

Diane Lawless, Chair
 Doug Martin, Vice Chair
 Chuck Ellinger
 Chris Ford
 Julian Beard
 Bill Farmer
 Kevin Stinnett
 K.C. Crosbie
 Jay McChord
 Peggy Henson

AGENDA

Public Safety Committee

October 18, 2011

1:00 p.m.

1. Chronic Nuisance Ordinance – Councilmember Henson
 Presentation by Keith Gaines

Synopsis	(2 – 3)
Draft Ordinance	(4 – 19)

2. Fireworks Ordinance – Councilmember Stinnett (20 - 26)
3. Review Items Referred to Committee & Discussion of Special Meeting (27)

“Public Safety Committee, to which shall be referred matters relating to the
 Department of Public Safety and its related divisions.” Council Rules &
 Procedures, Section 2.102(1)

Future Committee Meetings
 November 1st (Special Meeting)

November 15th
 Noise Ordinance

Chronic Nuisance Synopsis

Each property should be examined on a case-by-case basis.

Properties can be identified in multiple ways, but reports will be used to verify that there is a chronic nuisance. Once identified, the property will be referred to the commissioner of public safety or his designee to review the calls for service and the supporting documentation. Owners will be notified in person or by mail to the address listed on PVA, and owners will be required to discuss and work on an abatement plan with the City to abate the issues.

The owner may appeal to the hearing officer.

There will be a higher fine structure for owners who fail to respond or refuse to work with the abatement plan.

Nuisance Activity. Any criminal conduct as defined by state law or local ordinance occurring on, around or near a premise, including but not limited to, the following activities or behaviors that would consistent with nuisance activity:

- i. Violation of noise ordinance;
- ii. Harassment;
- iii. Failure to Disperse;
- iv. Disorderly Conduct;
- v. Assault;
- vi. Gambling;
- vii. Wanton Endangerment;
- viii. Prostitution and related crimes;
- ix. Alcohol related violations;
- x. Public Disturbance Noises;
- xi. Indecent exposure;
- xii. Any Firearms/Dangerous Weapons violations
- xiii. Drug related loitering;
- xiv. Any dangerous animal violations;
- xv. Any Drug Related Activity;
- xvi. Parking violations;
- xvii. Gang-related crime;
- xviii. Unauthorized and junk vehicles;
- xix. Fire code violations; and
- xx. Any conditions that negatively impact health and sanitation.

Non-residential property

Three (3) or more nuisance activities documented within a sixty (60) day period

Six (6) or more nuisance activities documented within a twelve (12) month period

Synopsis (continued)

Residential property

(i) 1-4 unit residential - three (3) or more nuisance activities within a sixty (60) day period; or six (6) or more nuisance activities within a twelve (12) month period.

(ii) 5-8 unit residential - six (6) or more nuisance activities within a (60) day period; or nine (9) or more nuisance activities within a twelve (12) month period.

(iii) 9-12 unit residential - nine (9) or more nuisance activities within a (60) day period; or twelve (12) or more nuisance activities within a twelve (12) month period.

(iv) 13-50 unit residential - twelve (12) or more nuisance activities within a (60) day period; or fifteen (15) or more nuisance activities within a twelve (12) month period.

(v) 51+ unit residential - fifteen (15) or more nuisance activities within a (60) day period; or eighteen (18) or more nuisance activities within a twelve (12) month period.

Initial fine structure

1st violation: \$100.00 fine.

2nd violation: \$250.00 fine.

3rd violation: \$500.00 fine.

4th violation: \$1000.00 fine.

5th violation: \$2000.00 fine.

Maximum fine: \$2000.00 for each subsequent violation.

Sec. 12-65. Action on failure to comply.

1st violation: \$500.00 fine.

2nd violation: \$1000.00 fine.

3rd violation: \$2000.00 fine.

4th violation: \$4000.00 fine.

Maximum fine: \$4000.00 for each subsequent violation.

The city will have the ability to close and vacate a property for up to one (1) year. This should be used as a last resort when all other methods fail in remedying the multiple calls for service and the owner is unwilling to work to assist in the efforts.

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ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 12-60 THROUGH 12-70 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT RELATING TO AGGRAVATED PUBLIC NUISANCES.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the heading of the Code of Ordinances, Article II, Public Nuisances of the Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

ARTICLE II – CHRONIC NUISANCE PROPERTIES

Section 2 – That Section 12-60 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-60. Findings.

The Urban County Council hereby finds as follows:

(1) Chronic nuisance properties present grave health, safety and welfare concerns and have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located.

