ENFORCEMENT THROUGH THE KENTON COUNTY JOINT CODE ENFORCEMENT BOARD, AND OTHER AMENDMENTS RELATING TO NUISANCES.**

**WHEREAS**, the Fort Wright City Council desires to update and amend its code of ordinances relating to its Nuisance ordinance, codified in the City's Code of Ordinances as Title IX, Section 92.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF FORT WRIGHT, KENTON COUNTY, KENTUCKY, AS FOLLOWS.**

### **SECTION 1**

The Code of the City of Fort Wright TITLE IX, specifically Chapter 92, is hereby amended as follows (any text being added is shown by a single solid line drawn underneath it; text that is removed is marked at the beginning with an opening bracket and at the end with a closing bracket; the text between the brackets is stricken through with a single solid line).

### **SECTION 2**

## ***GENERAL PROVISIONS***

### **§ 92.01 STATUTORY AUTHORITY.**

The purpose of this chapter is to establish a nuisance ordinance under KRS 65.8840(1).

### **§ 92.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"ABATEMENT COSTS." Has the meaning provided in KRS 65.8840(1).

"ANYBODY." Any human being, or any organization or combination thereof, in the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

~~["BANNER SIGN." Any commercial sign composed of any pliable plastic or cloth, without a rigid supporting frame.]~~

"BUILDING." Any relatively permanent enclosure consisting of no less than three connected walls covered by a roof.

"CITY." The City of Fort Wright.

"CODE ENFORCEMENT OFFICER." Has the same meaning provided in KRS 65.8840(1), ~~[-Code Enforcement Officer shall also]~~ and shall include the Public Works Director; the City Administrative Officer; police officers; and as defined in KRS 65.8801 et seq., any employee of Planning and Development Services of Kenton County charged with the enforcement of this chapter as a code enforcement/citation officer, exclusive of clerical and administrative staff.

"COMMERCIAL SIGN." Any sign which includes any information, message identification which is, in any way, related to the promotion of any business or commerce.

"CONTROL." To exercise restraint or direction over.

"DELIVER." Includes any manner of delivery that conforms to the federal and state constitutional requirements for procedural due process.

"EVERYBODY." Every human being, and every organization or combination thereof, in the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

"FRONT YARD." That portion of a lot or parcel of real estate that extends from the street upon which the principle building on that lot or parcel fronts, for the full width of that lot or parcel, back to every part of the front (as distinguished from the sides and back) of that principle building.

"GRAFFITI." Any display of words, letters, numbers, design or symbols scrawled, by hand or otherwise, in any ink, paint, chalk, dye or any other medium on any building or structure, without the consent or authority of the owner thereof, and which is within view from any public property or right of way.

"IMMINENTLY DANGEROUS." A condition which could cause serious or life-threatening injury or death.

"INOPERABLE MOTOR VEHICLE." A motor vehicle that is:

- (1) Wrecked or otherwise in a state of disrepair or disassembly;
- (2) Mechanically inoperable; or
- (3) Legally inoperable on public streets and highways.

"LIVESTOCK." Animals of the bovine, ovine, porcine, caprine, equine, camelid and cervid species, including, without limitation, horses, cattle, sheep, swine and goats.

"MUNICIPAL SOLID WASTE." Has the same meaning provided in KRS 224.1.010(30)(a) [~~KRS 224.01-010(31)(a)(4)~~].

"MUNICIPAL SOLID WASTE CONTAINER." A clean, covered, rigid metal or plastic container with a capacity of no less than 30 gallons and no more than 96 gallons.

"NOBODY." No human being, or any organization or combination thereof, in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

"OUTSIDE." An area of a lot or parcel of real estate that is not enclosed within a building.

"RECREATIONAL VEHICLE." Has the same meaning provided in KRS 227.550(11) [~~KRS 227.550(12)~~].

"RUBBISH." Worthless, discarded material.

"UNLEASHED ANIMAL." Any animal that is not secured and controlled by the owner or custodian of that animal by means of a leash.

"UNSOLICITED WRITTEN MATERIAL." Any written material that is distributed to any lot or parcel of real estate in the city without the affirmative express invitation or permission of an owner or occupant of that lot or parcel of real estate.

### **§ 92.03 NUISANCES DESCRIBED AND PROHIBITED.**

(A) The following actions, omissions, behavior, conditions and occurrences upon any lot or parcel of real estate within the city are hereby declared to be public nuisances and violations of this chapter; and nobody, including, without limitation, landlords and tenants, shall, by either act or omission, conspire, cause, permit, encourage, aid, assist, allow or engage in any of them, or fail to exercise any authority to prevent the occurrence thereof, including, without limitation, the eviction of tenants who cause, permit, encourage, aid assist, allow or engage in any of them.

(B) Public nuisances include, but are not limited to:

(1) Any condition or use of any lot or parcel of real estate in the city or any structure thereon that is detrimental to the value, use or enjoyment of the property of others in the vicinity of that lot or parcel of real estate, including, without limitation;

(a) Those in violation of the provisions of the International Property Maintenance Code, published by the International Code Council, Inc. as amended from time to time and enacted by city ordinance;

(b) Those structures that are designed and intended for human habitation occupancy or use that become unfit and unsafe for human habitation, occupancy or use or have conditions in them that 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 city;

(c) Those in violation of the standards of safety promulgated pursuant to KRS 227.300. which are hereby adopted by the city pursuant to the requirements of KRS 227.320; and

(d) Those in violation of the provisions of the NFPA1 Uniform Fire Code published by the National Fire Protection Association, as amended from time to time ~~[and enacted by city ordinance]~~.

