

**CHAPTER 50: NUISANCES**

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**Cross reference:**

*Garbage and trash, see Ch. 31*

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## ARTICLE I. GENERAL PROVISIONS

### § 50.001 DEFINITIONS

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

**"NUISANCE."**

(A) Any condition or use of premises or of building exterior which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located, including, but not limited to, the keeping of the following:

(1) Ashes, rubbish, garbage, lumber, bricks, cinder blocks, insulation material, building debris, refuse or waste of any kind, whether liquid or solid;

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

(B) All things by which the common and statutory law of the state are deemed nuisances and in addition thereto, the following:

(1) All offensive trades that render the enjoyment of homes or property offensive, dangerous, or uncomfortable;

(2) Pools of stagnant water, or any other thing which shall become offense to the smell or dangerous to the health;

(3) Privies that are subject to become unclean and obnoxious;

(4) Dung heaps, hog pens, stock pens, slaughter pens, or slaughterhouses that are suffered to become unclean and obnoxious;

(5) The throwing out of slop water or other filth from kitchens or cook houses upon any street, lot, alley, or sidewalk of the city; or suffering or permitting the same to be done within the limits of the city;

(6) Obnoxious slops in barrels or vessels; or

(7) Dead animals, putrid flesh, or offensive matter of any description.

(1976 Code, § 11-4; Am. Ord. 16-84, § 1(a), passed 5-29-84)

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**Cross reference:**

*Definitions, general, see § 10.002*

*Definitions, garbage and trash, see § 31.001*

*Rules of construction, see § 10.003*

## **§ 50.002 DUTY OF MAINTENANCE OF PRIVATE PROPERTY**

It shall be unlawful for any person owning, leasing, occupying, or having charge of any premises to maintain or keep any nuisance thereon, or to keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which the premises are located.

(Ord. 16-84, § I(b), passed 5-29-84)

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### **Cross reference:**

*Penalty for violation, see § 50.999*

## **§ 50.003 EXTERIOR STORAGE OF NON-OPERATING OR NON-LICENSE VEHICLES PROHIBITED**

(A) It shall be unlawful for a person in charge of or in control of premises, whether as owner, lessee, tenant, occupant, or otherwise, to allow any partially dismantled, wrecked, junked, discarded, or otherwise non-operating motor vehicle or any motor vehicle which is not properly licensed pursuant to KRS 186.020 to remain on the property longer than ten (10) days.

(B) It shall be unlawful for any person to leave any vehicle listed in subsection (A) on any property within the city for a longer time than ten (10) days.

(C) This section shall not apply to historic motor vehicles registered and licensed in conformance with KRS 186.043, property where such use is allowed under zoning ordinances, or other applicable laws, or to any vehicle in an enclosed building or so located upon the premises as not to be readily visible from any public place or from any surrounding private property.

(D) This section shall not apply with regard to any vehicle on the premises of a business enterprise operated in a lawful place, other than a residential district, when the keeping or maintenance of the vehicle is necessary to the operation of the business enterprise; or with regard to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city, any other public agency, or entity.

(Ord. 16-84, § I(c), passed 5-29-84)

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### **Cross reference:**

*Motor vehicle regulation, see Ch. 40*

*Penalty for violation, see § 50.999*

## **§ 50.004 CERTAIN CONDITIONS DECLARED A NUISANCE**

(A) Except as provided in subsection (B) of this section, it shall be unlawful for the owner, occupant or person having control or management of any land within a city 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 nonoperative and which are not inhabited;

(3) Rubbish; or

(4) The excessive growth of weeds or grass.

(B) The provisions of paragraph (1) of subsection (A) of this section shall not apply to:

(1) Junked, wrecked, or nonoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);

(2) Junked, wrecked, or nonoperative motor vehicles, including parts cars, stored on private real property 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; and

(3) Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed, or leased by a motor carrier.

(C) It shall be unlawful in any city for the owner of a property to permit any structure upon the property to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist in the structure 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 city.

(D) Any city may establish by ordinance reasonable standards and procedures for the enforcement of this section. The procedures shall comply with all applicable statutes, administrative regulations, or codes. Proper notice shall be given to property owners before any action is taken pursuant to this section; and, prior to the demolition of any unfit or unsafe structure, the right to a hearing shall be afforded the property owner.