(2) The failure of owners or managers of certain real property to control the activity occurring on or from their property is a financial burden to the city caused by the repeated and substantial expenditures of public funds in order to enforce federal, state and urban county laws upon or near their property. Among the property management practices contributing to the existence of activities that disturb the public are:

- (a) the failure of owners of real property to require tenants or occupants to obey laws as a condition of leases or occupancy,
- (b) the failure to enforce existing provisions of leases,
- (c) the failure of owners to respond to or to take affirmative steps to address complaints by surrounding property owners, and
- (d) the overall tolerance by owners of criminal activity on property by tenants, occupants, or their guests, all of which substantially annoys and injures the health, comfort, repose and safety of the

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public.

(3) The decline in or depression of surrounding property values and the expenditure of public funds results in part from the fact that certain property owners fail to adequately manage and control their property.

(4) The provisions of this ordinance will assist the urban county government in the long term to renew certain areas of the urban county by lessening the expenditures of public funds, increasing the property values, preserving the tranquility of areas of the urban county, and deterring property owners from adopting inadequate management practices.

Sec. 12-60. Definition:

~~For purposes of sections 12-60 through 12-70, the term public nuisance is hereby defined as any premises or place where law enforcement officers have, on more than two (2) occasions in a twelve (12) month period, criminally cited or arrested a person for violation of the laws governing prostitution, controlled dangerous substances, or gambling on the premises or executed a court issued search warrant for violation of the laws governing prostitution, controlled dangerous substances, or gambling on the premises.~~

Section 3 – That Section 12-61 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Section 12-61. Definitions.

The following words or phrases shall, when used in this section, have the following meaning:

- (a) Premises. Any parcel of real property and the structure or structures, if any, which is situated on the property.
- (b) Structure. Any type of building, dwelling, edifice, enclosure, garage, house, room, shed, shop, store, warehouse, or unit thereof.
- (c) Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state or urban county as holding title; or otherwise having control of the property, including the guardian of the estate of any such person, and the Executor or Administrator of the estate of such person if ordered to take possession of real property by accord.
- (d) Occupant. Any person who lives in or has possession or holds an occupancy interest in a structure or any person residing or

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frequenting the premises with actual or implied permission of an owner, lessor or lessee.

(e) Chronic Nuisance Property.

- i. A non-residential property upon which any combination of three (3) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period;
- ii. A non-residential property upon which any combination of six (6) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.
- iii. A 1-4 unit residential property upon which any combination of three (3) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period; or six (6) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.
- iv. A 5-8 unit residential property upon which any combination of six (6) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period; or nine (9) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.
- v. A 9-12 unit residential property upon which any combination of nine (9) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period; or twelve (12) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.
- vi. A 13-50 unit residential property upon which any combination of twelve (12) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period; or fifteen (15) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.
- vii. A 51+ unit residential property upon which any combination of fifteen (15) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any sixty (60) day period; or eighteen (18) or more nuisance activities documented in a citation(s) or report(s) occur or exist during any twelve (12) month period.

(f) Nuisance Activity. Any criminal conduct as defined by state law or local ordinance occurring on, around or near a premise, including but not limited to, the following activities or behaviors that would consistent with nuisance activity:

- i. Violation of noise ordinance;
- ii. Harassment;
- iii. Failure to Disperse;
- iv. Disorderly Conduct;

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- v. Assault;
- vi. Gambling;
- vii. Wanton Endangerment;
- viii. Prostitution and related crimes;
- ix. Alcohol related violations;
- x. Public Disturbance Noises;
- xi. Indecent exposure;
- xii. Any Firearms/Dangerous Weapons violations
- xiii. Drug related loitering;
- xiv. Any dangerous animal violations;
- xv. Any Drug Related Activity;
- xvi. Parking violations;
- xvii. Gang-related crime;
- xviii. Unauthorized and junk vehicles;
- xix. Fire code violations; and
- xx. Any conditions that negatively impact health and sanitation.

For the purposes of this section, "Nuisance Activity" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.

Domestic violence calls for service are not considered nuisance activities.

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- (g) Drug-Related Activity. Any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined by State law.

Sec. 12-61. Prohibition.

~~No owner of residential property located within the urban county shall allow his or her property to be used as the site for any public nuisance after having received notice pursuant to section 12-63 that the property has been used for the commission of a public nuisance. This prohibition shall apply to both rental and owner-occupied property. A legal or equitable owner of the property is deemed to have knowledge of such activity upon receipt of the notice as set forth in this Code.~~

Section 4 – That Section 12-62 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

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Section 12-62. Prohibition.

No owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in any real property shall recklessly, knowingly, or negligently allow or permit a chronic public nuisance to exist upon real property or part thereof, including individual units, owned by that person.

Sec. 12-62. Enforcement.

~~The division of police shall be responsible for enforcement of sections 12-60 through 12-70 relating to public nuisances. The term code official as used in these sections shall refer to the chief of police or his or her designated representative.~~

Section 5 -- That Section 12-63 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-63. Enforcement.