(C) The accumulation of any rubbish on any portion of any lot or parcel of real estate outside of any building.

(D) Use of any portion of a residential lot or parcel of real estate outside of a building for the location of any broken, inoperable or otherwise non-functional vehicles, equipment, machinery or furniture or any parts thereof, or the location of any scrap or salvage material, or the location of any other tangible personal property.

(E) The location of one or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or non-operative and which are not inhabited.

(F) The growth of weeds or grass in excess of ten inches above the surface of the ground on any lot or parcel of real estate that is less than four acres in area and developed with the public utilities of water, electricity and sewers.

(G) The parking of any recreational vehicle, boat or trailer anywhere in any residential area except for only one of any such vehicles:



(1) In the rear yard of any lot or parcel of real estate that is paved with blacktop or concrete, provided that no part of such vehicle is within one foot of any point in the nearest boundary line;

(2) In any area of a side yard that is ~~[continuously]~~ paved with blacktop or concrete, provided that no part of such vehicle is within one foot of any point in the nearest boundary line; or

(3) In any driveway during the period after May 1 and before October 15 in any calendar year, provided that:

(a) ~~[The area thereof occupied by any such vehicle is in addition to all off street parking areas required by this chapter;~~

~~—(b)—~~There is no more than one of any such vehicles parked, stored or otherwise located in any portion of any driveway on any one lot or parcel of real estate at any one time; and

(b) [(e)] No part of any such vehicle is within one foot of any point in the nearest boundary line.

(4) Under no circumstance may any recreational vehicle, boat, or trailer be permitted to remain in a residential area more than five consecutive days and no more than a total of 25 days per year.

(5) However, a recreational vehicle, boat or trailer less than twenty feet in length from tongue to bumper may remain indefinitely provided it rests on a paved surface behind the front-most portion of the home. The paved surface may also be in the rear of the house.

(H) No INOPERABLE MOTOR VEHICLE or any motor vehicle parts shall be stored in excess of seventy-two (72) hours in any residential zone, unless it is in a completely enclosed building. No INOPERABLE MOTOR VEHICLE shall be parked in the right of way of any city street for more than seventy-two (72) hours.

(I) It shall be unlawful for any person(s) to live in any boat, automobile, camper, recreational vehicle, or truck, within the jurisdiction of the legislative body.

(J) It shall be unlawful to park or to keep any truck or commercial vehicle with a gross vehicle weight in excess of 10,000 pounds, at any place on property located in a residential district zone, except in a completely enclosed garage.

(K) No person shall allow a recreational vehicle to be parked or otherwise located on a public street.

(L) Portable Storage Containers (i.e., PODS). Portable storage containers are a temporary structure designed for storage that are less than 169 square feet in size and eight feet in height that may be delivered onsite by a commercial enterprise then picked up and removed to a commercial storage facility or the customer's destination. Portable storage containers are permitted as a non-permanent accessory use to provide temporary storage for moving and similar short-term purposes. One portable storage

container may be located at any residence or business for two non-sequential periods, not exceeding 16 days for each period, per calendar year. The portable storage container shall be situated on an improved surface; not block any sidewalk, shared-use path or lane; and may not be placed on any public right-of-way, street or road. A portable storage container is not permitted as a permanent accessory storage structure regardless of the proposed location of the unit on a parcel.

(M) Dumpsters. Dumpsters are a temporary large trash receptacle designed for disposing of trash in a non-commercial setting that may be delivered onsite by a commercial enterprise then picked up and removed to haul to a solid waste facility. Dumpsters are permitted as a non-permanent accessory use to provide temporary trash collection. One dumpster may be located at any residence for 30 days per calendar year. The dumpster shall be situated on an improved surface; not block any sidewalk, shared-use path or lane; and may not be placed on any public right-of-way, street or road.

(N [H]) The accumulation of any municipal solid waste anywhere unless it is enclosed within a covered municipal solid waste container, except city-provided recycle bins.

(O [I]) The location of any municipal solid waste container in the front yard of any lot or parcel of real estate in the city at any time other than that period of time that begins at 6:00 p.m. on the day before the day that municipal solid waste is scheduled by the city for collection from that real estate and ends at 6:00 a.m. on the following day.

(P [J]) Being the owner of an animal, to permit or to allow his or her animal to do any of the following:

~~[(1) To run at large within the city. "At large" means on or off the premises of the owner and not under the immediate effective control of the owner or custodian either by leash, cord, or chain, or effectively confined within a fenced area on the owner's premises.~~

~~— (2) To trespass upon another person's real property or to in any manner injure or destroy any real or personal property belonging to another person.~~

~~— (3) To bark, howl, cry, whine or make any other noise or do anything else in such a manner that it unreasonably interferes with the occupation, use and enjoyment of any other property in the city.]~~

(1) It shall be unlawful to keep at any one residence within the city limits more than five dogs or cats, or any combination thereof with the exception that the owner or person who has custody of a dog or cat may retain the puppies or kittens, born of said dog or cat which exceed the permissible numbers set forth in this division for a period of 12 weeks after the birth of the animals. Any retention of dogs or cats in excess of the number specified in this division after this 12-week period will constitute a violation of this division.