(E) Unless imminent danger exists on the subject property that necessitates immediate action, the city shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the property owner, a copy of the determination to any lien holder of record of the subject property by first-class mail with proof of mailing. The lien holder of record may, within forty-five (45) days from receipt of that notice, correct the violations cited or elect to pay all fines, penalty charges, and costs incurred in remedying the situation as permitted by subsection (F) of this section.

(F) A city shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this statute, 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 over all other liens, except state, county, school board, and city taxes, except as provided in subsection (G) of this section. The lien may be enforced by judicial proceeding.

(G) The lien provided in subsection (F) of this section shall not take precedence or priority over a previously recorded lien if:

(1) The city failed to provide the lien holder a copy of the determination in accordance with subsection (E) of this section; or

(2) The lien holder received a copy of the determination as required by subsection (E) of this section, and the lien holder corrected the violations or paid the fines, penalty charges, and costs incurred in remedying the violation.

(H) In addition to the remedy prescribed in subsection (D) of this section or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. The failure of a city to comply with subsection (E) of this section, and the failure of a lien to take precedence over previously filed liens as provided in subsection (G) of this section, shall not limit or restrict any remedies that the city has against the owner of the property.

(I) The provisions of subsections (D), (F), and (H) of this section shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area if the owner, occupant, or person is not the generator of the rubbish or is not dumping or knowingly allowing the dumping of the rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons onto the property.

(KRS 381.770)

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**Cross reference:**

*Penalty for violation, see § 50.999*

### **§ 50.005 ABATEMENT OF NUISANCE**

(A) *Notice to abate.* It shall be the duty of the Chief of Police or other police officer, as designated by the Chief of Police, the City Engineer or Code Enforcement official to serve or cause to be served a notice upon the owner or occupant of any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter. Such notice shall describe the nuisance so maintained and shall demand abatement of such nuisance within five (5) days of notice, unless the nuisance constitutes an immediate danger to the health and well-being of the community, in which case the notice shall demand abatement within twenty-four (24) hours of the notice. The notice shall include the following:

(1) A statement to the effect that if the situation is not remedied within the prescribed time, the city will proceed to abate the nuisance;

(2) An estimate as to the value of the labor and material necessary to remedy the situation;

(3) A statement to the effect that the cost of abatement will constitute a lien against the property in favor of the city; and

(4) A statement to the effect that after the city has abated the nuisance, the City Manager or Assistant City Manager will send a bill for the cost of the abatement, to include an administrative cost, to the property owner and occupant, and if the bill is not paid within two (2) weeks following the mailing of the bill, that a notice of lien claimed for the cost of the abatement will be placed against the property.

(B) *Service of notice.* Notice shall be personally served upon the owners or occupants or shall be mailed to the last known address of the owner of the property as it appears on the current tax assessment bill. If the owner of the property cannot be ascertained from the tax rolls in the exercise of reasonable diligence, the City Manager or Assistant City Manager shall make an affidavit to that effect. The serving of such notice upon the owners may be made by publication in a newspaper of general circulation. A copy of the notice shall be posted in a conspicuous place on the premises affected by the notice.

(Ord. 16-84, § I, passed 5-29-84; Am. Ord. 2010-6, passed 3-23-10)

### **§ 50.006 ABATEMENT BY THE CITY**

(A) If the owner or occupant served with a notice to abate does not abate the nuisance within five (5) days, the city may proceed to abate the nuisance, keeping an account of the expense of the abatement; and such expense, including an administrative cost fee, shall be charged to and paid by the owner or occupant.

(B) The five (5) days period provided for in this section shall be deemed to commence as follows:

(1) Where notice is personally served, on the day following service;

(2) Where notice is served by mail, on the third day following notice;

(3) Where notice is by publication or posting, on the third day following the publication or posting.

