

CHAPTER 50: NUISANCES

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§ 50.001 PUBLIC NUISANCE DEFINED

(A) As used in this chapter, a public nuisance shall mean any act, thing, occupation, condition or use of property which shall continue for such length of time as to:

- (1) Substantially annoy, injure, or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public nuisance in life or in the use or property;
- (3) Greatly offend the public morals or decency;
- (4) Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any street, alley, highway, sidewalk, stream, ditch or drainage; or
- (5) Essentially interfere with the comfortable enjoyment of life and property, or tend to depreciate the value of the property of others.

(B) Public nuisances shall include but not be limited to the following acts, conduct, omissions, conditions, or things:

- (1) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
- (2) Carcasses of household pets or other animals not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death;
- (3) Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing materials, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rodents or other vermin may breed or may reasonably be expected to breed;
- (4) All stagnant water in which mosquitoes, flies or other insects can multiply;
- (5) Garbage and refuse containers which are not fly-tight;
- (6) All noxious weeds and other rank growth or vegetation;
- (7) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits or within one (1) mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;

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(8) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;

(9) Any use or property, substances, or things within the city emitting or causing any foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of person within the city.

(10) Any building or structure which is uncompleted and abandoned, deteriorated, dilapidated, or extremely unsound, and endangers the health and safety of the public;

(11) Any inoperable or abandoned vehicle which exists in violation of any of the provisions of this Code;

(12) Any vehicle parked on private property except on a wood-free surface made of gravel, crushed stone, asphalt or portland cement concrete;

(13) Dumpsters, located on a public way unless the dumpster is owned, leased or under the control of the city;

(14) Vegetation which is:

(a) Unmanaged and in excess of ten inches in height, provided that cultivated flowers, ornamentals, or food plants shall be presumed to be managed vegetation;

(b) Grass which is in excess of ten (10) inches in height regardless of its managed state; or

(c) Vegetation which interferes with or obstructs the view or passage on any street, alley, or other public way; provided that this provision shall not apply to any parcel of land five (5) acres or greater, designated by the Madison County Property Valuation Administrator to be agricultural, or is used for the production of legal agricultural products, except that all grass and weeds on such agricultural property which is within three hundred feet (300) feet of a residential area shall be mowed annually, or twice annually if within one hundred and fifty (150) feet of a residential area.

(15) Any condition which violates the Property Maintenance Code; and

(16) Other actions, conduct, omissions, conditions or things defined or specified in this Code as nuisances or as public nuisances.

(Ord. No. 14.90, 6-10-90; Amd. Ord. No. 03-06, passed 1-14-06)

§ 50.002 PROHIBITION

(A) No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the city.

(B) The procedures and remedies set forth in §§ 50.003 and 50.004 may be used in the alternative or in consonance with or in lieu of any other remedy or procedure set forth in this Code for the removal of violations or nuisances.

(Ord. No. 14.90, 6-10-90)

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§ 50.003 *CODES ENFORCEMENT OFFICER TO ENFORCE*

(A) All complaints alleging the existence of a public nuisance shall be filed with the codes enforcement official (CEO).

(B) The codes enforcement officer shall promptly inspect the premises or cause them to be inspected and shall make a written report of the findings of the inspection. Whenever practicable, photographs of the premises shall be attached to the written report. The codes enforcement officer shall keep all the written reports on file.

(Ord. No. 14.90, 6-10-90)

§ 50.004 *ABATEMENT*

(A) Upon determining that a public nuisance exists and that there is danger to the public health, safety, peace, morals or decency, the codes enforcement officer shall serve a notice of the public nuisance or cause a notice to be served on the owner or occupant of the property where the public nuisance exists or upon the person causing, permitting, or maintaining the nuisance. A copy of the notice shall be posted on the premises where the public nuisance exists.

(B) The notice shall specifically describe the public nuisance and shall direct the owner or the occupant of the private property where the public nuisance exists or the person causing, permitting or maintaining the nuisance to abate or remove the nuisance within twenty-four (24) hours of service or posting of the notice. If the owner, occupant, or person cannot be located after reasonable inquiry, posting shall be sufficient notice. The notice shall state that unless the nuisance is so abated or removed the city will cause it to be abated or removed, that the cost will be charged to the owner, occupant, or person causing, permitting, or maintaining the nuisance and that the cost shall be a lien on the real property where the nuisance was abated or removed. The notice shall also state that failure of the owner, occupant, or person to abate the nuisance as required by the notice shall be deemed an implied consent for the city to abate or remove the nuisance. The implied consent shall be deemed to form a contract between the owner, occupant, or person and the city. If the public nuisance does not constitute a great and immediate danger to the public health, safety, or welfare, the codes enforcement officer may serve the owner or occupant of the premises or the person in whose name the real estate was last billed for property tax purposes a notice to demand the abatement or removal of the violation within five (5) days. Service may be had by personal service, certified mail, or first class mail, provided that there shall be a presumption that first class mail which is not returned to the codes office within five (5) days of mailing was received in fact by the addressee.

(C) If a nuisance is not abated or removed after notice pursuant to this section and within the time specified in the notice, the codes enforcement officer may cause the abatement or removal of the public nuisance. The reasonable cost thereof shall be a lien on the real property where the nuisance was abated or removed.