(2) The keeping of poisonous reptiles, vicious animals and/or wild animals on property within the city is prohibited, whether owned by the resident or not.

(3) It shall be unlawful to keep at any one residence within the city limits more than five chickens, with the exception that the owner or person who has custody of a chicken may retain the chicks, born of said chicken which exceed the permissible numbers set forth in this division for a period of 12 weeks after the birth of the animals. Any retention of chicks in excess of the number specified in this division after this 12-week period will constitute a nuisance.

~~[(K) The occurrence of any sound, odors or anything else from any animal or animals on any lot or parcel of real estate in the city that unreasonably interferes in any way with the occupation, use or enjoyment of any other lot or parcel of real estate in the city by any owner, tenant, occupant, resident or user thereof.]~~

(Q [L]) The location of any rubbish on any public sidewalk or right of way and the failure of those with any ownership or possessory interest in any lot or parcel of real estate abutting thereon to remove it within a reasonable period of time after such rubbish has been deposited thereon.

(R [M]) Any commercial sign that isn't in a condition of good repair and in a clean, neat, and safe and functional condition in compliance with all applicable laws, including, without limitation, all building and property maintenance codes.

(S [N]) The occurrence, existence or continuation of any graffiti.

(T [O]) The outside storage or other location of any equipment in any front or side yard where it may be seen from a public street, while that equipment is in a position or condition in which the design and purpose of that equipment may not be accomplished.

(U [P]) Any outdoor swimming pool in which:

(1) The water in the pool is contaminated with dangerous disease-causing pathogens, including bacteria; however

(2) Water may be retained and impounded in the pool to a depth of 18 [24] inches or more at any one point so long as the pool area is surrounded by a fence that is at least four feet in height. The fence must limit access to the pool, except that it may have one or more gates. Each gate must have an automatic self-closing mechanism.

(3) No swimming pool or associated equipment shall be permitted within any required yards, nor within any public utility right-of-way easement.

(4) Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.

(5) No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent residential properties.

(V [Q]) Any livestock within 500 feet of any residence.

(W [R]) Roosters are entirely prohibited.

(X [S]) Any literature or handbills, including fliers, leaflets, circulars, pamphlets, advertisements and coupons, which may be distributed in the City, pursuant to law, shall be done only in the manner described in the follows:

A. Placed in the hand of the intended recipient;

B. Bound, folded, boxed or weighed in such a manner that the material cannot be blown away, scattered or fragmented by the action of the elements and/or normal pedestrian or vehicular traffic; or

C. Deposited on the premises for which it is intended by being tied to, affixed, slipped over a doorknob or other protrusion, or placed through a slot or opening in a front entry door or with a receptacle for such items located upon the property; provided, however, the item being distributed first shall have been rolled up and secured with a rubber band or in some other manner so as to prevent the materials from being blown away, scattered, or fragmented by the action of the elements and/or normal pedestrian or vehicular traffic. As used in this section, "receptacle" means a container made of a stiff material containing the words "For Papers", or similar words. ~~[The distribution or accumulation of any unsolicited written material on any portion of any lot or parcel of real estate in the city outside of a building other than:~~

~~—(1) On a perch, if one exists, nearest to the front door;~~

~~—(2) Securely attached to a door;~~

~~—(3) Between an exterior door and an interior door; or~~

~~—(4) Personally with any occupant of the lot or parcel of real estate.]~~

~~(Y [T]) [The use of any portion of any residential lot or parcel of real estate outside of a building for the storage or other location of any inoperable motor vehicles or any motor vehicle parts.~~

~~—(U)—[The use of any lot or parcel of real estate, or any portion thereof, including, without limitation, any building or any portion thereof located on that lot or parcel of real estate, for any criminal activity to such an extent that there have been documented responses to any of them by peace officers or other personnel of the city on five or more separate occasions within any one period of 12 consecutive calendar months; provided that an owner of that lot or parcel of real estate has been notified at least once during that period of 12 consecutive calendar months of the occurrence of any such criminal activity; and provided further that the eviction of any tenants of that lot or parcel of real estate who were involved in such criminal activity shall be a defense to any civil or criminal prosecution for a violation of this section.~~

~~(Z [V]) The use of any paved area other than sidewalks within the right-of-way of any street within the city for any athletic or other recreational activity.~~

~~W] The location of any apparatus for the athletic or other recreational use of any area within the right-of-way of any street within the city [whether that apparatus is located within or outside of that right-of-way.]~~



(AA [X]) Any tree, shrub, or bush located on private property, which dangers any public street or highway, ~~any vehicle or person~~, any public sidewalk or any public property.

(BB [Y]) The location of any motor vehicle in any manner that any portion of it is on or above any portion of any sidewalk in the city, potentially blocking the pedestrian use thereof.