(Ord. 16-84, § I, passed 5-29-84)

### **§ 50.007 COLLECTION OF ABATEMENT COSTS; LIEN**

The city shall have a lien against the property for its costs incurred in such nuisance abatement. This lien shall be evidenced by a notice of lien claimed, filed with the Clerk of the District Court, which notice shall include the affidavit of the City Manager or Assistant City Manager, or the police officer setting forth the property in question, the amount of the city's cost of abatement, the date of abatement, and that the notice provisions of this article were complied with before abatement. The City Manager or Assistant City Manager shall bill the property owner and occupant of the premises at least once following abatement, and no notice of lien claimed shall be filed against the property until two (2) weeks have elapsed since the bill is sent. A copy of the notice of lien claimed shall be mailed to the owner of the premises, or published in a newspaper of general circulation, as required by statute, where the owner of the property cannot be ascertained. However, the failure of the Clerk to record the notice of lien claimed or the failure to mail the owner a copy of

the notice, or publish the notice, or the failure of the owner to receive the notice shall not affect the right to foreclose the lien for such charges as provided in § 50.005.

(Ord. 16-84, § I, passed 5-29-84)

### **§ 50.008 SALE OF PROPERTY TO SATISFY LIEN**

Property subject to a lien for unpaid nuisance abatement charges shall be sold for nonpayment of the lien, and proceeds of such sale shall be applied to pay the charges after deducting costs as in the case in the foreclosure of statutory liens. The foreclosure shall be in equity in the name of the city.

(Ord. 16-84, § I, passed 5-29-84)

### **§ 50.009 CITY ATTORNEY TO INSTITUTE PROCEEDINGS**

The attorney for the city is hereby authorized and directed to institute proceedings, in the name of the city, in any court having jurisdiction over such matter, against any property for which the cost of abatement of a nuisance bill has remained unpaid six (6) months after it has been rendered.

(Ord. 16-84, § I, passed 5-29-84)

## **ARTICLE II. NOISE**

### **§ 50.100 EXCESSIVE NOISE PROHIBITED**

It shall be unlawful for any person to make, continue, or cause to be made or continued, any excessive, unnecessary, or unusually loud noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of other within the jurisdiction of the city.

(Ord. 10-81, passed 4-7-81)

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#### **Cross reference:**

*Penalty for violation, see § 50.999*

*Animals, nuisances, see § 51.003*

*Peddlers and solicitors, loud noises and speaking devices, see § 63.002*

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#### **Statutory reference:**

*Noise control, see KRS 224.30-100, et seq.*

### **§ 50.101 NUISANCE DECLARED; PERMISSIBLE SOUND LEVELS**

(A) The following provisions are deemed nuisances in violation of this article, but shall not be considered a full and complete listing of nuisances.

(1) *Maximum permissible sound levels.* It shall be unlawful, except as expressly permitted in this article, to make, cause, or allow the making of any noise or sound which violates the provisions of this article.

(2) No person shall operate or cause to be operated any source of sound level which exceeds the limits set forth in subsection (B) for the receiving land use category more than ten percent (10%) of any measurement period, which period shall not be less than ten (10) minutes, when measured at or beyond the property boundary of the land use category from which the sound emanates provided, however, that in the case of a multi-family dwelling land use category, the sound

level shall be measured within an adjacent intra-building dwelling.

(a) For any source of sound, the sound level shall not exceed the maximum permissible sound level limit set forth in Table 1 by 15 dB(A) for all land use categories.

(b) Sound level measurement shall be made with a Type 2 or better sound level meter using the A-weighted scale in accordance with the standards promulgated by the American National Standards Institute (ANSI).

(B) The following table is a list of the maximum permissible sound levels by receiving land use category:

<u>Land Use Category</u>	<u>Time</u>	
Residential, noise sensitive area, public space	7:00 a.m. - 10:00 p.m.	60 dB(A)
	10:00 p.m. - 7:00 a.m.	55 dB(A)
Multi-family dwelling	7:00 a.m. - 10:00 p.m.	50 dB(A)
	10:00 p.m. - 7:00 a.m.	45 dB(A)
Commercial	7:00 a.m. - 10:00 p.m.	65 dB(A)
	10:00 p.m. - 7:00 a.m.	60 dB(A)

(C) *Exemptions.* The following are exempt from the sound level limits in subsection (B):

(1) Domestic power tools, lawn mowers, and agricultural equipment, when operated with a muffler;

(2) Noises resulting from any authorized emergency vehicles when responding to an emergency, noises from church bells and chimes. Noises from construction activity are exempt from subsection (B) except that the industrial sound level limit shall apply in all land use categories.

(3) Any noise resulting from activities of a temporary duration, for which a special permit has been granted pursuant to this article, and which conforms to the conditions and limits stated thereon.

