

**COMMONWEALTH OF KENTUCKY
CITY OF LOUISA
ORDINANCE NO. 11-02**

**AN ORDINANCE DECLARING CERTAIN CONDITIONS
A NUISANCE AND PROVIDING FOR ABATEMENT
PROCEDURES AND PENALTIES**

WHEREAS, KRS 82.700 et. seq. and KRS 381.770 provides for the enactment of nuisance ordinances by cities; and

WHEREAS, the City of Louisa, Kentucky, desires to enact an ordinance for the abatement of nuisances;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF LOUISA,
KENTUCKY, AS FOLLOWS:**

SECTION 1:

Definitions

As used in this Ordinance:

[1] "Abatement costs" means the City's costs for and associated with cleaning, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises to maintain and preserve public health, safety, and welfare in accordance with the portion of a nuisance code pertaining to the condition of and maintenance of structures or City's premises, adopted pursuant to KRS 82.700 to 82.725 or 381.770;

[2] "Hearing Board" means a body empowered to conduct hearings pursuant to KRS 82.710 and composed of three [3] persons appointed by the Mayor. "Hearing Board" also means any hearing officers appointed by the Board. Any action of a Hearing Officer shall be deemed to be the action of the Board.

[3] "Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.

[4] "Premises" means a lot, plot, or parcel of land, including any structures upon it.

SECTION II

In addition to what is declared in this Ordinance to be a public nuisance, those offenses which are known to the common law and statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this Ordinance or in accordance with any other ordinance or law.

SECTION III

It shall be unlawful for the owner, occupant, or person having ownership control or management of any land or building within the City to permit a public nuisance to develop thereon. The following conditions are declared to be public nuisances:

[a] Dangerous trees or stacks adjoining street. The permitting of any tree, shrubbery, hedge, stack, or other object adjoining public right-of-ways to grow or stand in such a condition that it interferes with the use, construction or maintenance of streets or sidewalks, that could cause injury to streets or sidewalks, or causes an obstruction to drainage or poses a danger to life, limb or property of persons using the sidewalks or right-of-ways.

[b] Visual obstruction of streets. The permitting of any hedge, shrubbery, fence or other visual obstruction on any corner lot to attain a height which prohibits proper sight distance.

[c] Accumulation of rubbish. An accumulation on any premises of filth, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents, or insects, give off offensive odors, or blow rubbish onto any street, sidewalk or property of another.

[d] Scattering garbage, etc. The throwing, placing or scattering of any garbage, rubbish trash or other refuse over or upon any premises, street[s] or alley, either public or private, or adjacent thereto, and either with or without the intent to later remove.

[e] Storage of explosives. The storage of explosive materials which creates a safety hazard to other property or persons in the vicinity.

[f] Weeds and grass. The excessive growth of weeds, grass, or other vegetation on any lot, place, or area or which may be left lying or located on streets or sidewalks abutting same. No owner, occupant or person having control or management of any land within the City shall permit or maintain on any such premises or adjacent right of way any growth of noxious weeds; nor any growth of grass or brush or any other rank vegetation to a greater height than eight [8] inches; nor any accumulation of dead weeds, grass, or brush. Noxious weeds shall include Canada thistle, dodders, common ragweed, bindweed, Common Cocklebur, Poison Ivy, poison sumac or poison oak; provided, however, there is excepted from the provisions of the above are flower gardens, plots of shrubbery, vegetable gardens, small grain plots, and farmland under cultivation if the land has been cultivated and cared for in an appropriate manner. The Code Enforcement Officer or such as may be designated by the Mayor may grant

exemption in certain areas for the control of erosion, urban forestry, and preservation of any rare species of flora or fauna.

[e] Attractive nuisances. The allowing of any physical condition, use or occupancy of any property or premises to be an attractive nuisance to children, including but not limited to, the maintenance or any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, retaining walls, unsafe fences, and refrigerators, freezers, ice chests, ice boxes or similar airtight box or container which has a locking device inoperable from within.

[f] Obstruction of storm water drainage facilities. The permitting of any limbs, leaves, grass clippings or other objects to be placed in a manner that interferes with the use or maintenance of any storm water or drainage facilities;

[g] Keeping of animals. The failure to keep an animal's pen, yard, lot, or other enclosure in a sanitary condition and free from preventable offensive odors. Animals causing excessive noise or disturbance shall be removed from the City by their owners or keepers.

[h] Junk; scrap metal; motor vehicles. The storage of motor vehicles in an inoperative condition, which upon inspection are found to be wrecked, dismantled, inoperative, abandoned, discarded or expired tags, automobile parts, or scrap metal within the city limits except on premises authorized by the city for such purposes. If the vehicle is any of the above mentioned and is parked, kept or stored on any public right of way for longer than three [3] days, it should be found to be a nuisance.

