

CITY OF PARK HILLS, KENTUCKY

ORDINANCE NO. 17, 2013

AN ORDINANCE AMENDING CHAPTER 92 OF THE CITY'S MUNICIPAL CODE BY INCORPORATING A PROCESS FOR THE SUMMARY ABATEMENT OF CONDITIONS IMMINENTLY DANGEROUS TO THE HEALTH AND SAFETY OF PARK HILLS RESIDENTS.

WHEREAS, KRS 381.770 provides for the establishment procedures for summarily abating imminently dangerous conditions;

BE IT ORDAINED BY THE CITY OF PARK HILLS, KENTUCKY:

SECTION I

That §92.01 of the Park Hills Code of Ordinances is hereby amended as follows:

92.01 DEFINITIONS AND CERTAIN NUISANCES DEFINED

"IMMINENTLY DANGEROUS." A condition which could cause serious or life-threatening injury or death at any time. KRS 381.770(1)(d). For purposes of this Chapter, dying and dead trees may be considered imminently dangerous.

SECTION II

That §92.05 of the Park Hills Code of Ordinances is hereby amended as follows:

92.05 ABATEMENT PROCEDURE.

(A) It shall be the duty of the code enforcement officer or other responsible person designated by the legislative body 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 and to demand the abatement of the nuisance within five (5) days unless the nuisance constitutes an immediate danger to the health and well-being of the community. The abatement of conditions imminently dangerous to the health and safety of city residents is governed by §92.05A of the Code. ~~If the danger is present, the nuisance shall be abated within twenty-four (24) hours of notice.~~ Notice shall be served upon persons by certified mail, but if the whereabouts of the persons is unknown and cannot be ascertained by the Chief of Police in the exercise of reasonable diligence, the Chief of Police shall make an affidavit to that effect, and the serving of notice may be made by publication in a newspaper of general circulation for two (2) consecutive days. A copy of the notice shall be posted in a conspicuous place on the premises affected by the notice and it shall be recorded in the office of the County Clerk.

(B) If the person so served 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 the expense shall be charged and paid by the owner or occupant.

(C) Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for ~~sixty (60)~~ fourteen (14) days after it has been rendered, the City Clerk may file with the County Clerk a statement of lien claims. This statement/affidavit shall contain a legal description of the premises, the expenses and costs incurred, the date the nuisance was abated, and a notice that the city claims a lien for this amount. The affidavit of the authorized city officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 381.770 and this section. The lien shall be notice to all persons from the time of the recording and shall bear interest at six percent (6%) per annum thereafter until paid. Notice of the lien shall be mailed to the owner of the premises if his address is known. However, failure to record the claim or to mail the notice, or the failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges as provided in provision (D) below.

(D) In addition to the lien to which reference is made in KRS 381.770, the city shall have a lien upon the land to which reference is made in KRS 381.770 and § 92.04 for the costs incurred in all legal action necessary to foreclose the lien, which costs shall include ~~a reasonable attorney's fee~~ reasonable attorney fees.

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

(F) The City Attorney is authorized and directed to institute the proceedings, in the name of the city, in any court having jurisdiction over the matter, against any property for which the bill has remained unpaid for ~~sixty (60)~~ fourteen (14) days after it has been rendered, upon direction by the mayor.

(G) In the alternative to the abatement procedure described in this section, this Chapter may be enforced pursuant to Chapter 101 of this Code.

(H) Unsafe Sidewalk Abatement Procedure.

- (1) It is the duty of the Director of Public Works of the City to supervise the construction, repairs or maintenance of all sidewalks within the City.
- (2) Whenever the Director of Public Works shall determine that any sidewalk blocks, including bricks and paving stones, are in such condition by reason of having a crack or cracks, holes, depressions, reveling, spalling, heaving or are so uneven in relation to one

another or are so sloped, or contain stumps, side posts or other obstructions, or retain such water stop-boxes, gas stop-boxes or similar items that are not on grade level, or are in such other conditions as to prevent a hazard to persons utilizing such sidewalks blocks or to the public right-of-way or public improvements in or near such sidewalk blocks as to require repair or replacement of such sidewalk blocks, the Director of Public Works shall notify the persons charged with the responsibility of maintaining, repairing or replacing the sidewalk blocks as hereinafter provided.