(4) Noises created by the sounding of train whistles at all public grade crossings as required by state law.

(Ord. 10-81, passed 4-7-81; Am. Ord. 92-22, passed 7-28-92)

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**Cross reference:**

*Penalty for violation, see § 50.999*

**§ 50.102 SPECIFIC PROHIBITIONS**

Notwithstanding any of the other provisions of this chapter, the following activities are specifically prohibited:

(A) Yelling, shouting, hooting, or whistling on the public streets as to annoy or disturb the quiet, comfort, or repose of persons in the vicinity;

(B) The sounding of any horn or signally devise on any vehicle except as a danger warning;

(C) Operating, playing or permitting the operation or playing of any music, radio, television, phonograph, compact or other disc player, drum, musical instrument or similar device:

(1) In such a manner as to create a noise disturbance across a dwelling unit boundary; or

(2) In such a manner as to create a continuing noise disturbance at fifty (50) feet from such device when operated in or on a motor vehicle;

(D) Keeping or harboring within the city any animal, including, but not limited to, domestic pets, that repeatedly or frequently emits any sound, including but not limited to barking, yelping, howling, meowing, crowing or squawking, or that otherwise creates a noise disturbance across a dwelling unit boundary, in such a manner so as to annoy or disturb a reasonable person of normal sensitivities.

(Ord. 10-81, passed 4-7-81; Am. Ord. 2009-21, passed 11-24-09)

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**Cross reference:**

*Penalty for violation, see § 50.999*

**§ 50.103 MOTOR VEHICLES**

(A) No person shall operate a motor vehicle at any time in such a manner as to exceed the sound level limits for the category of motor vehicles shown in subsection (B). The sound level shall be measured at a distance of at least seven and five-tenths (7.5) meters (twenty-five (25) feet) from the rear side of the nearest lane(s) being monitored at a height of at least one and twenty-three-hundredths (1.23) meters (four (4) feet) above immediately surrounding surface. This section shall apply to the total noise from a vehicle, including those noises addressed in § 50.102 above.

(B) The following are the maximum permissible sound levels for motor vehicles:

	<i>Speed Limit</i>	<i>Speed Limit</i>
<u>Category</u>	<u>35 mph or less</u>	<u>over 35 mph</u>
Motor vehicle with a manufacturer's gross vehicle rating (GVWR) of ten thousand (10,000) pounds or more of any combination of vehicles towed by such motor vehicle	91 dB(A)	95 dB(A)
Any other vehicle or any combination of vehicles towed by motor vehicle	78 dB(A)	78 dB(A)

(C) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler in good working order and in constant operation.

(D) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, any muffler or sound dissipative device on a motor vehicle or motorcycle other than for purposes of maintenance, repair, or replacement.

(Ord. 10-81, passed 4-7-81)

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**Cross reference:**

*Motor vehicle regulation, see Ch. 40*

*Penalty for violation, see § 50.999*

**§ 50.104 NOISE SENSITIVE ZONES**

It shall be unlawful to create any excessive noise on any street adjacent to any school, institution of learning, church, court, or hospital while the same is in use, which unreasonably interferes with the workings of such institutions or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed on the streets indicating such.

(Ord. 10-81, passed 4-7-81)



**Cross reference:**

Penalty for violation, see § 50.999

**§ 50.105 SPECIAL PERMITS**

(A) Any person desiring relief from any provisions of this article shall apply for a special permit to cause or create a noise at sound levels which would otherwise be in violation of this article. Applications for a special permit shall be made in writing to the City Manager or his designee. The City Manager shall grant the special permit upon a showing by the applicant that:

(1) Additional time is necessary for the applicant to alter or modify the activity in order to comply with the provisions of this article;

(2) The activity, operation, or noise source will be of a temporary duration and cannot be done in a manner that would comply with the provisions of this article; or

(3) No reasonable alternative is available to the applicant. Any permit granted pursuant to this section shall contain all conditions upon which the permit has been granted, including, but not limited to the effective date, time of day, location, sound level limit, or equipment limitation.

(B) No special permit shall be issued for a period in excess of thirty (30) consecutive days. Any special permit granted under this section may be renewed upon application to the City Manager and upon demonstrating that the reasons for which the permit was granted still exist.