The Commissioner of Public Safety or his or her designee shall be responsible for enforcement of sections 12-60 through 12-70~~1~~ relating to chronic public nuisances. Chronic nuisance properties will be addressed on a case-by-case basis. If the established procedure does not appear to remedy the issues in a particular situation, the owner can be required to modify the abatement procedure as necessary.

Sec. 12-63. Abatement procedure.

~~(a) *Duty to notify owner.* Whenever the code official receives information that a public nuisance exists in or upon residential property, he shall notify the owner of the property, and any representative designated by the owner pursuant to subsection (d) below, that the property is being used in a manner so as to constitute a public nuisance and that the public nuisance must be abated.~~

~~(b) *Notice to abate.* It shall be the duty of code official to serve or cause to be served a notice upon the owner of any premises~~

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~~upon which there is kept or maintained a public nuisance in violation of sections 12-60 through 12-70. Such notice shall describe the nuisance so maintained and shall demand abatement of such nuisance. The notice shall be mailed by certified mail, return receipt requested, or may be personally served upon the owner. The notice shall include a statement to the effect that civil penalties of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) may be imposed if the public nuisance is not abated and shall state the procedure and time frame established by section 12-68 for appealing the notice to abate or the imposition of civil penalties, when applicable.~~

~~(c) *Order to close and vacate.* Should the public nuisance not be abated by or before the date stated in the notice to abate, the code official shall be authorized at any time thereafter to issue an order closing and vacating the premises to the extent necessary to abate the public nuisance. Such closing and vacating shall be for such period of time as the code official reasonably may direct, but in no event shall the closing and vacating be for a period of more than one (1) year from the date of closing. An order to close and vacate issued pursuant to this section is not an act of possession, ownership or control by the urban county government. An order to close and vacate order shall be rescinded within fourteen (14) days of an abatement, unless such premises is the site of repeated orders to close and vacate.~~

~~(d) *Service of notice to abate or order to close and vacate.* A notice to abate or an order to close and vacate shall be personally served upon the owner or shall be mailed by certified mail, return receipt requested, to the last known address of the owner of the property as it appears on the current tax assessment roll. If the owner of the property cannot be ascertained from the tax rolls in the exercise of reasonable diligence, the code official shall make an affidavit to that effect, and the serving of such notice upon such owners may be made by publication in a newspaper of general circulation for two (2) consecutive days. A copy of such notice or order shall be posted in a conspicuous place on the premises affected by the notice. Any property owner may voluntarily file with the division of police a completed certificate, on a form provided by the division, that provides the name and address of a management company or designated representative with authority over the subject property or an alternative address of the property owner to which all notices issued under this article also shall be served.~~

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~~(e) *Lien.* The urban county government shall have a lien against the property for any civil penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the public nuisance if necessary. This lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes pursuant to KRS 82.720. This lien shall be evidenced by a notice of lien claimed, filed in the county clerk's office, which notice shall include the affidavit of the code official, setting forth the property in question, the amount of the urban county government's cost and date of abatement, if any, and the amount of the civil penalty, if any, and shall recite that the notice provisions of this section were complied with before abatement or assessment of civil penalty. The code official shall bill the property owner of such premises at least once and no notice of lien claimed shall be filed against the property until twenty (20) days have elapsed since the bill is sent. If the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill. A copy of the notice of lien claimed shall be mailed to the owner of the premises, or published in a newspaper of general circulation, as required by statute, where the owner of the property cannot be ascertained. However, the failure of the clerk to record such notice of lien claimed or the failure to mail the owner a copy of such notice or publish same, or the failure of the owner to receive such notice shall not affect the right to foreclose the lien for such charges as provided in subsection (f).~~

~~(f) *Property to be sold.* Property subject to a lien for unpaid public nuisance abatement costs or civil penalties shall be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the charges after deducting costs as is the case in the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the urban county government.~~

~~(g) *Court proceedings.* The commissioner of law is hereby authorized and directed to institute such proceedings, in the name of the urban county government, in any court having jurisdiction over such matter, against any property for which a bill for public nuisance abatement or civil penalty remains unpaid for twenty (20) days after it is mailed. If the property is the subject of litigation, the proceedings may be initiated immediately upon the mailing of the bill.~~

~~(h) *Release of lien.* The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (e) upon payment in full of the nuisance abatement cost or civil penalty~~

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~~evidenced by the lien or upon conclusion of court proceedings resulting in the sale of the property regardless of whether any portion of the costs were paid from the proceeds of the sale. The lien release shall be filed in the county clerk's office.~~

Section 6 – That Section 12-64 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Section 12-64. Abatement procedure.

(a) *Duty to notify owner.* Whenever the Commissioner of Public Safety or his or her designee receives information that ~~a-a~~ chronic public nuisance exists in or upon ~~residential property any premises,~~ he shall notify the owner of the ~~property premises,~~ and any representative designated by the owner pursuant to subsection (d) below, that the ~~property premises~~ is being used in a manner so as to constitute ~~a-a~~ chronic public nuisance and that the chronic public nuisance must be abated.