[i] Unfit vacant structures. It shall be unlawful for the owner of a property [a] to permit any vacant structure upon the property to become unfit and unsafe for human

habitation, occupancy, or use if such condition has existed or if such condition is allowed to exist for a period of two [2] years or more or [b] to permit conditions to exist in the vacant structure which are dangerous or injurious to the health or safety of the occupant[s] of the structure, the occupant[s] of neighboring structure[s], or other resident[s] of the City if such condition has existed or such condition is allowed to exist for a period of two [2] years. Vacant unfit structure is defined as follows:

- [a] A building that has become so dilapidated, decayed, unsafe, unsanitary or which so utterly fails to provide amenities essential to decent living that it unfit for human habitation or is likely to cause sickness or disease or injury to health, safety or general welfare of those living therein.
- [b] A building having inadequate facilities for egress in case of fire or other events, or having insufficient stairways fire escapes or other means of travel.
- [c] A building that has parts or elements that are attached or not attached in such a way that they may fall and cause injury to persons or property.
- [d] A building characterized by disconnected utilities, extensive broken glass, peeling or flaking paint on the exterior walls, loose or rotting materials on the roof or the exterior walls or a vacant building or structure from entry or the elements.

SECTION IV

There is hereby established a Hearing Board in accordance with KRS 82.700 et. seq. consisting of three [3] persons appointed by the Mayor who are residents of the City. Each member of the Board shall qualify by taking the oath of office provided by Section 228 of the Kentucky Constitution and by KRS Chapter 62, but no surety bond shall be required by any member of the Board for performance of Board duties.

The initial appointees shall serve for terms of office as follows:

- [a] One resident member for a term expiring August 1, 2013;

[b] One resident member for a term expiring August 1, 2014; and

[c] One resident member for a term expiring August 1, 2015.

The terms of office shall commence upon the date of appointment by the Mayor.

At the expiration of their respective terms of office set out above, all successor members shall be appointed for a term of three [3] years, such appointment to be made at least ten [10] days prior to the expiration of each respective term; provided, however, that in the event of failure to appoint a new member, each respective member shall continue to serve until his successor is appointed.

Any member of the Hearing Board may be removed from office upon a two-thirds [2/3] vote of the City Council, with the approval of the Mayor, for inefficiency, neglect of duty, misfeasance, nonfeasance or malfeasance in office.

Any appointed Board Member who fails to attend four consecutive regular meetings of the Hearing Board without cause acceptable and approved by the remaining Hearing Board members shall be summarily removed from office, and the vacancy shall be filled as hereinbefore provided.

A majority of the Hearing Board shall constitute a quorum and the Hearing Board shall act by vote of a majority present at any meeting attended by the quorum.

Vacancies in the Hearing Board shall not affect its power or authority so long as a quorum remains. Within ten [10] days after the initial appointment and qualification of its members, the Hearing Board shall hold a meeting and shall elect a Chairman, Vice-Chairman, and a Secretary. Meetings thereafter shall be called at such time as may be scheduled by the City Clerk with the approval of the Chairman.

SECTION V

The Code Enforcement Office, who shall be an employee of the City of Louisa, shall enforce the provisions of this Ordinance. To the extent it is practical and economically feasible, the Code Enforcement Office shall seek to obtain training relevant to the position.

SECTION VI

[a] Enforcement proceedings before the Hearing Board shall be initiated by the issuance of a citation by a code enforcement officer.

[b] When a code enforcement officer or such other person[s] as may be designated by the Mayor, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of this Ordinance, the officer is authorized to issue a citation after a warning as set forth herein.

Before issuing a citation the code enforcement officer shall give ~~either~~ a written warning that a violation shall be remedied within a specific period of time. If the person to whom the warning is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation in accordance with [c][iii].

Civil penalties may be imposed by the Code Enforcement Officer as follows:

<u>Violation</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
Property Maintenance	\$100.00	\$300.00	\$500.00
Junked Motor Vehicle	\$100.00	\$300.00	\$500.00
Junked Appliances	\$100.00	\$300.00	\$500.00
Trash/Debris	\$100.00	\$300.00	\$500.00
Other Nuisances	\$100.00	\$300.00	\$500.00

[c] Service upon a violator may be made in any of the following manners:

[i] Personal service to the alleged violator [whether owner, occupant, or person having control or management of the premises;

[ii] Leaving a copy of the citation with any person eighteen [18] years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or

[iii] Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular mail of the United States Postal Service to the owner of record of the property if no one is on the premises at the time the citation is issued. The Code Enforcement Officer shall give fifteen [15] days written notice to remedy the nuisance situation; provided, however, any nuisance violation pertaining to the obstruction of water drainage facilities or otherwise stated, shall have twenty four [24] hours to remedy the condition. Such notice may be in the following terms:

"To _____, [owner, occupant, or person having control of the premises] of the premises known and described as _____."

"You are hereby notified the _____ [describe condition] on the premises above mentioned has been determined to be a nuisance pursuant to City Ordinance 11-02."

"The reasons for this decision are _____ [here insert the facts as to the conditions constituting the nuisance and the section of the ordinance that has been violated.]"