(Ord. 10-81, passed 4-7-81)

**§ 50.106 DEFINITIONS**

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

(A) "**DWELLING UNIT.**" One (1) room or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy by a family as owner, by rental or lease on a weekly, monthly or longer basis and physically separated from any other rooms or dwelling units which may be in the same building, and containing independent cooking and sleeping facilities.

(B) "**DWELLING UNIT BOUNDARY.**" A real or imaginary boundary which separates one (1) dwelling unit from another dwelling unit, including, but not limited to, walls, ceilings and floors in a building containing more than one (1) dwelling unit or in situations involving detached single dwelling unit(s), the real property boundary line of the unit.

(C) "**MOTOR VEHICLE.**" Every vehicle defined as a motor vehicle in § 40.001 of this Code.

(D) "**NOISE DISTURBANCE.**" Any sound which:

- (1) Endangers or injures the safety or health of humans or animals;
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

(Ord. 2009-21, passed 11-24-09)

**§ 50.107 RIGHT OF ENTRY OF LAW ENFORCEMENT OFFICER TO INVESTIGATE NOISE DISTURBANCE**

Any law enforcement officer, in addition to any authority vested in him, has the power, upon presentation of proper credentials, to enter and inspect any dwelling, multifamily dwelling, building, structure or premises within the city as may be necessary to enforce the provisions of this section. Needed permission is to be obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused or is otherwise unobtainable, a

search warrant must be obtained upon the showing of probable cause to believe that a violation of §§ 50.100 through 50.108 may exist, before such entry or inspection is made.

(Ord. 2009-21, passed 11-24-09)

### **§ 50.108 ORDER OF ABATEMENT OF NOISE DISTURBANCE**

In lieu of issuing a citation as provided for in § 50.109, any law enforcement officer may issue an order requiring the immediate abatement of any source of sound alleged to be in violation of §§ 50.100 through 50.108.

(Ord. 2009-21, passed 11-24-09)

### **§ 50.109 CITATION FOR VIOLATION**

Except where a person is acting in good faith to comply with an abatement order issued pursuant to § 50.108, violation of any provision of §§ 50.100 through 50.108 shall be cause for a citation to be issued by a law enforcement officer.

(Ord. 2009-21, passed 11-24-09)

## **ARTICLE III. WEEDS AND GRASS**

### **§ 50.200 PROPERTY TO BE KEPT CLEAR OF WEEDS**

(A) The owners or occupants of property in the city on which any structure is present, except as set forth in subsection (C) below, are required to cut any weeds, grass or plants whose length or height exceeds ten (10) inches, other than trees, bushes, flowers, or other ornamental plants.

(B) The owners of any property in the city where no structure is present, except as set forth in subsection (C) below, are required to cut any weeds, grass or plants whose length or height exceeds ten (10) inches within any location within fifteen (15) feet of all boundaries of the property, other than trees, bushes, flowers, or other ornamental plants. The remaining portions of the property not within the required set-back area may have weeds, grass or plants growing to a length or height up to but not to exceed fifteen (15) inches.

(C) The owner or occupant of any property in the city may petition the City Engineer or Code Enforcement official for an agricultural exemption from the requirements of this section for a bona fide agricultural purpose. However, any property operating under the agricultural exemption shall cut any weeds, grass or non-ornamental plants whose length or height exceeds ten (10) inches within any location within fifteen (15) feet of any boundaries adjacent to any street or road.

(1976 Code, § 8-5(a); Am. Ord. 93-22, passed 6-22-93; Am. Ord. 2010-6, passed 3-23-10)

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#### **Cross reference:**

*Penalty for violation, see § 50.999*

### **§ 50.201 NOTICE TO CLEAN PROPERTY**

Whenever a weed and grass situation, as set forth in § 50.200 is discovered, the authorized city official shall give five (5) days written notice to remedy the situation. The notice shall be provided in the manner set forth in § 50.005, as amended.

(1976 Code, § 8-5(b), (c); Am. Ord. 94-18, passed 7-12-94; Am. Ord. 2010-6, passed 3-23-10)

### **§ 50.202 FAILURE TO COMPLY WITH NOTICE**

(A) Upon failure of the owner of the property to comply with any notice required by this chapter, the authorized city

official is authorized to employ the necessary labor and send them upon the property to remedy the situation. All expenses incurred shall be paid out of the money in the treasury of the city not otherwise appropriated. Such costs shall be at the owner's expense and that cost, together with an administrative fee of seventy-five dollars (\$75.00), shall be assessed against the lot or land.

