

CHAPTER 92: NUISANCES

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§ 92.01 DEFINITIONS.

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

"AUTOMOBILE PARTS." Any portion or parts of any motor driven vehicle as detached from the vehicle as a whole.

"BONA FIDE FARMING OPERATION." the operation and maintenance of a farm, situated on five (5) contiguous acres or more of land used for the production of livestock, poultry, poultry products, dairy, dairy products, or horticulture products or for the growing of crops such as, but not limited to, tobacco, corn, soybeans and wheat.

"CONSTRUCTION or DEMOLITION ACTIVITY." The erection (including excavation), demolition, alteration, or repair of any building, structure or roadway, for which all necessary and proper governmental permits have been obtained.

"INOPERATIVE CONDITION." Unable to move under its own power due to defective or missing parts, and which has remained in such condition for a period of not less than ten consecutive days.

"INTENSITY." The magnitude and strength of noise.

"MOTOR VEHICLE." Any style or type of motor driven vehicle used for the conveyance of persons or property.

"NOISE." The intensity, frequency, duration and character of sound or sounds from a source or sources.

"NUISANCE." Any condition or the use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other properties or which renders such properties as dangerous or detrimental or adverse to the health or welfare or is offensive to the senses of the residents in the city.

"PARKING LOTS." Any off-street parking facility for public use, and the approaches to same, whether publicly or privately-owned, and shall include but not be limited to: parks, shopping centers, restaurants, entertainment centers, taverns, car washes, banking or financial institutions, whether publicly or privately-owned, operated, or controlled.

"PERSON." Any person, firm, association, partnership, joint venture, corporation or any private entity of any nature.

"PLAINLY AUDIBLE." Capable of being distinctly heard by a person with normal hearing.

"RIGHT-OF-WAY." Any road, street, avenue, alley, boulevard, highway, lane, or court, including the berm, shoulder or any public property adjacent thereto, bridge, viaduct, trestle and the approaches to them, or sidewalk.

"SCRAP METAL." Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

"UNFIT FOR FURTHER USE." In a dangerous condition; having defective or missing parts; or in such a condition generally as to be unfit for further use as a conveyance.

"UNREASONABLE PERIOD OF TIME." A period of time in excess of that necessary to accomplish:

- (1) A danger warning with a horn or other audible signaling device; or
- (2) The preservation or protection of property or the life, safety, or welfare of a person or persons by use of an audible signaling device.

"UNREASONABLY LOUD, HARSH, OR EXCESSIVE NOISE." Any manufactured noise plainly audible at a distance of fifty (50) feet from its point of origination or emanation.

"VEHICLE." Any machine or device in, on, or by which any person or property is or may be transported or drawn on any right-of-way or parking lot.

(Am. Ord. 1-2006, passed 2-6-2006; Am. Ord. 12-2006, passed 9-5-2006)

§ 92.02 COMMON LAW AND STATUTORY NUISANCES.

In addition to what is declared in this chapter 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 chapter or in accordance with any other provision of law.

Penalty, see § 92.99

§ 92.03 CERTAIN CONDITIONS DECLARED A NUISANCE.

It shall be unlawful for the owner, occupant, or person having control or management of any land 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. Any tree, stack, or other object standing in such a condition that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property upon the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.

(B) Accumulation of rubbish/debris and abandoned, discarded or unused objects or equipment. Including, but not limited to, an accumulation on any premises of filth, refuse, trash, garbage or other waste material and/or abandoned, discarded or unused objects or equipment such as furniture, stoves, refrigerators, toys, freezers, washers, dryers, cans, containers which endanger the public health, welfare, or safety, or is materially detrimental to the property of others or which causes or tends to cause a nuisance because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents, or insects, or blow rubbish into any street, sidewalk or property of another or cause substantial diminution in the value of other properties. Garbage containers deposited on the street 24 hours prior to scheduled pickup and garbage containers left on the street 24 after scheduled pickup.

(C) Storage of explosives. The storage of explosive material which creates a safety hazard to other property or persons in the vicinity.

(D) Weeds and grass. The excessive growth of weeds, grass, or other vegetation. Excessive growth shall be deemed the growth of weeds, grass, or other vegetation to a height in excess of one foot.

(E) Open wells. The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private premises in any open or unfenced lot or place.

