

ORDINANCE NO. 15, 2017

AN EMERGENCY ORDINANCE OF THE CITY OF PARK HILLS, IN KENTON COUNTY, KENTUCKY, AMENDING THE CITY'S NUISANCE CODE CONTAINED IN CHAPTER 91 OF THE CODE OF ORDINANCES

WHEREAS, KRS §65.8840(6) permits a local government to establish by ordinance reasonable standards and procedures for enforcement of a nuisance code;

WHEREAS, the City Council of the City of Park Hills has determined that it is in the City's best interest to appoint the Kenton County Joint Code Enforcement Board as the hearing board for the enforcement of the City's nuisance code;

WHEREAS, an emergency exists due to the City's imminent need to enforce nuisance provisions related to dead and/or dying trees throughout the City that threaten the safety of the residents of Park Hills and public property in the City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF PARK HILLS, KENTUCKY, AS FOLLOWS:

SECTION 1

Section 91.13, HEARING BOARD AND HEARING OFFICERS, shall be repealed in its entirety and be replaced by Section 91.13, HEARING BOARD; RESPONSIBILITY FOR ENFORCEMENT, as follows:

[§ 91.13 HEARING BOARD AND HEARING OFFICERS

~~There is hereby established a hearing board consisting of one person appointed by the Mayor of the city for the purpose of conducting hearings pursuant to KRS 82.710, which shall be named and known as the Park Hills Nuisance Hearing Board; which shall be identified and referred to hereinafter simply as the "Board." The Board may appoint hearing officers; and any action of a hearing officer shall be deemed to be the action of the Board.]~~

Section 91.13 HEARING BOARD; RESPONSIBILITY FOR ENFORCEMENT

The Kenton County Joint Code Enforcement Board shall act as the hearing board for the enforcement of this Chapter. The responsibility for the enforcement of the nuisance code is delegated to the City of Park Hills Police Department. The Kenton County Joint Code Enforcement Board and the City of Park Hills Police Department shall operate in accordance with Chapter 30 of the Park Hills Code of Ordinances in the enforcement of this Chapter.

SECTION 2

Section 91.14, RESPONSIBILITY FOR ENFORCEMENT, shall be repealed in its entirety as follows:

~~[The responsibility for the enforcement of the nuisance code hereby established is hereby delegated to the code enforcement officer as designated by the City Council.]~~

SECTION 3

Section 91.15, STANDARDS AND PROCEDURES FOR THE ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER, shall be repealed in its entirety as follows:

~~[There are hereby established the following standards and procedures for the enforcement of this chapter.~~

~~(A) Enforcement proceedings before the Board shall be initiated by the issuance of a notice of violation and civil citation (citation) by a person who is a code enforcement officer.~~

~~(B) Whenever a code enforcement officer either:~~

~~(1) Observes or otherwise personally senses a violation of this nuisance code ordinance; or~~

~~(2) Has reason to believe that a violation of this nuisance code ordinance has occurred or is occurring;~~

~~the code enforcement officer is hereby authorized to issue a citation to everyone who the code enforcement officer has reason to believe has, by either act or omission, conspired, caused, permitted, encouraged, aided, assisted, allowed or engaged in that violation.~~

~~(C) The citation issued by the code enforcement officer shall be in a form prescribed by the executive authority of the city; but it shall include at least the following information:~~

~~(1) The date and time of issuance;~~

~~(2) The name and address of the person to whom the citation is issued;~~

~~(3) The date and time the violation occurred;~~

~~(4) The facts constituting the violation;~~

~~(5) The section of this nuisance code ordinance that has been violated;~~

~~(6) The name of the code enforcement officer;~~

- ~~(7) The civil fine that will be assessed for the violation if that person does not contest the citation;~~
 - ~~(8) The maximum civil fine that may be imposed if that person elects to contest the citation;~~
 - ~~(9) The procedure for the person to follow in order to pay the fine or to contest the citation; and~~
 - ~~(10) A description of the circumstances in which the determination of the code enforcement officer becomes final; and that, thereupon, the City shall cause the violations described in the Citation to be abated; and that the cost thereof shall be assessed upon the person to whom the citation was issued; and that the owner of the property upon which those violations occurred shall also be liable therefor and for all fines, penalties, charges abatement costs and fees assessed for those violations, for which the city shall possess a lien on that property.~~
- ~~(D) After issuing a citation, the code enforcement officer shall cause the citation to be served upon the person to whom it was issued either by personal delivery, or by any other means that conforms to the due process provisions of the federal and state constitutions.~~
- ~~(E) After issuing and serving a citation upon the person to whom it was issued, the code enforcement officer shall notify the Board thereof by delivering a copy of the citation to the Board.~~
- ~~(F) When a citation is issued and served upon the person to whom the citation was issued, that person shall respond to the citation within seven calendar days after the date the service of the citation, by either paying the civil fine set forth in the citation or delivering to the Board a written request for a hearing to contest the citation. If there is no response to the citation by the person to whom it was issued within seven days after the service thereof on that person, then that person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.]~~