~~[(Z) The location of any inoperable motor vehicle anywhere within the right-of-way of any street in the city.]~~

#### **§ 92.04 HEARING BOARD [AND HEARING OFFICERS].**

The Kenton County Joint Code Enforcement Board shall act as the Hearing Board for the enforcement of this chapter. Authorized personnel of Planning and Development Services of Kenton County and City Police, Fire Officials, City Administrative Officer and Public Works Director shall act as the enforcement authority for the provisions of this chapter.

All provisions and processes contained in the Interlocal Agreement for the Kenton County Joint Code Enforcement Board, as may be amended from time to time, and all requirements of KRS 65.8801 - 65.8840, are incorporated herein, and shall be applicable to all proceedings pursuant to this Chapter, including provisions relating to enforcement proceedings, hearings, appeals, fines and liens.

The powers and duties of the Kenton County Code Enforcement Board or any person that they may be designated by the city to enforce the provisions of this chapter shall include but not be limited to the following all pursuant to KRS 65.8801 to 65.8839(1):

(A) To conduct surveys and make inspections in any area of the city to determine compliance with this chapter or other ordinances he or she is empowered to enforce;

(B) To investigate all complaints made about buildings, structures, vacant lots, or other premises within the city, whether they be verbal, written, or in the form of a petition, alleging or charging that a violation of this chapter exists or that a dwelling, structure, or building is unfit or unsafe for human habitation or other occupancy;

(C) In support of police or fire authority to inspect, survey, or investigate any building, structure, dwelling, or premises between the hours of 8:00 a.m. and 5:00 p.m., or at any time if an emergency exists or if requested by the owner or occupant. A code enforcement officer may enter a building, structure, dwelling, or premises to inspect, survey, or investigate with the consent of the owner or occupant, in emergency situations, or when an inspection, survey, or investigation is required before a permit is issued or funding is provided by the county or is part of a licensing scheme adopted by the county. If an owner or occupant refuses to consent to entry or inspection of a building, structure, dwelling, or premises, a code enforcement officer may obtain a search warrant for this purpose from a court of appropriate jurisdiction. In addition, a code enforcement officer may obtain a search warrant to inspect several buildings or structures in a particular area as part of an area inspection policy promulgated by the city. Probable cause to issue a search warrant may be based upon the passage of time,



the nature of the building (e.g., a multi-family apartment house), the condition of the entire area, or other reasonable legislative or administrative standards adopted by the county. Probable cause does not need to depend upon specific knowledge of a condition existing in a particular dwelling. A code enforcement officer conducting an inspection pursuant to this chapter shall provide identification and statement of purpose before entering any building, structure, dwelling, or premises and the person in possession or in charge of the building, structure, dwelling, or premises shall give the Joint Code Enforcement Board and his or her assistants, staff, or employees free access to such property for the purposes set forth herein;

(D) To administer oaths and affirmations, to examine witnesses, and receive evidence;

(E) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of this chapter;

(F) To delegate any of his or her functions and powers under this chapter and other ordinances to such officers, agents, and employees as he or she designates;

(G) To seek through the appropriate judicial officer or office, such warrants that are necessary to enforce the provisions of this chapter and in pursuit of said warrants, make such oath or affirmation necessary in support thereof;

(H) To keep records of all complaints received, inspection reports, orders, and of other actions taken. The records shall be made available for public inspection upon request within a reasonable amount of time. The Joint Code Enforcement Board shall prepare an annual report including statistics based on the records kept.

~~[There is hereby established a Hearing Board consisting of three persons appointed by the Mayor of the city for the purpose of conducting hearings, which shall be named and known as the Fort Wright Nuisance Hearing Board which shall be identified and referred to hereinafter simply as the "Board." The Board may appoint hearing officers; and any action of a hearing officer shall be deemed to be the action of the Board.]~~

## **§ 92.05 RESPONSIBILITY FOR ENFORCEMENT.**

The responsibility for the enforcement of the nuisance code hereby established is hereby delegated to any [the a] Code Enforcement Officer as defined herein [as designated by the City Council].

## **§ 92.06 RESERVED. [STANDARDS AND PROCEDURES FOR THE ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER.]**

~~[There are hereby established the following standards and procedures for the enforcement of this chapter.~~

~~—(A) Enforcement proceedings before the Board shall be initiated by the issuance of a notice of violation and civil citation (citation) by a person who is a Code Enforcement Officer.~~

~~—(B) Whenever a Code Enforcement Officer either:~~

~~—(1) Observes or otherwise personally senses a violation of this chapter; or~~

~~—(2) Has reason to believe that a violation of this chapter has occurred or is occurring, the Code Enforcement Officer is hereby authorized to issue a citation to everyone who the Code Enforcement Officer has reason to believe has, by either act or omission, conspired, caused, permitted, encouraged, aided, assisted, allowed or engaged in that violation.~~

~~—(C) The citation issued by the Code Enforcement Officer shall be in a form prescribed by the executive authority of the city; but it shall include at least the following information:~~

~~—(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 violation occurred;~~

~~—(4) The facts constituting the violation;~~

~~—(5) The section of this chapter that has been violated;~~

~~—(6) The name of the Code Enforcement Officer;~~

~~—(7) The civil fine that will be assessed for the violation if that person does not contest the citation;~~