(b) *Notice to abate.* It shall be the duty of the Commissioner of Public Safety or his or her designee to serve or cause to be served a notice upon the owner of any premises upon which there is kept or maintained ~~a-a~~ chronic public nuisance in violation of sections 12-60 through 12-70-1. Such notice shall contain

- i. The street address or legal description sufficient for identification of the premises;
- ii. A concise description of the nuisance activities that exist, or that have occurred on the premises;
- iii. A demand that the person responsible for such premises respond to the Commissioner or designee within ten (10) days of service of the notice to discuss the nuisance activities and the plan to abate the chronic nuisance;
- iv. A statement that the premises could be subject to closure and civil penalties and/or fines assessed of not less than one hundred dollars (\$100) nor more than four thousand dollars (\$4000); and
- v. A statement describing the procedure and time frame established by section 12-68 for appealing the notice to abate or the imposition of civil penalties, when applicable.

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- (a) *Commencement of Action.* The Commissioner or designee shall serve or cause to be served such notice upon the owner in accordance with the procedures set forth above. If the owner responds as required by the notice and agrees to abate the nuisance activity according to an agreed upon course of action in a specified time frame, a reduced penalty shall be assessed according to the following fine structure:

1st violation: \$100.00 fine.
2nd violation: \$250.00 fine.
3rd violation: \$500.00 fine.
4th violation: \$1000.00 fine.
5th violation: \$2000.00 fine.
Maximum fine \$2000.00 for each subsequent violation.

- (b) If an agreed upon course of action does not result in the abatement of the nuisance activities in the specified time frame or if no agreement concerning abatement is reached, the Commissioner or designee shall take appropriate enforcement action.

(c) *Order to close and vacate.* Should the chronic public nuisance not be abated by or before the date stated in the notice to abate, or the agreement to abate, or the premises continues to receive notices as a chronic public nuisance, the Commissioner or designee may be authorized at any time thereafter to issue an order closing and vacating the premises to the extent necessary to abate the chronic public nuisance. Once the premises have been vacated, the door(s) to the premises will be padlocked. Such closing and vacating shall be for such period of time as the Commissioner or designee reasonably may direct, but in no event shall the closing and vacating be for a period of more than one (1) year from the date of closing. An order to close and vacate issued pursuant to this section is not an act of possession, ownership or control by the urban county government. An order to close and vacate order shall be rescinded within fourteen (14) days of an abatement upon proof presented by the property owner that the chronic public nuisance has ben abated, unless such premises is the site of repeated orders to close and vacate.

(d) *Service of notice to abate or order to close and vacate.* A notice to abate or an order to close and vacate shall be personally served upon the owner or shall be mailed ~~by certified mail, return receipt requested,~~ to the last-known address of the owner of the

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property as it appears on the current tax assessment roll, and shall be mailed, addressed to occupant to the address affected by the notice and a copy of such notice or order shall be posted in a conspicuous place on the premises affected by the notice. If the owner of the property cannot be ascertained from the tax rolls in the exercise of reasonable diligence, the Commissioner or designee shall make an affidavit to that effect; and the serving of such notice upon such owners may be made by publication in a newspaper of general circulation for two (2) consecutive days. A copy of such notice or order shall be posted in a conspicuous place on the premises affected by the notice. Any property owner may voluntarily file with the Commissioner or designee a completed certificate, on a form provided by LFUCG, that provides the name and address of a management company or designated representative with authority over the subject property or an alternative address of the property owner to which all notices issued under this article also shall be served.

(f) *Lien.* The urban county government shall have a lien against the property for any civil penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the chronic public nuisance if necessary. This lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes pursuant to KRS 82.720. This lien shall be evidenced by a notice of lien claimed, filed in the county clerk's office, which notice shall include the affidavit of the code official, setting forth the property in question, the amount of the urban county government's cost and date of abatement, if any, and the amount of the civil penalty, if any, and shall recite that the notice provisions of this section were complied with before abatement or assessment of civil penalty. The Commissioner or designee shall bill the property owner of such premises at least once and no notice of lien claimed shall be filed against the property until twenty (20) days have elapsed since the bill is sent. If the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill. A copy of the notice of lien claimed shall be mailed to the owner of the premises, or published in a newspaper of general circulation, as required by statute, where the owner of the property cannot be ascertained. However, the failure of the clerk to record such notice of lien claimed or the failure to mail the owner a copy of such notice or publish same, or the failure of the owner to receive such notice shall not affect the right to foreclose the lien for such charges as provided in subsection (g).

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(g) *Property to be sold.* Property subject to a lien for unpaid chronic public nuisance abatement costs or civil penalties may be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the charges after deducting costs as is the case in the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the urban county government.