SECTION 4

Section 91.16, BOARD HEARINGS, shall be repealed in its entirety as follows:

[~~Section 91.16~~ **BOARD HEARINGS**]

- ~~(A) When a hearing before the Board has been requested by a person to whom a citation has been issued, the Board shall schedule a hearing. Not less than seven days before the date set for the hearing, the Board shall cause to be delivered to the person who requested the hearing a written notice of the date, time, and place of the hearing. Any person requesting a hearing before the Board who fails to appear at the time and place scheduled for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination of the code enforcement officer that a violation was committed by that person shall become final. In that event, the Board shall enter a final order determining that the violation was committed by that person and assessing upon that person the civil fine set forth in the citation, plus the abatement costs, costs of collection and attorney fees of the city, if any.~~
- ~~(B) All testimony before the Board shall be under oath and shall be recorded. The Board shall receive testimony from the code enforcement officer, the person to whom the citation was issued, and any other witnesses to the facts identified in the citation or any other relevant facts offered by the code enforcement officer or the person to whom the citation was issued. Formal rules of evidence shall not apply, but constitutional procedural due process shall be observed and shall govern the proceedings.~~
- ~~(C) At the hearing, the Board shall determine from the evidence presented whether or not a violation of this chapter was committed by the person to whom the citation was issued. When the Board determines from that evidence that no such violation was committed, the contrary determination of the code enforcement officer shall be reversed and an order dismissing the citation shall be signed and entered into the record of the proceedings of the Board. When the Board determines that such violation was committed, the Board shall issue an order sustaining the citation and assessing the person to whom the citation was issued for a civil fine in an amount as provided in Chapter 91.20 of this ordinance. In its discretion, the Board may issue a fine less than permitted in Chapter 91.20 of this ordinance.~~
- ~~(D) Every final order of the Hearing Board shall be written and signed on behalf of the Board; and it shall include the date the order was issued, and a copy of the order shall be delivered to the person to whom the citation was issued. If the person to whom the citation was issued is not present at the time of the final order of the Hearing Board, the final order shall be delivered to that person by postage pre-paid first class U.S. mail to the address identified in the citation or a different address identified by that person.]~~

SECTION 5

Section 91.17, ELIMINATION OF VIOLATIONS BY THE CITY, shall be renumbered as follows:

Section [~~91.17~~] 91.14, ELIMINATION OF VIOLATIONS BY THE CITY

In the event that a determination of the code enforcement officer that the violations described in a citation were committed by the person to whom the citation was issued becomes final, and the violation(s) identified therein continue thereafter, the city shall cause those violations to be abated through either employees of the city or contracts with others.

SECTION 6

Section 91.18, VIOLATIONS, shall be renumbered as follows:

Section [~~91.18~~] 91.15, VIOLATIONS

A violation of this Chapter occurs whenever anybody, by either act or omission, conspires, causes, permits, encourages, aids, assists, allows or engages in any of the acts, actions, behavior, conditions and occurrences prohibited by this Chapter; and each and every day of each continuing occurrence thereof is a separate violation of this Chapter.

SECTION 7

Section 91.19, OWNERS LIABILITY AND LIEN OF THE CITY, shall be repealed in its entirety and be replaced by Section 91.14, OWNERS LIABILITY AND LIEN OF THE CITY, as follows:

[~~Section 91.19, OWNERS LIABILITY AND LIEN OF THE CITY~~

- (A) ~~Pursuant to KRS § 65.8840(10), the owner(s) of the property at the time of the occurrence of violations of this chapter on that property shall be liable for all civil fines, penalties, charges, abatement costs and fees assessed for those violations.~~
- (B) ~~Pursuant to KRS § 65.8840(8), the City of Park Hills shall possess a lien on all charges and fees incurred by the City in connection with the enforcement of this Chapter, including abatement costs. The lien shall also include attorneys' fees incurred as an additional penalty. The affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings, 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 KRS 65.8840(9). The City shall possess the lien for ten (10) years following the date of the final, non-appealable order of the Board or final judgment of the court. The lien may be enforced by judicial proceeding.]~~