~~—(8) The maximum civil fine that may be imposed if that person elects to contest the citation;~~

~~—(9) The procedure for the person to follow in order to pay the fine or to contest the citation; and~~

~~—(10) A description of the circumstances in which the determination of the Code Enforcement Officer becomes final; and that, thereupon, the city shall cause the violations described in the citation to be abated; and that the cost thereof shall be assessed upon the person to whom the citation was issued; and that the owner of the property upon which those violations occurred shall also be liable therefor and for all fines, penalties, charges abatement costs and fees assessed for those violations, for which the city shall possess a lien on that property.~~

~~—(D) After issuing a citation, the Code Enforcement Officer shall cause the citation to be served upon the person to whom it was issued either by personal delivery, or by any other means that conforms to the due process provisions of the federal and state constitutions.~~

~~—(E) After issuing and serving a citation upon the person to whom it was issued, the Code Enforcement Officer shall notify the Board thereof by delivering a copy of the citation to the Board.~~



~~—(F) When a citation is issued and served upon the person to whom the citation was issued, that person shall respond to the citation within seven calendar days after the date the service of the citation, by either paying the civil fine set forth in the citation or delivering to the Board a written request for a hearing to contest the citation. If there is no response to the citation by the person to whom it was issued within seven days after the service thereof on that person, then that person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.]~~

#### **§ 92.07 RESERVED. [BOARD HEARINGS.]**

~~—(A) When a hearing before the Board has been requested by a person to whom a citation has been issued, the Board shall schedule a hearing. Not less than seven days before the date set for the hearing, the Board shall cause to be delivered to the person who requested the hearing a written notice of the date, time, and place of the hearing. Any person requesting a hearing before the Board who fails to appear at the time and place scheduled for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination of the Code Enforcement Officer that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.~~

~~—(B) All testimony before the Board shall be under oath and shall be recorded. The Board shall receive testimony from the Code Enforcement Officer, the person to whom the citation was issued, and any other witnesses to the facts identified in the citation or any other relevant facts offered by the Code Enforcement Officer or the person to whom the citation was issued. Formal rules of evidence shall not apply, but constitutional procedural due process shall be observed and shall govern the proceedings.~~

~~—(C) At the hearing, the Board shall determine from the evidence presented whether or not a violation of this chapter was committed by the person to whom the citation was issued. When the Board determines from that evidence that no such violation was committed, the contrary determination of the Code Enforcement Officer shall be reversed and an order dismissing the citation shall be signed and entered into the record of the proceedings of the Board. When the Board determines that a violation was committed, the Board shall issue an order sustaining the citation and assessing the person to whom the citation was issued for a civil fine in an amount as provided in § 92.11. In its discretion, the Board may issue a fine less than permitted in § 92.11.~~

~~—(D) Every final order of the Hearing Board shall be written and signed on behalf of the Board; and it shall include the date the order was issued, and a copy of the order shall be delivered to the person to whom the citation was issued. If the person to whom the citation was issued is not present at the time of the final order of the Hearing Board,~~



~~the final order shall be delivered to that person by postage pre-paid first class U.S. mail to the address identified in the citation or a different address identified by that person.]~~

#### **§ 92.08 RESERVED. [ELIMINATION OF VIOLATIONS BY THE CITY].**

~~[In the event that a determination of the Code Enforcement Officer that the violation(s) described in a citation were committed by the person to whom the citation was issued becomes final, and the violations identified therein continue thereafter, the city shall cause those violations to be abated through either employees of the city or contracts with others.]~~

#### **§ 92.09 VIOLATIONS.**

A violation of this chapter occurs whenever anybody, by either act or omission, conspires causes, permits, encourages, aids, assists, allows or engages in any of the acts, actions, behavior, conditions and occurrences prohibited by this chapter; and each and every separate non-continuing occurrence thereof, and each and every day of each continuing occurrence thereof is a separate violation of this chapter.

#### **§ 92.10 OWNERS LIABILITY AND LIEN OF THE CITY.**

(A) Pursuant to KRS 65.8840(10), the owner(s) of the property at the time of the occurrence of violations of this chapter on that property shall be liable for all civil fines, penalties, charges, abatement costs and fees assessed for those violations.

(B) Pursuant to KRS 65.8840(8), the city shall possess a lien on all charges and fees incurred by the city in connection with the enforcement of this chapter, including abatement costs. The lien shall also include attorneys' fees incurred as an additional penalty. The affidavit of the Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings, and shall be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence provided in KRS 65.8840(9). The city shall possess the lien for ten years following the date of the final, non-appealable order of the Board or final judgment of the court. The lien may be enforced by judicial proceeding.