- (3) Whenever any block of sidewalk or sidewalk are requiring repair, the Director of Public Works of the City shall notify in writing the persons owning the real estate who are responsible for repairing the blocks of the sidewalk or sidewalk area to the effect that such repairs shall commence within 30 days and be completed within 60 days of the date of the mailing of the notice to the last known address of those persons. Records maintained by the Kenton County Property Valuation Administration may be relied upon to determine the identity and address of the property owner. Receipt of such notice shall be presumed conclusively unless and until notification of a change of address of the owner is received by the City Clerk.
- (4) If, in the judgment of the Director of Public Works of the City, the work performed is unsatisfactory, or has not been performed in accordance with the applicable specifications, the Director of Public Works shall give written notice thereof to the owner and shall proceed under the provisions set forth herein.
- (5) The Director of Public Works shall have the power to adopt and promulgate rules and regulations to interpret and implement the provisions of this ordinance as amended to secure the intent thereof to designate requirements applicable because of local climactic or other conditions.
- (6) An appeal to the Mayor may be taken by any person or entity, claiming to be injuriously affected or aggrieved by any order, requirement, interpretation or decision of the Director of Public Works under this subsection. Such appeal shall be taken within 30 calendar days after the person aggrieved his agent receives notice of the action of the Director of Public Works, by filing with the Director of Public Works and with the City Clerk a notice of appeal specifying the grounds thereof and giving notice of such appeal. The Director of Public Works shall forthwith transmit to the Mayor all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such

further proceedings. At the public hearing on the appeal held by the Mayor, an interested person may appear and be given an opportunity to be heard.

- (7) The Mayor shall fix a reasonable time for hearing the appeal and give written notice thereof to the appellant and to the Director of Public Works at least one calendar week prior to the hearing, and shall decide on the appeal within 60 consecutive calendar days after the date of the hearing. The Mayor has authority to hear and decide appeals where it is alleged that there is an error in any official action, order, requirement, interpretation or decision of the Director of Public Works in the enforcement of the sections of the Park Hills Code governing sidewalks. The affected party may appear at the hearing in person or by attorney. In the matter of appeals under the provisions of this Section, the Mayor shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The Mayor shall have the power to administer oaths to witnesses prior to their testifying on any issue.
- (8) Any person or entity claiming to be injured or aggrieved by any final action of the Mayor shall appeal from the action to the Circuit Court of Kenton County. Such appeal shall be taken within 30 consecutive calendar days after the final action of the Mayor. All actions that are not appealed within such 30 days become final and nonappealable.

(I) As to Section 92.03 subsection (Q), use of gas-fired heating of water heating devices prohibited, the city has the authority to shut off gas-fired space heaters, heating devices, and water heaters. Whenever it shall appear upon inspection by an authorized representative of the Fire Department of the City of Park Hills, Kentucky that gas-fired heating equipment, used for space heating or water heating, or any other gas-fired heating equipment is discharging noxious or dangerous fumes or is unsafe for use, said representative is hereby authorized to shut off the supply of gas to such heating device or equipment by turning off the valve or cock to such equipment, or when required to shut off such gas supply by capping or plugging gas lines to said device or equipment, or by any other reasonable means, to accomplish the shutting off of gas, so as to make such device or equipment inoperative, without notice to the owners of the property or the equipment involved.

SECTION III

That §92.05A of the Park Hills Code of Ordinances is hereby created as follows:

92.05A ABATEMENT PROCEDURE FOR IMMINENTLY DANGEROUS CONDITIONS

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

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

(C) Whenever the City determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the City shall give reasonable notice, not to exceed five (5) business days, to the property owner as to the nuisance and prior to the demolition of any unfit or unsafe structure, the property owner shall be afforded the right to a hearing before the Mayor or his designee pursuant to KRS 381.770(5). If the property owner cannot be located or the owner fails to take prompt appropriate action to abate the condition, the City may proceed to take abatement action authorized in this section to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing.

(D) Whenever the City takes action to abate imminently dangerous property conditions, the property owner shall be liable for all costs of such abatement. Charges for nuisance abatement shall be a lien upon the premises in accordance with the abatement procedures set forth in §92.05(C). The lien shall take precedence over all other liens, except state, county, school board, and city taxes and the City may bring a civil action against the owner and have the same remedies as provided for the recovery of a debt owed.

(E) In addition to the lien to which reference is made in KRS 381.770, the City shall have a lien upon the land as set forth in §92.05(D).

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

(G) The City Attorney is authorized to institute such proceedings in the name of the City in any court having jurisdiction over the matter against any property for

which the bill has remained unpaid for fourteen (14) days after it has been rendered, upon direction by the Mayor.

SECTION IV

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

SECTION V

The invalidity of any provision of this ordinance shall not affect the validity of any other provision.

CITY OF PARK HILLS, KENTUCKY

A municipal corporation of the fourth class

BY: Don Catcher

MAYOR

FIRST READING: 11/11/13

SECOND READING: 12/9/13

ATTEST: Julia A. Aleg

CITY CLERK/ADMINISTRATOR

PUBLISHED: _____