(D) The owner or occupant of the private property where the public nuisance exists who fails to abate or to remove the nuisance required by this section, thereby consents, under the terms of this section, to have the city abate or remove the nuisance. Further, the owner or occupant thereby also consents to the formation of a contract between the owner and occupant and the city for the payment of costs in relation to abatement or removal of the nuisance.

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(E) The person upon whom a notice to abate a nuisance is served, the property owner, tenant, or other affected person may appeal the determination of a nuisance, in writing, pursuant to § 22.605 of this code. The written appeal must be made within the time period in which to abate the nuisance is given in the notice. The codes enforcement officer or his/her designee shall meet with the appellant within five (5) working days of the receipt of the written appeal. The codes enforcement officer or his/her designee may extend the time in which the nuisance must be abated, determine that a nuisance does not or no longer exists, or that the nuisance must be abated within the time period set out in the notice or immediately if the period has run. Provided, however, that if the nuisance was determined to be an emergency and that the opportunity for an appeal was not available due to the short period of time to abate the nuisance, an appeal may be heard after the abatement of the nuisance by the city. In that event, the Code Enforcement Board may determine that the appellant is liable for the costs, or that, upon good cause shown, that the appellant is not liable for the costs and that a lien shall not be filed by the city upon the property. The notice to abate shall contain a statement as to the right of appeal.

(F) Emergencies. In the event that the Code Enforcement Officer determines in writing that a condition is so menacing to the public health, peace, or safety that it is necessary that it be summarily abated, the Code Enforcement Officer shall specify in writing the condition and the basis for the emergency, and shall maintain such writing in the Code Enforcement Office.
(Ord. No. 14.90, 6-19-90; Amd. Ord. No. 14-97, 7-1-97; Amd. Ord. No. 03-06, passed 1-14-06)

§ 50.005 *LIEN AUTHORIZED*

(A) Whenever a bill for the reasonable costs of abatement or removal of a nuisance pursuant to this chapter remains unpaid for thirty (30) days after it has been sent, the cost shall be placed upon the city's tax books against the property and may be collected, and the liens may be foreclosed, in the same manner as taxes and tax liens are collected and foreclosed, in the same manner as taxes and tax liens are collected and foreclosed, or by other civil suit or process as the corporation counsel may determine. In addition, the city shall have a lien on the property in the amount of such costs and the expense of preparing any lien statements provided for hereafter. The clerk may file a notice of lien with the Madison County Clerk, pursuant to KRS 381.770 but failure to file such notice shall not invalidate the lien provided for herein. Unpaid bills for the cost of abatement shall bear interest at the rate of twelve percent (12%) per annum, compounded annually. Any notice of lien pursuant to this chapter shall be filed within ninety (90) days after the cost and expense of abatement or removal of nuisance has been incurred by the city. The notice shall consist of a sworn statement setting out:

- (1) A description of the real estate sufficient for identification thereof;
- (2) The amount of money representing the cost and expense incurred or payable for the service; and
- (3) The date or dates when the costs and expense was incurred by the city.

(B) Any purchaser whose rights in and to the real estate have arisen subsequent to removal of the public nuisance and prior to the filing of the notice shall not be held personally liable for the costs of abatement or removal, and the lien of the city shall not have priority as to any mortgage, judgment creditor or other lienor whose rights in and to the real estate arise prior to the filing of the notice, but the property shall be subject to the lien and addition to the tax bill provided for herein.

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(C) Costs and expenses under this chapter include, but are not limited to the actual costs and expenses in time of city employees or city authorized contractors and in materials concerning the actual actions of abatement of the nuisance pursuant to this chapter, transportation to and from the property, title searches, or certifications, preparations of lien documents, foreclosure and other related expenses, including, but not limited to reasonable attorney's expenses.

(D) A copy of the notice of lien shall be mailed by the clerk to the owner of the property, or to the occupant, or to the person or persons in whose name the real estate was last billed for property tax purposes.

(E) The city may enforce the lien by action initiated in the Madison Circuit Court for the unpaid assessment of the costs and expenses, and the proceeds of the sale applied to pay the charges, after deducting costs.

(F) The city may institute proceedings in any court having jurisdiction over the matters against any property for which the costs and expenses have remained unpaid for thirty (30) days after a statement of the costs and expenses have been mailed to the property owner, to the occupant, or to the person or persons in whose name the property was last billed for property tax purposes.

(G) After notice of lien has been filed and upon payment of the costs and expenses plus interest from the date thirty (30) days after the bill was sent, the clerk shall file with the Madison County clerk a release of the lien.

(H) If payment of the city's costs of removal or abatement of the nuisance is not paid to the city within thirty (30) days of the filing of the notice of the lien, the city council is empowered to commence proceedings in the Circuit Court seeking a personal judgment from the owner of or persons interested in the property at the time the complaint for removal or abatement was filed with the Circuit Clerk in the amount of the costs. The action shall be based upon the implied consent for persons to form a contract for the removal or abatement of the nuisances. The action authorized by this subsection shall be in addition to, and without waiver of, any other remedy.

(Ord. No. 14.90, § 1, 6-19-90; Amd. Ord. No. 03-06, passed 1-14-06)

Statutory Reference:

Nuisance Abatement Procedure, KRS 381.770