

- (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 Chapter 52, the city 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 the 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 30 days become final and non-appealable.

SECTION 14

Section 91.20 DEFINITIONS is repealed in its entirety.

SECTION 15

Section 91.21 COMMON LAW AND STATUTORY NUISANCES is repealed in its entirety.

SECTION 16

Section 91.22 CERTAIN CONDITIONS DECLARED A NUISANCE is repealed in its entirety.

SECTION 17

Section 91.23 CRIMINAL ACTIVITY AS A NUISANCE shall remain unchanged and in full force and effect.

SECTION 18

Section 91.24 PRIVATE ROADS AND ROADS NOT ACCEPTED BY THE CITY FOR MAINTENANCE

- (A) The City has no duty to maintain private roads or public roads not accepted by the City for maintenance.

- (B) Private roads and public roads not accepted by the City for maintenance, and that provide necessary access for emergency vehicles, must be maintained in a reasonably safe manner by the owners of property adjacent to or served by the road.
- (C) All new private roads and public roads not accepted by the City for maintenance shall be surfaced, designed, and constructed in accordance with the standards for the surfacing of new off-street parking set forth in Section 13.0(M) of the Park Hills Zoning Ordinance.
- (D) Failure to maintain a private road or public road not accepted by the City for maintenance under paragraph (B) or failure to surface, design, or construct a road under paragraph (C) of this section shall constitute a nuisance under section 91.12.
- (E) For purposes of this section, "road" shall include streets and alleys.

SECTION 19

Section 91.24 REGULATION AND DEFINITION OF PUBLIC NUISANCES is repealed in its entirety.

SECTION 20

Section 91.25 ABATEMENT PROCEDURE is repealed in its entirety.

SECTION 21

Section 91.26 ABATEMENT PROCEDURE FOR IMMINENTLY DANGEROUS CONDITIONS shall be amended to state as follows:

- (A) Any property condition which the city reasonably determines to be imminently dangerous to the health and safety of city 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) (1) 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 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 or her designee pursuant to KRS 381.770(5).

- (2) 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) (1) 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 § 91.25(C).~~ Whenever a bill for charges remains unpaid for 14 days after it has been rendered, the City Clerk/Treasurer 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 6% per annum thereafter until paid. Notice of the lien shall be mailed to the owner of the premises if his or her 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.
- (2) 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 § 91.25(D).~~ to which reference is made in KRS 381.770 for the costs incurred in all legal action necessary to foreclose the lien, which costs shall include reasonable attorneys' fees.
- (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 14 days after it has been rendered, upon direction by the Mayor.

SECTION 22

Section 91.27 NUISANCE CREATED BY OTHERS is repealed in its entirety.

SECTION 23

Section 91.28 SUSPENSION OF LICENSE; NOTICE OF SAME is repealed in its entirety.

SECTION 24

Section 91.29 LIEN ON PROPERTY; COST IN ENFORCING LIEN is repealed in its entirety.

SECTION 25

Section 91.30 PRECEDENCE OF LIEN; PERSONAL LIABILITY OF PROPERTY OWNER is repealed in its entirety.

SECTION 26

Section 91.31 CHRONIC NUISANCE shall be amended to state as follows:

(A) *Chronic nuisance property - violations.*

- (1) Any property within the boundaries of the city that becomes a chronic nuisance property, as defined herein, is in violation of this section and subject to its remedies.
- (2) Any person who permits property under his or her ownership or control to be a chronic nuisance property, as defined herein, shall be in violation of this section and subject to its remedies.

(B) *Definitions.*

AGREEABLE WRITTEN ABATEMENT PLAN. An abatement plan approved by the Police Chief, Code Enforcement Officer, or other designee of the Mayor.

CHRONIC NUISANCE PROPERTY. Property on which three or more nuisance activities exist or have occurred during any 60-day period or on which 12 or more nuisance activities exist or have occurred during any 12-month period.

CODE ENFORCEMENT OFFICER. A Code Enforcement Officer as defined in KRS 65.8805.

CONTROL. The authority to regulate, restrain, dominate, counteract, or govern property, or conduct that occurs on property.

GOOD CAUSE. Circumstances beyond the ability of a person acting with reasonable care and diligence to control.

NUISANCE ACTIVITIES.