(B) The authorized city official shall make a written return to the county clerk of its action under this section with a statement of the charges for the services, the administrative costs incurred, the amount paid for labor, and a proper description of the premises. These amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of entry and be collected as other taxes and returned to the city's general fund. The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the weed and grass situation. The affidavit of the authorized city official shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 381.770 and this section, and shall be recorded in the office of the County Clerk. The lien shall be notice to all persons for the time of its recording and shall bear interest at the annual rate established by the Board of Commissioners from time to time until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding. In addition to this remedy, or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges, and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

(1976 Code, § 8-5(d); Am. Ord. 94-18, passed 7-12-94; Am. Ord. 2010-6, passed 3-23-10)

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**Cross reference:**

*Penalty for violation, see § 50.999*

## **ARTICLE IV. CHRONIC NUISANCE PROPERTIES**

### **§ 50.300 DEFINITIONS**

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

**"ABATE."** To repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter 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.

**"CHRONIC NUISANCE PROPERTY."** Any real property on which three or more nuisance activities exist or have occurred during any three month period.

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

**"DRUG-RELATED ACTIVITY."** Any unlawful activity at a property which 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 substances as defined in KRS Chapter 217 and 218A.

**"GOOD CAUSE."** Circumstances beyond the ability of a person acting with reasonable care and diligence to control.

**"NUISANCE ACTIVITY OR ACTIVITIES."** 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) Non-operating or non-licensed vehicles, as defined in Paris Code of Ordinances Chapter 50;
- (b) Fire Prevention, Paris Code of Ordinances Chapter 73;
- (c) International Property Maintenance Code as adopted by the City of Paris;
- (d) Noise Violations, as defined in Paris Code of Ordinances Chapter 50;

- (e) Animals Violations, as defined in Paris Code of Ordinances Chapter 51;
- (f) Nuisances Violations, Paris Code of Ordinances Chapter 50;
- (g) Building Regulations Violations, Paris Code of Ordinances Chapter 70;
- (h) Housing Violations, as defined in Paris Code of Ordinances Chapter 71; and
- (i) Zoning Code and Subdivision Regulation violations as defined in Paris Code of Ordinances.

(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) Harassment, as defined in KRS 525.070 through 525.080;
- (b) Disorderly conduct, as defined in KRS 525.055 or KRS 525.060;
- (c) Assault, menacing, wanton endangerment, terroristic threatening, criminal abuse and stalking as defined in KRS 508.090 through 508.160;
- (d) Any domestic violence offenses as defined in KRS 403.715 to 403.785;
- (e) Endangering the welfare of a minor or an unlawful transaction with a minor as defined in KRS 530.060 through 530.080;
- (f) Prostitution offenses as defined in KRS 529.010 through 529.110;
- (g) Public disturbance noises;
- (h) Weapons related offenses as defined in KRS 527.010 through 527.210;
- (i) Any drug-related activity as defined by KRS 218A.010 through 218A.1444;
- (j) Public intoxication as defined in KRS 525.100;
- (k) Robbery as defined in KRS 515.010 through 55.030;
- (l) Receiving stolen property as defined in KRS 514.110; and
- (m) Sexual exploitation, as defined in KRS 531.300 through 351.370.

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

(4) To qualify, all "*NUISANCE ACTIVITIES*" must be based on either:

- (a) Personal observation of a police officer, or code enforcement officer; or
- (b) A determination by a police officer or code enforcement officer, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident that the alleged nuisance activities did, in fact, occur.

**"PERMIT."** To suffer, allow, consent to, acquiesce by failure to prevent or expressly assent or agree to the doing of the act.

**"PERSON."** 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 which is subject to this article, an occupant in control of the property or structure which is subject to this article, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this article and/or any person who has control over the property and allows a violation of this article to continue.

**"PREMISES AND PROPERTY."** May be used by this article interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential property; however, for purposes of determining whether a "*PREMISES*" or "*PROPERTY*" constitutes a chronic nuisance property each rental unit shall be treated as a separate "*PREMISES*" or "*PROPERTY*" unless the nuisance activity is not attributable to any rental unit.