"You must remedy this situation within fifteen [15] days or the City of Louisa will proceed to do so. If the condition is remedied by the City, then the City shall acquire a lien against the property and all improvements located thereon for the reasonable value of labor and materials used in remedying the condition[s] and you shall be personally liable for the amount of the lien, interest, civil penalties and other charges and the City may bring a civil action against you and have the same remedies as provided by law for the recovery of a debt owed. In addition you shall be fined as follows if the condition is not remedied as follows:"

<u>Violation</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
Property Maintenance	\$100.00	\$300.00	\$500.00
Junked Motor Vehicle	\$100.00	\$300.00	\$500.00
Junked Appliances	\$100.00	\$300.00	\$500.00
Trash/Debris	\$100.00	\$300.00	\$500.00
Other Nuisances	\$100.00	\$300.00	\$500.00

Your fine is \$ _____, if the condition is not remedied on or before the _____ day of _____.

“You may appeal this determination to the Hearing Board within ten [10] days after you received this notice by filing a written request with the City Clerk. Your appeal will be heard by the Hearing Board at such time as the City Clerk may direct.”

[d] Upon failure of the owner of the property to comply with the notice, the Code Enforcement Officer or such other person as may be designated by the Mayor is authorized to send employees upon the property to remedy the situation and the property owner shall be responsible for all abatement costs.

[e] Any party who has received a notice to abate a nuisance may, within ten [10] days of receipt of the notice, appeal the decision of the Code Enforcement Officer by filing a written request with the City Clerk. The appeal will be heard by the Hearing Board at such time as scheduled by the City Clerk.

[f] When a hearing before the Hearing Board is requested, the City Clerk shall schedule a hearing. Not less than seven [7] days before the date set for the hearing, the City shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person’s usual place of residence with an individual residing therein who is eighteen [18] years of age or older and who is informed of the contents of the notice. Any person requesting a hearing who

fails to appear at the time and place set for a hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the Hearing Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

[g] Each case shall be presented by the City Attorney.

[h] All testimony shall be under oath and shall be recorded. The Hearing Board shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The Hearing Board may dismiss the citation, affirm it, or direct the Code Enforcement Officer to do additional investigation. A decision by the Hearing Board is a civil proceedings and does not constitute a bar, res judicata, or double jeopardy to a criminal action pursuant to this Ordinance.

[i] Any person aggrieved by the decision of the Hearing Board may appeal such decision to the Lawrence District Court within seven [7] days of the Board's determination. The appeal shall be initiated by the filing of a complaint and a copy of the Board's Order in the same manner as any civil action under the Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the City to establish that a violation occurred. If the Court finds that a violation occurred, the owner shall be ordered to pay the City all fines, fees, and penalties occurring as of the date of

the judgment. If the Court finds a violation did not occur, the City shall be ordered to dismiss the notice and the plaintiff shall be authorized to recover his costs.

[j] A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.

[k] The City shall have a lien against the property for the reasonable value of labor and materials used in remedying the nuisance 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 82.700 et. seq. and this section, and shall be recorded in the Office of the Lawrence County Court Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the rate of twelve percent [12%] compounded annually. The lien created shall take precedence over City taxes, and may be enforced by judicial proceeding. In addition to this remedy or any other remedy authorized by law, the owner, occupant, or person having a control or management of the property or building of which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including a civil action against the owner, and the City shall have the same remedies as provided in KRS 82.700 et. seq.

[l] All civil fines shall be payable to the general fund of the City.

SECTION VII

NUISANCE CREATED BY OTHERS

For the purpose of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or

management of the premises, but merely that the nuisance was created or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator is responsible.

SECTION VIII

It shall be unlawful for the operator or occupant of any motor vehicle to play music or otherwise create any noise of any type which may be heard fifty [50] feet beyond the vehicle.

SECTION IX

In addition to the civil remedies previously provided herein for the abatement of any nuisance, whoever violates any provision of this Ordinance shall be subject to criminal prosecution in the Lawrence District Court and may be fined as follows:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
Property Maintenance	\$100.00	\$300.00	\$500.00
Junked Motor Vehicle	\$100.00	\$300.00	\$500.00
Junked Appliances	\$100.00	\$300.00	\$500.00
Trash/Debris	\$100.00	\$300.00	\$500.00
Other Nuisances	\$100.00	\$300.00	\$500.00

SECTION X

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION XI

Ordinance 96-04 or any other Ordinance or Ordinance Amendment inconsistent with this Ordinance are hereby repealed effective June 1, 2012; provided, however nothing herein shall effect the right of the City to collect any fees or charges due and payable prior to June 1, 2012.

SECTION XII

This Ordinance shall become effective upon passage and publication.

This the 30 day of May, 2012.

INTRODUCED, SECONDED, AND GIVEN FIRST READING, at a duly convened meeting of the City Council of the City of Louisa, Kentucky, held on the 10th day of April, 2012.

INTRODUCED, SECONDED, AND GIVEN SECOND READING, at a duly convened meeting of the City Council of the City of Louisa, Kentucky, held on the 8th day of May, 2012.

Jeddy Preston - Mayor
MAYOR

ATTEST:

Kathy Longto
CITY CLERK