#### **§ 92.11 RESERVED [ABATEMENT PROCEDURE FOR IMMINENTLY DANGEROUS CONDITIONS.**

~~—(A)— Any property condition which the city reasonably determines to be imminently dangerous to the health and safety of city residents may be summarily abated in accordance with the procedures set forth in this section.~~

~~—(B)— Actions taken to abate imminently dangerous property conditions may include, but are not limited to, repair, removal, or demolition of the condition creating the danger and/or the restriction from use or occupancy of the property on which the dangerous condition exists or any other abatement actions determined by the city to be necessary.~~

~~—(C)— (1) Whenever the city determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the city shall give~~



~~reasonable notice, not to exceed five business days, to the property owner as to the nuisance and prior to the demolition of any unfit or unsafe structure, the property owner shall be afforded the right to a hearing before the Mayor or his or her designee.~~

~~—(2) If the property owner cannot be located or the owner fails to take prompt appropriate action to abate the condition, the city may proceed to take abatement action authorized in this section to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing.~~

~~—(D) (1) Whenever the city takes action to abate imminently dangerous property conditions, the property owner shall be liable for all costs of such abatement. Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for 14 days after it has been rendered, the City Clerk/Treasurer may file with the County Clerk a statement of lien claims. This statement/affidavit shall contain a legal description of the premises, the expenses and costs incurred, the date the nuisance was abated, and a notice that the city claims a lien for this amount. The affidavit of the authorized city officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings. The lien shall be notice to all persons from the time of the recording and shall bear interest at 6% per annum thereafter until paid. Notice of the lien shall be mailed to the owner of the premises if his or her address is known. However, failure to record the claim or to mail the notice, or the failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges.~~

~~—(2) The lien shall take precedence over all other liens, except state, county, school board, and city taxes, and the city may bring a civil action against the owner and have the same remedies as provided for the recovery of a debt owed. The city's lien shall include the costs incurred in all legal actions necessary to foreclose the lien, which costs shall include reasonable attorneys' fees.~~

~~—(E) Property subject to a lien for unpaid imminent danger abatement charges shall be sold for nonpayment, and the proceeds of the sale shall be applied to pay the charges after deducting costs, as is the case in the foreclosure of statutory liens. This foreclosure shall be in equity in the name of the city.~~

~~—(F) The City Attorney is authorized to institute such proceedings in the name of the city in any court having jurisdiction over the matter against any property for which the bill has remained unpaid for 14 days after it has been rendered, upon direction by the Mayor.]~~

## ***CHRONIC NUISANCE PROPERTIES***

### **§ 92.20 DEFINITIONS.**

For purposes of this subchapter, the following words or phrases shall have the meaning prescribed below.

“ABATE.” To repair, replace, remove, destroy or otherwise remedy a condition that constitutes a violation of this subchapter by such means and in such a manner and to

such an extent as the applicable city department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community.

“CONTROL.” The ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property.

“CHRONIC NUISANCE PROPERTY.” Any real property on which any combination of three or more nuisance activities occur or exist during any 90-day period.

“DRUG-RELATED ACTIVITY.” Any unlawful activity at a property that consists of the manufacture, delivery, sale, storage, possession or giving away of any controlled substance as defined under KRS Chapters 217 and 218A, legend drug as defined in KRS chapter 217, or imitation controlled substance as defined in KRS Chapters 217 and 218A.

“NUISANCE ACTIVITY.”

(A) Means and includes:

(1) Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:

- (a) Abandoned and junk vehicles;
- (b) Fire prevention;
- (c) Health and sanitation;
- (d) International Property Maintenance Code as adopted by the city in § [150.02](#);
- (e) Noise control;
- (f) Animals;
- (g) Nuisances;
- (h) Building regulations;
- (i) Violations of § [92.03](#).

(2) Any criminal conduct as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, the following activities or behaviors:

- (a) Stalking;
- (b) Harassment;
- (c) Failure to disperse;
- (d) Disorderly conduct;

- (e) Assault;
- (f) Reckless endangerment;
- (g) Prostitution;
- (h) Patronizing a prostitute;
- (i) Public disturbance noises;
- (j) Any firearms or dangerous weapons violations;
- (k) Drug-related loitering;
- (l) Any dangerous animal violations; and
- (m) Any drug-related activity.

(3) Exemptions. The following activities shall be exempt from the provisions of this chapter:

- (a) Contact made to police or other emergency services, if:
  - i. The contact was made with the intent to prevent or respond to domestic violence, sexual violence, or any non-criminal emergency situation;
  - ii. The intervention of emergency assistance was needed to respond to or prevent domestic violence, sexual violence, or a non-criminal emergency situation; or
  - iii. The contact was made by, on behalf of, or concerns an individual with a disability and the purpose of the contact was related to that individual's disability.
- (b) An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit on the premises.

(B) For purposes of this subchapter, "NUISANCE ACTIVITY" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.

"PERSON." A natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them.

"PERSON RESPONSIBLE FOR PROPERTY" or "PERSON RESPONSIBLE." Unless otherwise defined, any person who has titled ownership of the property or structure subject to this subchapter, an occupant in control of the property or structure subject to this subchapter, a developer, builder, business operator or owner who is developing, building or operating a business on the property or in a structure subject to this subchapter, and/or any person who has control over the property and allows a violation of this subchapter to continue.



“PREMISES AND PROPERTY.” May be used interchangeably, mean any public or private building, lot, parcel, dwelling, rental unit, real estate or land, or portion thereof, including property used as residential property.

“RENTAL UNIT.” Any structure or that part of a structure, including but not limited to, a single-family home, room or apartment rented to another and used as a home, residence or sleeping place by one or more persons

#### **§ 92.21 PROHIBITION.**

(A) Any property within the city that is a chronic nuisance property is declared a public nuisance, in violation of this subchapter and subject to the remedies provided herein; and

(B) Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this subchapter.