- (a) Any of the following activities, behaviors or conduct:
- (1) Harassment, as defined in KRS 525.070 through 525.080.
 - (2) Public intoxication or alcohol intoxication, as defined in KRS 525.100 or KRS 222.202.
 - (3) Disorderly conduct, as defined in KRS 525.055 or KRS 525.060.
 - (4) Murder, manslaughter, or reckless homicide, as defined in KRS 507.020, 507.030, 507.040, or 507.050.
 - ~~[(5) Rape, sodomy, sexual abuse, sexual misconduct, indecent exposure, or unlawful use of an electronic device to induce a minor to engage in sexual activities, as defined in KRS .010 through 510.155.]~~
 - [(6)] (5) Assault, menacing, wanton endangerment, terroristic threatening, criminal abuse, stalking, or disarming a police officer, as defined in KRS 508.010 through KRS 508.160.
 - [(7)] (6) Burglary or criminal trespass, as defined in KRS 511.010 through KRS 511.090.
 - [(8)] (7) Criminal mischief, as defined in KRS 512.010 through KRS 512.060.
 - [(9)] (8) Arson, as defined in KRS 513.010 through KRS 513.040.
 - [(10)] (9) Theft, as defined in KRS 514.010 through KRS 514.090.
 - [(11)] (10) Receiving stolen property, as defined in KRS 514.110.
 - [(12)] (11) Robbery, as defined in KRS 515.010 through KRS 515.030.
 - [(13)] (12) Prostitution, promoting prostitution, permitting prostitution, or human trafficking, as defined in KRS 529.010 through KRS 529.110.
 - [(14)] (13) Endangering the welfare of a minor or unlawful transaction with a minor, as defined in KRS 530.060 through KRS 530.080.
 - [(15)] (14) Distribution of obscene matter, promoting sale of obscenity, or voyeurism, as defined in KRS 531.010 through 531.110.
 - [(16)] (15) Sexual exploitation of minors, as defined in KRS 531.300 through KRS 531.370.

~~[(17)]~~ (16) Drug possession or trafficking, as defined in KRS 218A.010 through KRS 218A.1444.

~~[(18)]~~ (17) Weapons related offenses, as defined in KRS 527.010 through KRS 527.210.

~~[(19)]~~ (18) Violations of protection orders, as defined in KRS 403.763.

~~[(20)]~~ (19) Alcohol related offenses, as defined in Chapter 112 of the code of ordinances.

~~[(21)-(20)]~~ Noise violations, as defined in § 91.22.

~~[(22)-(21)]~~ (20) Any violation of any ordinance of the city, or a violation of any state or federal law, statute or regulation.

~~[(23)-(22)]~~ (21) Any attempt to commit and/or conspiracy to commit any of the activities, behaviors or conduct listed in this section.

~~[(24)-(23)]~~ (22) Violations of §91.12 of the Code.

(b) Exemptions: The following activities shall be exempt from the provisions of this chapter:

a. Contact made to police or other emergency services, if

i. The contact was made with the intent to prevent or respond to domestic violence, sexual violence, or any non-criminal emergency situation;

ii. The intervention of emergency assistance was needed to respond to or prevent domestic violence, sexual violence, or a non-criminal emergency situation; or

iii. The contact was made by, on behalf of, or concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

b. An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises.

~~[(b)]~~ (c) To qualify, all nuisance activities must be based on either:

(1) Personal observation of a police officer or Code Enforcement Officer; or

- (2) A determination by a police officer or Code Enforcement Officer, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident that the alleged nuisance activities did, in fact, occur.

PERMIT. To suffer, allow, consent to, or acquiesce by failing to prevent, or expressly assenting or agreeing to the doing of an act.

PERSON. Any natural person, agent, association, firm, partnership, corporation, limited liability company, or any other entity capable of owning, occupying, possessing, or using property in the city.

PERSON ASSOCIATED WITH THE PROPERTY. Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or any person present on a property. **PERSON ASSOCIATED WITH THE PROPERTY** includes, without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, the person in charge, or an owner of a property.

PERSON IN CHARGE. Any person with actual or constructive possession of a property including, but not limited to, an owner or occupant of property under his or her ownership or control. When an owner of the property and the occupant of a property under his or her ownership or control are not the same person, the person in charge shall include both such persons.