(F) Trees and shrubbery, athletic goals and equipment, skateboard ramps, vehicles obstructing streets, sidewalks, and drainage. The growing and maintenance of trees or shrubbery, the use or storage of athletic goals, equipment, skateboard ramps or vehicles which in any way interferes with the use, construction, or maintenance of streets or sidewalks, causes injury to streets or sidewalks, or constitutes an obstruction to drainage.

(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.

(H) Junk; scrap metal; motor vehicles. The storage of motor vehicles in an inoperative condition, motor vehicles unfit for further use, automobile parts, or scrap metal within the city limits except on premises authorized by the city for such purposes.

(Am. Ord. 1-2006, passed 2-6-2006; Am. Ord. 7-2009, passed 1-4-2010) Penalty, see § 92.99

§ 92.04 ABATEMENT PROCEDURE.

(A) When one of the conditions specified in § 92.03 is discovered, the police officer discovering such conditions shall give five days written notice to the owner of the property to remedy the situation. This notice shall be mailed to the last known address of the owner of the property as it appears on the current tax assessment roll.

(B) Upon failure of the owner of the property to comply, the Police Chief may authorize city employees to go upon the property to remove the rubbish, excessive growth of weeds or grass; or other condition constituting a nuisance.

(C) The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The Police Chief shall submit an affidavit to the County Clerk evidencing the amount of the lien and the regularity of the proceedings to clear the property. The affidavit shall be filed in the County Clerk's office where it shall constitute notice to all persons of the lien of the city.

(D) The lien shall bear interest at 6% per annum.

(E) Property subject to a lien for unpaid charges for the removal of rubbish, excessive weeds and grass, or the correction of any condition constituting a nuisance shall be sold for nonpayment for the same and the proceeds of such sale shall be applied to pay the charges after deducting the costs, as is the case in the foreclosure of statutory liens. The foreclosure shall be in equity in the name of the city and shall join all persons having an interest in the property as shown in the record of the County Court Clerk's office. The foreclosure action may be maintained against any property for which such a bill or lien has remained unpaid for sixty (60) days after it has been rendered.

(F) In the alternative to the above procedure, the city, at its discretion, may issue a citation to the offending property owner to appear in the County District Court to answer to a misdemeanor offense.

(Ord. 4-86, passed 6-2-86)

§ 92.05 NUISANCE CREATED BY OTHERS.

For the purposes 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 be created or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware of.

§ 92.06 UNLAWFUL CONDUCT.

(A) It shall be unlawful for any person within the city to make, continue, or cause to be made or continued, any unreasonably loud, harsh or excessive noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, unless the making and continuing of the noise is necessary for the protection or preservation of property or the life, health, or safety of a person or persons.

(B) The following acts are hereby declared to be unreasonably loud, harsh or excessive noises in violation of this chapter, but the enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn or other such audible signaling device on any automobile, motorcycle or other vehicle on any right-of-way, parking lot or other public place, except as a danger warning, for an unreasonable period of time;

(2) The use or operation of any radio, stereo, or other machine or device for the producing, reproducing or amplification of sound in any vehicle in such a manner as to create and unreasonably loud, harsh, or excessive noise, that disturbs the peace, quiet or comfort

of others;

(3) The use or operation of, or allowing the use or operation of, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner as to create an unreasonably loud, harsh or excessive noise, which disturbs the peace, quiet, and comfort of others by creating or allowing a louder volume than is necessary for the convenient hearing of the person or persons who are voluntarily in the room, chamber, or vehicle in which any above described machine, device, or musical instruments is located.

(4) The use or operation of any vehicle in such a manner as to produce any unreasonably loud, harsh or excessive noise, or to discharge into the open air the exhaust of any vehicle except through a muffler or other device which will effectively prevent any unreasonably loud, harsh or excessive noises therefrom;

(5) Creation of any unreasonably loud, harsh, or excessive noise in connection with the loading or unloading of any vehicle, or by the operation of any such vehicle;

(6) The use of any mechanical loud speaker, amplifier, sound system, stereo or radio on any moving or standing vehicle for advertising, entertainment or any other purpose, in such a manner as to create an unreasonably loud, harsh or excessive noise.

(Ord. 12-2006, passed 9-5-2006) Penalty, see § 92.99

§ 92.07 STANDARDS FOR NOISE POLLUTION; EXEMPTIONS.