#### **§ 92.22 RESERVED. ~~ABATEMENT PROCEDURE FOR CHRONIC NUISANCE PROPERTIES.~~**

~~—(A) When the Code Enforcement Officer, or his or her designee(s), receives documentation or information confirming the occurrence of three or more nuisance activities within a 90-day period on or at any premises or property, the Code Enforcement Officer, or his or her designee(s), shall review such documentation or information to determine whether it describes the nuisance activities enumerated in this subchapter. Upon such a finding, the Code Enforcement Officer, or his or her designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.~~

~~—(B) The warning shall be sent by certified mail, return receipt requested, and shall contain:~~

~~—(1) The street address or a legal description sufficient for identification of the property;~~

~~—(2) A concise description of the nuisance activities that exist or have occurred on the property;~~

~~—(3) A demand that the person responsible for the property respond to the notice, within ten days of its service, to discuss the nuisance activities and create a plan to abate the chronic nuisance;~~

~~—(4) Offer the person responsible an opportunity to abate the nuisance activities giving rise to the violation; and~~

~~—(5) A statement describing that the property could be subject to closure and civil penalties and/or costs assessed up to \$200 per day if the property is declared a chronic nuisance property.~~

~~—(C) The Code Enforcement Officer, or his or her designee(s), shall serve, or cause to be served, the warning and notice to abate upon the person responsible by certified~~



mail, return receipt requested, or may personally serve the person responsible in accordance with the procedures set forth in KRS 65.8825.

~~—(D) If the person responsible fails to respond to the warning within the time prescribed, the Code Enforcement Officer, or his or her designee(s), shall issue a notice declaring the property to be a chronic nuisance property, and post such notice at the property and issue the person responsible a citation for a civil infraction, punishable by a maximum penalty of \$200. If the person responsible fails to respond to the warning, notice or citation, the matter shall be referred for enforcement.~~

~~—(E) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Code Enforcement Officer, or his or her designee(s), and the person responsible, may work out an agreed upon course of action that would abate the nuisance activity. If an agreed upon course of action does not result in the abatement of the nuisance activities, or if no agreement concerning abatement is reached, the matter shall be forwarded to the Kenton County Joint Code Enforcement Board, or other city enforcement board or agency and any additional appropriate entity or office, for appropriate official enforcement action. Provided, that in the event the Code of Enforcement Officer, or his or her designee(s), determine that the person responsible has taken reasonable steps to abate the nuisance activity, the city shall not commence an enforcement action under this subchapter, notwithstanding the continuance of the nuisance activity.~~

~~—(F) It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.]~~

## **§ 92.23 ENFORCEMENT.**

The Kenton County Joint Code Enforcement Board shall act as the Hearing Board for the enforcement of this chapter. Authorized personnel of Planning and Development Services of Kenton County and City Police, Fire Officials, City Administrative Officer and Public Works Director shall act as the enforcement authority for the provisions of this chapter.

All provisions and processes contained in the Interlocal Agreement for the Kenton County Joint Code Enforcement Board, as may be amended from time to time, and all requirements of KRS 65.8801 - 65.8840, are incorporated herein, and shall be applicable to all proceedings pursuant to this Chapter, including provisions relating to enforcement proceedings, hearings, appeals, fines and liens.

The powers and duties of the Kenton County Code Enforcement Board or any person that they may be designated by the city to enforce the provisions of this chapter shall include but not be limited to the following all pursuant to KRS 65.8801 to 65.8839(1):

(A) To conduct surveys and make inspections in any area of the city to determine compliance with this chapter or other ordinances he or she is empowered to enforce;

(B) To investigate all complaints made about buildings, structures, vacant lots, or other premises within the city, whether they be verbal, written, or in the form of a petition, alleging or charging that a violation of this chapter exists or that a dwelling, structure, or building is unfit or unsafe for human habitation or other occupancy;

(C) In support of police or fire authority to inspect, survey, or investigate any building, structure, dwelling, or premises between the hours of 8:00 a.m. and 5:00 p.m., or at any time if an emergency exists or if requested by the owner or occupant. A code enforcement officer may enter a building, structure, dwelling, or premises to inspect, survey, or investigate with the consent of the owner or occupant, in emergency situations, or when an inspection, survey, or investigation is required before a permit is issued or funding is provided by the county or is part of a licensing scheme adopted by the county. If an owner or occupant refuses to consent to entry or inspection of a building, structure, dwelling, or premises, a code enforcement officer may obtain a search warrant for this purpose from a court of appropriate jurisdiction. In addition, a code enforcement officer may obtain a search warrant to inspect several buildings or structures in a particular area as part of an area inspection policy promulgated by the city. Probable cause to issue a search warrant may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), the condition of the entire area, or other reasonable legislative or administrative standards adopted by the county. Probable cause does not need to depend upon specific knowledge of a condition existing in a particular dwelling. A code enforcement officer conducting an inspection pursuant to this chapter shall provide identification and statement of purpose before entering any building, structure, dwelling, or premises and the person in possession or in charge of the building, structure, dwelling, or premises shall give the Joint Code Enforcement Board and his or her assistants, staff, or employees free access to such property for the purposes set forth herein;