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

**"RESIDENTIAL LANDLORD."** A real property owner of land upon which is located one or more dwelling units based or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semi-permanent site at which lots are based or otherwise rented to tenant for the parking of a manufactured home, mobile home, or residential vehicle that is solely for residential purposes.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.301 PROHIBITION**

(A) Any property within the city which is a chronic nuisance property is declared a public nuisance and in violation of this article 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 article.

(Ord. 2013-12, passed 12-10-13) Penalty, see § 50.999

### **§ 50.302 ABATEMENT PROCEDURE FOR CHRONIC NUISANCE PROPERTIES**

(A) When the Code Enforcement Officer, or his or her designee(s), receives information documenting the existence of activities which qualify as nuisance activities:

(1) The Code Enforcement Officer or Police Chief, or their designee(s), shall independently review the information to determine whether a chronic nuisance property, as defined herein in § 50.300, is established by the information; and

(2) Upon such determination, the Code Enforcement Officer or Police Chief, or their designee(s), shall issue a notice of violation to the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.

(B) The notice shall contain the following information:

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

(2) A concise statement that the property has been determined to be a chronic nuisance property with a description of the nuisance activities leading to the determination;

(3) A demand that the person responsible for such property respond to the notice within ten days of service of the notice by describing the actions the person intends to take to abate the nuisance activities (an abatement plan), or indicating good cause as to why the responsible person cannot abate the nuisance activities;

(4) Advising that an abatement plan must be reached with the Code Enforcement Officer or his or her designee within 30 days from the date of the notice of determination of chronic nuisance property;

(5) That if the nuisance activities are not abated or good cause for failure to abate is not shown, a citation may be issued;

(6) That permitting the existence of a chronic nuisance property is a violation of this article;

(7) That the above remedies are in addition to those otherwise provided by law; and

(8) A statement describing that the property could be subject to closure and civil penalties and/or costs assessed up to two hundred fifty dollars (\$250.00) per day if the property is declared a chronic nuisance property.

(C) The notice may be delivered in person or sent registered mail with return receipt requested. The notice may be delivered to the property itself, or to the mailing address of the owner of the property as listed on city tax roll or to any other address that is likely to give the person responsible notice of the determination and notice of violation. Failure of the person to receive the notice shall not invalidate or otherwise alter the proceedings under this article.

(D) Failure to respond, failure to abate the nuisance activities, or failure to propose an abatement plan shall be prima facie evidence of lack of cooperativeness of the person responsible. Failure to implement or comply with any abatement

plan shall be prima facie evidence of an absence of good faith in mitigating or connecting the chronic nuisance violation.

(E) The Code Enforcement Officer or his or her designee may issue a citation if:

(1) The responsible person fails to respond within ten days from the date of notice of violation and chronic nuisance property determination; or

(2) No agreeable written abatement plan is reached within 30 days from the notice of violation and determination of chronic nuisance property by the Code Enforcement Officer or his or her designee and the responsible person fails to establish one of the affirmative defenses provided in the exception stated in division (3) of the definition of "*NUISANCE ACTIVITY OR ACTIVITIES*" in § 50.300, divisions (G), (H) or (I) of this section; or

(3) The responsible person fails to abate the nuisance activities from the property as required by the agreed abatement plan; or

(4) The responsible person fails to comply with all conditions of the written abatement plan for a period of one year.

(F) A timely response and statement from a responsible person does not constitute an admission that any nuisance activities have occurred or are occurring but may be used as evidence and considered by any trier of fact for any purpose.

(G) *Landlord's affirmative defense.* A residential landlord has an affirmative defense to a violation under this article if they establish by a preponderance of the evidence that the basis for the charge is the actions or omissions of a tenant(s) and the residential landlord establishes the following: that the residential landlord, upon written notice by the city that a nuisance activity has occurred on the property within the prior three months, commences an eviction action against the tenant whose action or omission forms the basis of the charge, and diligently prosecutes that action to completion, irrespective of any ultimate ruling by a court on the merits of the action.