Section 91.16 OWNERS LIABILITY AND LIEN OF THE CITY

The City shall possess a lien on real property owned by the person found by a final order of the hearing board, or by final judgment of a court, to have committed a violation of this Chapter in the amount of all fines assessed for the violation, for all charges, and fees

incurred by the City in connection with the enforcement of this Chapter, and bear interest until paid. The City may also abate the nuisance and the lien shall include abatement costs under KRS §65.8805(7). The lien shall also include attorneys' fees incurred as an additional penalty. The lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes. A person found to have committed a violation of this Chapter shall be personally liable for the amount of all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of this ordinance.

SECTION 8

Section 91.20, PENALTY, shall be repealed in its entirety and be replaced by Section 91.17, PENALTY, as follows:

~~[Section 91.20, PENALTY~~

~~(A) Civil offense. Each separate violation of this chapter is hereby classified as a civil offense; and the penalties to be imposed upon persons determined to have violated this chapter are hereby established as follows:~~

~~(1) The maximum civil fine that may be imposed for each separate violation of this chapter is hereby established at \$500 for a first violation, \$750 for a second occurrence of the same violation, and \$1,000 for the third and each subsequent occurrence of the same violation plus the costs of collection, including, without limitation, court costs and attorney fees.~~

~~(2) The specific civil fine that shall be imposed for each separate violation of this chapter in the event that a citation for that violation is not contested is hereby established at \$100 for a first violation, \$250 for a second occurrence of the same violation, and \$500 for the third and each subsequent occurrence of the same violation, plus the costs of collection, including, without limitation, court costs and attorney fees.~~

~~(B) Criminal offense. Each violation of this chapter shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500 as set forth in KRS 534.050(2)(a) or a term of imprisonment not to exceed the maximum period of 12 months as set forth in KRS 532.090(1), or both.]~~

Section 91.17 PENALTY

The following penalties shall apply to violations of this Chapter:

(1) Any person, firm, or corporation who violates any provision of this Chapter shall be subject to a civil fine of not less than \$50 per day per violation but not more than \$500 per day per violation, or the cost to the City to abate the public nuisance, or both. Each day that a violation of this Chapter continues after due

notice has been served in accordance with the terms of this Chapter may be deemed a separate offense to a maximum of \$10,000 per citation.

- (2) As an additional alternative remedy to the above penalty, any violator who violates any provision of this Chapter and has been previously issued two or more citations for violation of this Chapter relating to the same property within a 12-month period may be assessed additional civil penalties of \$500 per day per violation to a maximum of \$20,000 per citation.

SECTION 9

Section 91.26(E), COMMENCEMENT OF ACTIONS; REMEDIES; BURDEN OF PROOF, shall be amended as follows:

(E) *Commencement of actions; remedies; burden of proof.*

- (1) In the event a citation is issued for a chronic nuisance property, the person in charge shall have those rights and shall otherwise be subject to the procedures and provisions set forth in Chapter 91 of the municipal code. The Code Enforcement Officer shall also cause the citation to be served on any tenants of the nuisance property by posting the citation on the door of the unit. Tenants shall have the same hearing rights provided in this chapter to the person in charge. If the ~~[Park Hills Nuisance Board]~~ hearing board determines that the property is a chronic nuisance property, then it shall issue such fine and/or take such other action consistent with the provisions of Chapter 91 of the municipal code.
- (2) In addition, whenever the hearing board ~~[Park Hills Nuisance Board]~~ determines that a chronic nuisance exists, the Board shall forward such determination to the Mayor of the city. Based on such determination, the Mayor may suspend or revoke the occupational license of any person conducting any business upon the property where the chronic nuisance exists.

SECTION 10

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

SECTION 11


If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

SECTION 12

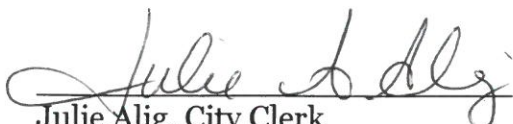
For the reasons set forth above, an emergency is hereby declared to exist and the provisions of this ordinance shall become effective immediately upon its adoption by a vote of two-third or more of the City Council.

Passed by City Council on June 26, 2017.

CITY OF PARK HILLS, KENTUCKY

By: 
Matthew Mattone, Mayor

ATTEST:


Julie Alig, City Clerk

First Reading for emergency ordinance: 6/26/17