(D) To administer oaths and affirmations, to examine witnesses, and receive evidence;

(E) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of this chapter;

(F) To delegate any of his or her functions and powers under this chapter and other ordinances to such officers, agents, and employees as he or she designates;

(G) To seek through the appropriate judicial officer or office, such warrants that are necessary to enforce the provisions of this chapter and in pursuit of said warrants, make such oath or affirmation necessary in support thereof;

(H) To keep records of all complaints received, inspection reports, orders, and of other actions taken. The records shall be made available for public inspection upon request within a reasonable amount of time. The Joint Code Enforcement Board shall prepare an annual report including statistics based on the records kept.

~~[(A) A violation of this subchapter constitutes a civil offense. In addition to other remedies set out in this subchapter or by statute, should the chronic nuisance property not be abated at the time stated in the notice to abate, the Code Enforcement Officer~~



~~shall be authorized to issue any appropriate citation. Upon failure of the property owner to request a hearing before the Fort Wright Nuisance Hearing Board, an order may be issued condemning and vacating the premises, or portions thereof, to the extent necessary to abate the chronic nuisance property. Any close and vacate order shall be for a period of less than one year from the date of closing and rescind within 14 days of an abatement. If the property consists of multi-unit dwellings, and the nuisance activity has occurred solely within a single unit, the condemnation and vacate order may be limited to the single unit.~~

~~—(B) Upon the issuance of any order provided for in this section, a copy of the order shall be served on the owner of the property in the same manner as the warning, and shall be conspicuously posted on the property.~~

~~—(C) Nothing in this subchapter shall prevent the city from pursuing additional remedies, including judicial actions provided by statute or common law, to enjoin or otherwise remedy the chronic nuisance.]~~

#### **§ 92.24 SUMMARY CLOSURE.**

Nothing in this subchapter prohibits the city from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety.

#### **§ 92.25 PENALTY UPON FAILURE TO COMPLY.**

Upon the failure of the property owner to comply with an order to close and vacate, the Code Enforcement Department may prohibit the furnishing of utility service, including but not limited to, gas, electric, water and heating oil, to the premises by any public utility holding a franchise to use the streets and public ways of the city; revoke the certificate of occupancy of the premises; or use any other legal remedy available under the laws of the state.

#### **§ 92.26 RELIEF FROM ORDER.**

The Code Official may vacate or suspend the provisions of an order to close and vacate upon a showing, by clear and convincing evidence, that the nuisance activity has been abated and will not be maintained or permitted on the property or a unit thereof.

#### **§ 92.27 LIEN.**

Pursuant to KRS 65.8840(8), the city shall possess a lien on all charges and fees incurred by the city in connection with the enforcement of this chapter, including abatement costs. The lien shall also include attorneys' fees incurred as an additional penalty. The affidavit of the Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings, and shall be recorded in the office of the County Clerk. The lien shall be notice to all person from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other liens, except state, county, school board, and city taxes, except as provided in KRS 65.8840(9). The city shall possess the lien for ten years



following the date of the final, non-appealable order of the Board or final judgment of the court. The lien may be enforced by judicial proceeding.

#### **§ 92.99 PENALTY.**

(A) Civil offense. Each separate violation of this Chapter 92 is hereby classified as a civil offense; and the penalties to be imposed upon persons determined to have violated this chapter are hereby established as follows:

(1) The maximum civil fine that may be imposed for each separate violation of this chapter is hereby established at \$500 for a first violation, \$750 for a second occurrence of the same violation, and \$1,000 for the third and each subsequent occurrence of the same violation plus the costs of collection, including, without limitation, court costs and attorney fees; and

(2) The specific civil fine that shall be imposed for each separate violation of this chapter in the event that a citation for that violation is not contested is hereby established at \$100 for a first violation, \$250 for a second occurrence of the same violation, and \$500 for the third and each subsequent occurrence of the same violation, plus the costs of collection, including, without limitation, court costs and attorney fees.

(B) Criminal offense. Each violation of this chapter shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500 as set forth in KRS 534.050(2)(a) or a term of imprisonment not to exceed the maximum period of 12 months as set forth in KRS 532.090(1), or both.

(C) In an addition to an order condemning and vacating the property, a maximum civil penalty shall be imposed for any violation of §§ [92.20](#) et seq. However, if the responsible party does not appeal the citation to the Kenton County Joint Code Enforcement Board, then the civil penalty may be reduced.

#### **SECTION 9**

Any and all Ordinances in conflict with this Ordinance shall be, and hereby are, repealed to the extent of said conflict.

#### **SECTION 10**

If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

#### **SECTION 11**


That this ordinance shall become effective upon its passage and shall be published under KRS 83A.060(9) and other applicable law. This ordinance may be published by summary.

Passed by City Council on October 5, 2022

CITY OF FORT WRIGHT, KENTUCKY

By:   
Dave Hatter, Mayor

ATTEST:

  
Maura Russell, City Clerk

FIRST READING: 9-7-2022

SECOND READING: 10-5-2022

PUBLICATION: \_\_\_\_\_