(H) *Good cause affirmative defense.* Any person charged under this article has an affirmative defense to a violation under this article if they establish by a preponderance of the evidence that:

(1) The responsible person has taken all actions to deter and prevent the nuisance activity that formed the basis of the violation;

(2) The nuisance activity that forms the basis of the citation was not the result of the actions or omissions of the responsible person, their authorized guests, tenants or any other person residing in their household; and

(3) The nuisance activity that forms the basis of the citation was not suffered, permitted or tolerated by the responsible person.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.303 ENFORCEMENT**

(A) When a citation is issued for a chronic nuisance property, the responsible person shall have those rights and be subject to the procedures and provisions set forth in §§ 22.600*et seq.* of this Code of Ordinances. If the Code Enforcement Board finds that the real property is a chronic nuisance property, then it shall issue such civil fine or order any other action consistent with the provisions of §§ 22.600*et seq.*

(B) Whenever the Code Enforcement Board finds, or a citation is not appealed, that a chronic nuisance property exists, the Board or Code Enforcement Official shall forward the finding to the City Manager. Based on such determination, the City Manager may suspend or revoke any occupational license and rental license of any person conducting any business upon the chronic nuisance property.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.304 SUMMARY CLOSURE**

The city may also initiate a summary closure proceeding in Bourbon District and/or Circuit Court. Such an action shall be based on evidence showing that Nuisance Activities exist and have occurred on the property and that action is necessary to avoid a threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by applicable Kentucky law for obtaining temporary restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures of §§ 22.600*et seq.* As part of any summary closure order, the

Court may revoke or suspend the occupational license of any person conducting business upon the property where the chronic nuisance exists.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.305 UTILITY SERVICE PROHIBITION**

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, to include 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.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.306 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.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.307 LIEN**

Pursuant to the provisions KRS 381.770, the city shall possess a lien against the property for all fines, penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the nuisance activity. The lien shall be superior to and have priority over all other liens on the property except state, county, school board and city taxes, and may be enforced by judicial proceeding.

(Ord. 2013-12, passed 12-10-13)

### **§ 50.999 PENALTY**

(A) Any owner, lessee, occupant, or other person having charge of premises where any nuisance is caused, maintained, or kept in violation of any of the provisions of this chapter, who fails to remove to abate the nuisance, after notice, as provided in Article I, shall be subject to the penalty as set forth in § 10.999. Each day the nuisance remains after the notice shall constitute a separate offense. The penalty as herein provided is in addition to the civil abatement procedures set out in Article I.

(Ord. 16-84, § I, passed 5-29-84)

(B) Each violation of one (1) or more of the cited noise nuisances in Article II shall be considered a separate offense. Those found in violation of this article are subject to the penalty as set forth in § 10.999. In the case of defective or illegal equipment on vehicles, the offender must also show proof of repair or rectification.

(Ord. 10-81, passed 4-7-81)

(C) Any person responsible for such weed cutting as provided in Article III, within five (5) days after notice, failing, or refusing to obey the terms of this article shall be guilty of an offense and, upon conviction, shall be subject to the penalty as set forth in § 10.999, and each day that the condition exists, after notice by the Chief of Police, shall be deemed a separate offense.

(1976 Code, § 8-5(e); Am. Ord. 94-18, passed 7-12-94)

(D) Penalty for violation of §§ 50.100 through 50.108. Any person who violates any provision of §§ 50.100 through 50.108 shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Any person found guilty of a second offense of any of these sections within any twelve (12)-month period shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and any person found guilty of a third offense of any of these sections within any twelve (12)-month period shall be subject to a fine of not less

than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(E) (1) Notwithstanding the civil penalties or the general criminal penalties set forth in §§ 50.300 through 50.307, whoever violates any provision of §§ 50.300 through 50.307 shall be guilty of a Class A misdemeanor and shall be fined not more than five hundred dollars (\$500.00) and/or imprisoned up to 12 months for each offense. Each day's continued violation shall constitute a separate offense.

(2) Any violation of this §§ 50.300 through 50.307 is also classified as a civil offense, pursuant to KRS 65.8808 and §§ 22.600 *et seq.*, and such classification shall provide an additional or supplemental means of obtaining compliance.

(3) Each section of §§ 50.300 through 50.307 violated shall be considered a separate fineable civil offense. All fines shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

(Am. Ord. 2013-12, passed 12-10-13)

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**Cross reference:**

*General penalty, see § 10.999*