(h) *Court proceedings.* The commissioner of law is hereby authorized and directed to institute such proceedings, in the name of the urban county government, in any court having jurisdiction over such matter, against any property for which a bill for chronic public nuisance abatement or civil penalty remains unpaid for twenty (20) days after it is mailed. If the property is the subject of litigation, the proceedings may be initiated immediately upon the mailing of the bill.

(i) *Release of lien.* The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (e) upon payment in full of the chronic nuisance abatement cost or civil penalty evidenced by the lien or upon conclusion of court proceedings resulting in the sale of the property regardless of whether any portion of the costs were paid from the proceeds of the sale. The lien release shall be filed in the county clerk's office.

Sec. 12-64. Action on failure to comply.

~~If any person fails to comply with a notice to abate a public nuisance or an order to close and vacate issued pursuant to section 12-63, the code official may:~~

~~(a) Assess civil penalties of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00), with notice of the assessment of a civil penalty for a violation to be made in the manner specified in section 12-63 herein;~~

~~(b) Revoke the certificate of occupancy of the premises; or~~

~~(c) Use any other legal remedy available under the laws of the Commonwealth.~~

Section 7 – That Section 12-65 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

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Sec. 12-65. Action on failure to comply.

If the owner or designee fails to respond to the notice within the time prescribed, to comply with a notice to abate a chronic public nuisance, an agreement to abate a chronic nuisance; or an order to close and vacate issued pursuant to section 12-634, the Commissioner or designee may:

- (a) Issue a notice in person or by first class mail declaring the premises to be a chronic nuisance property and post such notice at the property;
- (b) Assess civil penalties according to the following fine structure:

1st violation: \$500.00 fine.

2nd violation: \$1000.00 fine.

3rd violation: \$2000.00 fine.

4th violation: \$4000.00 fine.

Maximum fine \$4000.00 for each subsequent violation.

with notice of the assessment of a civil penalty for a violation to be made in the manner specified in section 12-634 herein;

- (c) move to revoke the conditional use permit, if any.; or
- (d) Use any other legal remedy available under the laws of the Commonwealth.

~~Sec. 12-65. Destroying, etc., notice; disobeying order.~~

~~No person shall destroy, remove or deface any notice or order posted by the code official. No person shall disobey any order to close and vacate, or use or occupy or permit any other person to use or occupy any premises ordered closed.~~

Section 8 – That Section 12-66 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-66. Destroying, etc., notice; disobeying order.

No person shall destroy, remove or deface any notice or order posted by the code official. No person shall disobey any order to close and vacate, or use or occupy or permit any other person to use or occupy any premises ordered closed. Violation of this section shall constitute

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a misdemeanor and result in a fine of \$25.00 to \$100.00.

~~Sec. 12-66. Multiple unit dwellings.~~

~~If the premises consist of multiple unit dwellings or mixed uses and the public nuisance has occurred solely within a unit or units, the authority to issue an order to close and vacate is restricted to the unit or units in which the public nuisance has occurred and does not extend to any other unit in the premises.~~

Section 9 – That Section 12-67 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-67. Multiple unit dwellings.

If the premises consist of multiple unit dwellings or mixed uses and the chronic public nuisance has occurred solely within a unit or units, the authority to issue an order to close and vacate is restricted to the unit or units in which the chronic public nuisance has occurred and does not extend to any other unit in the premises. This section does not apply to hotels, motels, or other places of lodging.

~~Sec. 12-67. Defense to violation.~~

~~It shall be a defense to a violation of this section if the owner has instituted an eviction proceeding within thirty (30) days of the notice or order against the offending tenant(s) and all occupants of the premises, and completes the eviction within seventy five (75) days of commencement of the eviction proceeding or as soon thereafter as court procedure will allow. In the event that judicial or quasi-judicial proceedings prohibit an owner from proceeding with an eviction, enforcement under this section will be stayed until the judicial or quasi-judicial proceeding is resolved. It shall be the responsibility of the owner to provide, in writing to the code official, notice that an eviction proceeding has been instituted and to provide such other proof of such proceeding as may reasonably be requested by the code official.~~

Section 10 – That Section 12-68 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-68. Defense to violation.

It shall be a defense to a violation of this section if the owner has instituted an eviction proceeding within thirty (30) days of the notice or order against the offending tenant(s) and all occupants of the premises, and completes the eviction within seventy-five (75) days of

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commencement of the eviction proceeding or as soon thereafter as court procedure will allow. In the event that judicial or quasi-judicial proceedings prohibit an owner from proceeding with an eviction, enforcement under this section will be stayed until the judicial or quasi-judicial proceeding is resolved. It shall be the responsibility of the owner to provide, in writing to the Commissioner or designee, notice that an eviction proceeding has been instituted within seven (7) days of initiating the eviction and to provide such other proof of such proceeding as may reasonably be requested by the Commissioner or designee. Calls by the owner or manager of the premises to the police shall not count against the premises. This section does not apply to hotels, motels, or other places of lodging.