POLICE CHIEF. The Chief of Police of the city.

POLICE OFFICER. Shall mean a police officer as defined in KRS 15-420.

PROPERTY. Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of property including, without limitation, other structures erected on the property and areas used for parking, loading, and landscaping. Multi-dwelling units, motels, and hotels constitute one property for the purposes of §§ ~~91.20 through 91.30 and 91.99.~~ Chapter 91.

RESIDENTIAL LANDLORD. An owner of property upon which is located one or more dwelling units leased or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semi-permanent site at which lots are leased or otherwise rented to tenants for the parking of a manufactured home, mobile home, or recreational vehicle that is used solely for residential purposes.

[~~SECTIONS 30.100 THROUGH 30.109 OF THE MUNICIPAL CODE. Refers to §§ 30.100 through 30.109 of the city code of ordinances and includes the provisions of any interlocal agreement for code enforcement incorporated in §§ 30.100 through 30.109 of the code of ordinances.~~]

(C) *Procedure - city enforcement.*

- (1) When the Police Chief, a Code Enforcement Officer, or the designee of the Police Chief or Code Enforcement Officer receives information documenting the existence of activities which qualify as nuisance activities:
 - (a) The Police Chief or a Code Enforcement Officer shall independently review such report(s) to determine whether a chronic nuisance property as defined in division (B), above, is established by the information.
 - (b) Upon a determination that a chronic nuisance property exists, the Police Chief or Code Enforcement Officer shall issue a notice of violation to the person in charge, that the property has been determined to be a chronic nuisance property and request an abatement plan from the person in charge.
 - (c) The notice to the person in charge, shall contain the following information:
 - (1) The street address or a legal description sufficient for identifying the property.
 - (2) A statement that the Police Chief or Code Enforcement Officer has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to this determination.
 - (3) A demand that the person in charge respond in writing within ten calendar days to the Police Chief or Code Enforcement Officer by either describing the actions the person in charge intends to take to abate the nuisance activities (i.e., an abatement plan), or demonstrating good cause as to why the person in charge cannot abate the nuisance activities.
 - (4) That an agreed abatement plan must be reached with the Police Chief or Code Enforcement Officer within 30 days from the date of the notice of determination of chronic nuisance property, ~~at division (C)(1)(c)2. above.~~
 - (5) That if the Nuisance Activities are not abated and good cause for failure to abate is not shown, a citation under ~~§§ 30.100 through 30.109~~ Chapter 91 of the city's municipal code may be issued.
 - (6) That permitting the existence of a chronic nuisance property is a violation of this section.

- (7) That the above remedies are in addition to those otherwise provided by law.
- (d) The notice may be delivered in person, or sent registered mail with return receipt requested. The notice may be delivered to the property itself, or to the mailing address of the owner of the property as listed on the city tax roll, or to any other address that is likely to give the person in charge notice of the determination of the Police Chief or Code Enforcement Officer.
- (e) The failure of any person to receive notice shall not invalidate or otherwise affect the proceedings under this section.
- (2) The Police Chief or Code Enforcement Officer may issue a citation when:
 - (a) The person in charge fails to respond within ten calendar days from the date of the notice of determination of chronic nuisance property by the Police Chief or Code Enforcement Officer; or
 - (b) No agreeable written abatement plan is reached within 30 calendar days from the notice of determination of chronic nuisance property by the Police Chief or Code Enforcement Officer, and the Person in charge fails to establish one of the affirmative defenses provided in division (C)(6) or (C)(7) of this section;
 - (c) The person in charge fails to abate the nuisance activities from the property as required by the agreed abatement plan; or
 - (d) The person in charge fails to comply continuously with all conditions of the written abatement plan for a period of one year from the date the Police Chief or the Code Enforcement Officer approves the abatement plan by signing the plan.
- (3) If the person in charge is both a person with actual or constructive possession of the property and a legal owner of the property, then both persons must agree to any proposed abatement plan within the time allotted under division (C)(1)(c)4. of this section. Failure of both to agree to a proposed abatement plan shall result in a finding by the Police Chief or Code Enforcement Officer that the abatement plan is not agreeable under division (C)(2)(b) of this section.
- (4) Failure to respond, failure to abate the nuisance activities, or failure to propose an abatement plan shall be prima facie evidence of lack of cooperativeness of the person in charge. Failure to execute or comply with any abatement plan shall be prima facie evidence of lack of good faith in mitigating or correcting deficient conditions on the property.
- (5) When a person in charge makes a response to the Police Chief or Code Enforcement Officer, as required in division (C)(1)(c)3. of this section, conduct or statements made in connection with the response do not constitute an

admission that any nuisance activities have occurred or are occurring. This subsection does not require exclusion of any evidence that is otherwise admissible or offered for any other purpose.