(A) Standards. The standards which shall be considered in determining whether a violation exists shall include but not be limited to the following:

- (1) The volume of the noise;
- (2) The intensity of the noise;
- (3) The volume and intensity of back-ground noise, if any;
- (4) The proximity of the noise to a residential area, place of public accommodation such as a hotel, motel, inn, campground and the like, health care facilities, churches or schools;
- (5) The nature and zoning of the area within which the noise emanates;
- (6) The density of inhabitation of the area within which the noise emanates;
- (7) The time of day or night the noise occurs;
- (8) The duration of the noise;
- (9) Whether the noise is recurrent, intermittent or constant.

(B) Exemptions. The following uses and activities shall be exempt:

- (1) Noises originating or emanating from safety signals, warning devices, and emergency pressure relief valves.
- (2) Noises resulting from any authorized emergency vehicle or law enforcement training facilities.
- (3) Noises resulting from construction or demolition activity provided such activity takes place between the hours of 7:00 a.m. and 9:00 p.m.
- (4) Noises relating to the use of farm machinery, or other machinery for agricultural purposes in bona fide farming operations.
- (5) Noises relating to the use of lawn mowers or other machinery for landscaping purposes between the hours of sunrise and sunset.
- (6) Noises originating or emanating from public recreational facilities, such as but not limited to fairgrounds, sports arenas, sports stadiums, amusement parks, racetracks and other public amusement establishments.
- (7) The operation of any aircraft in conformity with, or pursuant to, federal law, federal air regulations and/or air traffic control instructions.

(8) Noises resulting from any and all transportation, flood control, utility company maintenance and construction operations at any time on right-of-ways and noises from situations which may occur on private real property, including in parking lots, deemed necessary to serve the best interest of the public and to protect the public's health and well being, including, but not limited to, street or hard surface sweeping or cleaning, debris and limb removal, removal of downed wires restoring electrical service, repairing traffic signals, unplugging sewers, snow removal, house moving, vacuuming catch-basins, removal of damaged poles and vehicles, repair of water hydrants and mains, gas lines, oil lines, and sewers.

(9) Noises from activities conducted on public parks or playgrounds and public or private school grounds, including, but not limited to, school athletic and school entertainment events.

(10) Noises from activities conducted on property owned or operated by civic, charitable or religious organizations, including, but not limited to, neighborhood or church festivals and entertainment events.

(11) Noises from activities at parades provided a valid parade permit has been obtained from the city.

(12) Noises from activities at firework displays provided all necessary permits have been obtained.

(13) Noises from activities conducted on rights-of-way of the city including, but not limited to, festivals and entertainment events, provided all necessary permits have been obtained.

(14) Noises relating to the collection of refuse between the hours of 6:00 a.m. and 10:00 p.m.

(Ord. 12-2006, passed 9-5-2006)

§ 92.99 PENALTY.

(A) First offense. A fine of \$50.00, if paid within 30 days of citation; and additional \$50.00 if not paid within 30 days of citation, plus interest at the rate of 1% per month, compounded monthly.

(B) Second offense. A fine of \$100.00, if paid within 30 days of citation; and additional \$100.00 if not paid within 30 days of citation, plus interest at the rate of 1% per month, compounded monthly.

(C) Third offense. A fine of \$500.00, if paid within 30 days of citation; and additional \$500.00 if not paid within 30 days of citation, plus interest at the rate of 1% per month, compounded monthly.

(D) Nothing in this section will affect the imposition of attorney fees or legal costs and this section does not repeal the imposition of the same in prior ordinances or ordinances that may be enacted and ordained after this section is enacted or ordained.

(E) Any person violating § 92.06 shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) for a first offense within a two (2) year period. Any person violating any provision § 92.06 a second time within a two (2) year period shall be fined not less than two hundred and fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) and/or imprisoned for a period not exceeding sixty (60) days. Any person violating any provision of § 92.06 a third time within a two (2) year period shall be fined not less than five hundred dollars (\$500.00) and/or imprisoned for a period not exceeding one hundred eighty (180) days. Each separate occurrence or each day such violation is committed or permitted to continue shall constitute a separate offense. It shall be a defense for an owner, lessee or occupant of any premises involved in an offense by some other party, if there is posted on said property a sign adequately noticeable in size (no larger than twelve (12) square feet), which contains sufficient warnings as to the criminal liability applicable for noise pollution violations. Said sign shall not contain any other messages such as advertising for said business.

(Ord. 4-86, passed 6-2-1986; Am. Ord. 12-2006, passed 9-5-2006; Am. Ord. 6-2011, passed 5-2-2011)