~~Sec. 12-68. Hearing.~~

~~(a) Any person affected by a notice to abate, order to close and vacate, or civil penalty assessment which has been issued in connection with the enforcement of sections 12-60 through 12-70 of the Code shall have the right to request and shall have granted a hearing on the matter; provided that such person shall file, with the administrative hearing board as established by section 12-13 of this Code, or its designee, a written request for such hearing and the grounds therefor within twenty (20) days. The code official shall make available, upon request, a preprinted appeal form. The twenty (20) day period provided for in this subsection shall be deemed to commence as follows:~~

~~(1) Where notice is personally served, on the day following service;~~

~~(2) Where notice is by certified mail, on the third day following mailing;~~

~~(3) Where notice is by publication, on the third day following the initial day of publication.~~

~~(b) Failure to Appeal. A notice to abate, an order to close and vacate, or the assessment of a civil penalty for violations of sections 12-60 through 12-70 of the Code shall represent a determination that the violation has been committed and that determination shall be final, unless appeal is timely taken to the administrative hearing board established by section 12-13 as specified herein.~~

~~(c) Pursuant to KRS 82.715(4), an appeal from the board's determination may be made to the Fayette District Court within seven (7) days of the board's determination.~~

Section 11 – That Section 12-69 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

DRAFT 10/03/11

Sec. 12-69. Hearing.

(a) Any person affected by a notice to abate, order to close and vacate, or civil penalty assessment which has been issued in connection with the enforcement of sections 12-60 through 12-70~~1~~ of the Code shall have the right to request and shall have granted a hearing on the matter; provided that such person shall file, with the administrative hearing board as established by section 12-13 of this Code, or its designee, a written request for such hearing and the grounds therefore within twenty (20) days. The Commissioner or designee shall make available, upon request, a preprinted appeal form. The twenty (20) day period provided for in this subsection shall be deemed to commence as follows:

- (1) Where notice is personally served, on the day following service;
- (2) Where notice is mail, on the third day following mailing;
- (3) Where notice is by publication, on the third day following the initial day of publication.

(b) Failure to Appeal. A notice to abate, an order to close and vacate, or the assessment of a civil penalty for violations of sections 12-60 through 12-70~~1~~ of the Code shall represent a determination that the violation has been committed and that determination shall be final, unless appeal is timely taken to the administrative hearing board established by section 12-13 as specified herein.

Sec. 12-69. Notice of hearing; conduct of hearing.

~~A hearing officer shall give notice of a hearing to the parties not less than ten (10) days in advance of the date set for the hearing, in the form and manner provided in section 12-14 of this code. The hearing shall be conducted in the form and manner provided by section 12-15 of this code.~~

Section 12 – That Section 12-70 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is amended to read as follows:

Sec. 12-70. Notice of hearing; conduct of hearing.

A hearing officer shall give notice of a hearing to the parties not less than ten (10) days in advance of the date set for the hearing, in the form and manner provided in section 12-14 of this code. The hearing shall be conducted in the form and manner provided by section 12-15 of this code.

Sec. 12-70. Written order of hearing officer; appeal.

~~Within a reasonable time after the conclusion of the hearing, the~~

DRAFT 10/03/11

~~hearing officer shall issue a written order in the form and manner provided in section 12-16 of this code. An appeal from any final order issued by a hearing officer may be made to the Fayette District Court within seven (7) days of the date the order was issued pursuant to KRS 82.720. There shall be no appeals from such orders to the board.~~

Section 13 – That Section 12-71 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby is created to read as follows:

Sec. 12-71. Written order of hearing officer; appeal.

Within ten (10) days the conclusion of the hearing, the hearing officer shall issue a written order in the form and manner provided in section 12-16 of this code. An appeal from any final order issued by a hearing officer may be made to the Fayette District Court within seven (7) days of the date the order was issued pursuant to KRS 82.715(4). There shall be no appeals from such orders to the board.

Section 14 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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ORDINANCE NO. ____-2011

AN ORDINANCE CREATING AND ENACTING CHAPTER 9A OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PERTAINING TO FIREWORKS . . . ; ALL EFFECTIVE ON JANUARY 1, 2012.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Section 9A-1 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-1. Title.

The provisions of this chapter shall be known and may be cited as the "fireworks enforcement code".

Section 2 - That Section 9A-2 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-2. Definitions.

The following words, terms and/or phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "Ancillary fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell only those types of fireworks described in KRS 227.702(1) and which such sales are ancillary to its primary course of business.
- (b) "Consumer fireworks" shall have the same meaning as in KRS 227.702.
- (c) "Fireworks" shall have the same meaning as in KRS 227.700 except it shall not include those types of fireworks described in KRS 227.702(1).
- (d) "Permanent fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, which is open to the public

year round, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell any consumer fireworks as its primary course of business.