- (6) Residential landlord affirmative defense: A residential landlord has an absolute defense to a charge under this section if it establishes by a preponderance of the evidence that the basis for the charge is the actions or omissions of its tenant(s), and the residential landlord establishes all of the following:
 - (a) That the residential landlord undertakes a reasonably appropriate screening process for prospective tenants including diligence into the criminal background of prospective tenants and the residential landlord did not knowingly rent to a tenant with a felony conviction or conviction involving drugs or violence. A residential landlord's employment of a screening process vendor approved by the city results in a rebuttable presumption that the landlord undertook a reasonably appropriate screening process. No provision in this section requires landlords to violate federal or state fair housing laws.
 - (b) That the residential landlord includes language in its leases providing that violations of federal, state, or local laws by tenants or their guests is a ground for eviction with 30 days or less notice;
 - (c) That the residential landlord, upon written notice by the city that a nuisance activity has occurred on their property within the prior 30 days, commences an eviction action against the tenant whose action or omission forms the basis of the charge, and diligently prosecutes that action to completion, irrespective of any ultimate ruling by a court on the merits of that action. A residential landlord shall not be responsible for prosecuting a forcible entry and detainer action against the tenant or their guests whose action or omission forms the basis of the charge if the city fails to give the notice provided in this section.
- (7) Good cause affirmative defense: Any person charged under this section has an absolute defense to any such charge if it establishes by a preponderance of the evidence that:
 - (a) The person charged has taken all appropriate actions to deter and prevent the nuisance activity forming the basis of the charge on its property;
 - (b) The nuisance activity that forms the basis of the charge was not the result of the actions or omissions of person charged, their authorized guests, or any other person residing in their household; and
 - (c) The nuisance activity that forms the basis of the charge was not permitted by the person charged.
- (D) *Procedure - resident enforcement.* Any city resident adversely affected by an alleged chronic nuisance property may provide a sworn complaint to the Police

Chief or a Code Enforcement Officer that may be used by the Chief of Police or Code Enforcement Officer in their enforcement of this section.

(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 [~~§§ 30.100 through 30.109 of the municipal code, or any interlocal cooperation agreement incorporated into the code~~] 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 [Code Enforcement Board, or a joint board under an interlocal agreement for code enforcement], Park Hills Nuisance 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 §§ ~~30.100 through 30.109~~ Chapter 91 of the municipal code.

(2) In addition, whenever the [~~Code Enforcement Board, or a joint board under an interlocal agreement for code enforcement~~], 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.

(F) *Summary closure.* The city, through its City Attorney, may also initiate a summary closure proceeding in the Kenton County District and/or Circuit Court. Such an action shall be based on evidence showing that nuisance activities exist or have occurred on the property and that action is necessary to avoid a threat to the health, safety, or public welfare. Proceedings to obtain an order of summary closure shall be governed by the provisions of applicable Kentucky law for obtaining [~~temporary~~] restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures set forth in division (C)(1)(c)1. of this section. As part of any summary closure order, the District/Circuit Court may also revoke or suspend the occupational license of any person conducting any business upon the property where the chronic nuisance exists.

SECTION 27

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


SECTION 28

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.

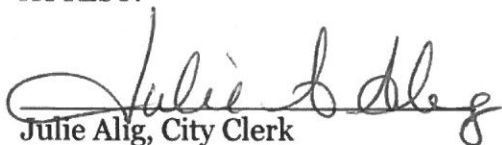
SECTION 29

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-thirds or more of the City Council.

CITY OF PARK HILLS, KENTUCKY
A Municipal Corporation

By: 
Matt Mattone, Mayor

ATTEST:


Julie Alig, City Clerk

FIRST READING: ER - 1/11/16

SECOND READING: _____

PUBLICATION: _____