- (e) "Seasonal fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, which is not considered a permanent fireworks retailer, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell any consumer fireworks described in KRS 227.702(2) and/or (3) between June 10 and July 7 only.

Section 3 - That Section 9A-3 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-3. Use and sale of fireworks.

- (a) The use or sale of fireworks, including consumer fireworks, is prohibited except as set forth herein.
- (b) The use or sale of any fireworks other than consumer fireworks, including display fireworks as defined in KRS 227.706, are subject to the applicable restrictions of state and federal law and are further prohibited at all times within Fayette County without written approval of the Commissioner of Public Safety or his designee and all necessary permits. The government may require the applicant for a display permit to reimburse the government for all reasonable costs incurred which are associated with the display, including but not limited to the incurrence of overtime by government personnel.

Section 4 - That Section 9A-4 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-4. Restrictions.

Fireworks and consumer fireworks shall not be used, ignited, fired, or exploded in Fayette County, except as follows:

- (a) Fireworks and consumer fireworks must be handled, stored, used, possessed, and sold in accordance with all applicable federal, state, and local law.
- (b) Fireworks and consumer fireworks may only be used, ignited, fired, or exploded between the hours of 10:00 a.m. and 10:00

p.m., except on the following dates when the applicable ending hour shall be 12 a.m. (midnight):

- (1) December 31st (New Year's Eve);
 - (2) July 3rd;
 - (3) July 4th; and
 - (4) The date specifically named or designated by the urban county government as the date to celebrate Independence Day, if other than the actual date of July 4th.
- (c) No person under the age of eighteen (18) years of age may possess, use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702 (2) and (3).
 - (d) No person may use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702(2) and (3), within two hundred (200) feet of any structure, motor vehicle (whether operational or non-operational), or any other person, or in any other place where the person is in violation of any other law, regulation or ordinance.
 - (e) No person may use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702, if otherwise prohibited as part of any ban on burning pursuant to section 9-20 of the code of ordinances.
 - (f) Any person subject to the provisions of KRS 227.752 pertaining to storage notification must fully comply with its provisions.
 - (g) Any person using, igniting, or exploding fireworks or consumer fireworks as defined in KRS 227.702 shall be responsible for disposing of any resultant trash or debris.

Section 5 - That Section 9A-5 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-5. Permits.

In order to lawfully operate in Fayette County all seasonal fireworks retailers and permanent fireworks retailers within Fayette County shall first obtain a "retail fireworks permit" from the commissioner of public safety or his designee. The application for a permit, the form of which shall also be approved by the urban county government's fire marshal, shall be submitted at least ten (10) business days prior to the applicant's desired effective date for the permit, and shall, at a minimum, require the following:

- (a) The applicant's name, phone number, and permanent address. In the event that the applicant desires to operate multiple locations, a separate application does not have to be submitted for each location, however, each location must have a separate firework sales permit;
- (b) A detailed site plan for the proposed location(s), the address(es) of the proposed location(s), and contact information for the owner(s) of the proposed location(s) if other than the applicant;
- (c) Proof of current registration with the state fire marshal in accordance with the applicable provisions of KRS Chapter 227;
- (d) Proof that the applicant has submitted to the division of revenue, at least ten (10) days prior to transacting business in Fayette County, a completed transient merchant permit application pursuant to KRS 365.665 and has complied with all necessary requirements related to the statute, if applicable;
- (e) Proof that the applicant has obtained any necessary certificate(s) of occupancy from the government's division of building inspection, and if deemed necessary the applicant must also obtain verification from the government's division of planning that the proposed location on the application is zoned appropriately for the conduct of said business;
- (f) Proof that the applicant has obtained the necessary approval of the division of fire and emergency services' fire prevention bureau;
- (g) Proof that the applicant has obtained the appropriate occupational business license(s) from the division of revenue in accordance with chapter 13 of the code;
- (h) Proof of general liability insurance in an amount of not less than one million dollars (\$1,000,000.00) per occurrence which shall remain in effect at all times while engaged in the permitted activity; and
- (i) Payment of a permit fee according to the following table. In the event that an applicant wishes to operate more than one (1) geographical location within Fayette County, each location must have a separate permit and the permit fee shall apply:

Type of Applicant		Permit Fee		Permit Period
Seasonal retailer	fireworks	\$500.00 per location		June 10 through July 7th
Permanent retailer	fireworks	\$2,500.00 per location		Automatically expires 365 calendar days after the effective date
Permanent retailer (renewal)	fireworks	\$500.00 per location		Automatically expires 365 calendar days after the effective date

Section 6 - That Section 9A-6 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-6. Seasonal and Permanent Fireworks Retailers.

In order to lawfully operate in Fayette County all seasonal fireworks retailers and all permanent fireworks retailers shall:

- (a) Obtain the necessary retail fireworks permit;
- (b) Prominently display a valid retail fireworks permit at each location and at all times during the hours of operation;
- (c) Comply with the applicable provisions of KRS Chapter 227, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances, Lexington-Fayette Urban County Government;
- (d) Not allow any person under eighteen (18) years of age to sell consumer fireworks;
- (e) Not give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age; and
- (f) Not offer for sale, expose for sale, or sell consumer fireworks except between the hours of 8:00 a.m. and 10:00 p.m.

Section 7 - That Section 9A-7 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-7. Revocation; suspension.

The urban county government's commissioner of public safety or his designee may revoke or suspend the retail fireworks permit for any

site which is in violation of the fireworks enforcement code, KRS Chapter 227, or chapter 13 of the code.

Section 8 - That Section 9A-8 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-8. Ancillary fireworks retailers.

In order to lawfully operate in Fayette County all ancillary fireworks retailers shall:

- (a) Comply with all aspects of the applicable provisions of KRS Chapter 227, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances, Lexington-Fayette Urban County Government;
- (b) Obtain any necessary certificate(s) of occupancy from the government's division of building inspection;
- (c) Not give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age; and
- (d) Not offer for sale, expose for sale, sell at retail or wholesale, or keep with intent to sell any consumer fireworks other than those described in KRS 227.702(1); and
- (e) Possess the appropriate occupational business license(s) from pursuant to chapter 13 of the code; and
- (f) Maintain general liability insurance (or the equivalent) and be able to provide proof thereof, in an amount of not less than one million dollars (\$1,000,000.00) per occurrence.

Section 9 - That Section 9A-9 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-9. Penalties.

Any person convicted of violating the fireworks enforcement code shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000.00), or imprisonment for a period of time not to exceed thirty (30) days, or both. Each day a violation occurs shall constitute a separate offense.

- (a) The minimum fine for a conviction under any section other sections 9A-4(a) through (e) or 9A-4(g), shall be five hundred dollars (\$500.00).
- (b) The minimum fine for convictions under sections 9A-4(a) through (e) or 9A-4(g) shall be as follows:
 - (1) one hundred dollars (\$100.00) for the first offence within any twelve (12) month period of time;
 - (2) two hundred fifty dollars (\$250.00) for the second offence within any twelve (12) month period of time; and
 - (3) five hundred dollars (\$500.00) for the third or greater offence within any twelve (12) month period of time.

Section 10 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of 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 hereof.

Section 11 - That this Ordinance shall become effective on January 1, 2012.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00315777

Items Referred to Public Safety Committee

<u>Item</u>	<u>Referred By</u>	<u>Date</u>	<u>Status</u>
Noise Ordinance	Blues	4/12/2009	November 15th
Public Safety Disability Claims	Martin	2/3/2011	HR & Law have been asked to prepare to present Vice Mayor has appointed Councilmember Farmer as chair of Fire & Emergency Services Work Group
Paramedic Training: Emergency Medical Advisory Board (EMAB)*	Gorton/Lawless	3/11/2011	Motion needed to move to Economic Development
Itinerant Merchant	Henson	4/17/2011	Information requested from Administration 10/7
Community Corrections Best System of Management	Myers/Kay	6-7-11/6-21-11	BI - Consider more appropriate committee
Examine Quarrying Ordinance (UCG 8-4) to Ensure Revenue Neutral	PS Link	6/17/2011	CE
ROW Signage – Establish Program Similar to Operation Brightside	PS Link	6/17/2011	CE
Examine Nuisance Abatement Process	PS Link	6/17/2011	CE
Examine Nuisance Ordinance (UCG 12-1) to Ensure Appropriate Revenue	PS Link	6/17/2011	Will be ready for January 2012
Emergency Management Long Range Strategic Plan	PS Link	6/17/2011	Information requested from Administration 10/7
E 911 Routing Non Emergency Calls to 311	PS Link	6/17/2011	Information requested from Administration 10/7
Community Corrections: Explore Receiving Federal/State Inmates	PS Link	6/17/2011	Information requested from Administration 10/7
Electronic Monitoring Utilization: Work With Judicial	PS Link	6/17/2011	FES
Best Practice for Firefighter and Paramedic Staffing*	PS Link	6/17/2011	October Meeting
Fireworks Ordinance	Stinnett	7/6/2011	Building Inspection
Off Premises Signage	Lawless	7/12/2011	Being Research. Update at November Meeting
Taxicab Ordinance	Lawless/Stinne	4-17-08-13-11	October Meeting
Chronic Nuisance Ordinance	Henson	8/13/2011	

*These two items could be addressed jointly.

