

Peggy Henson – 11th District - Chair
Kevin Stinnett – 6th District – Vice Chair
Chuck Ellinger – At Large
Chris Ford – 1st District
Shevawn Akers – 2nd District
Diane Lawless – 3rd District
Bill Farmer – 5th District
Jenny Scutchfield – 7th District
Jennifer Mossotti – 9th District
Harry Clarke – 10th District

Staff:
Jenifer Benningfield

AGENDA

PUBLIC SAFETY COMMITTEE

February 5th, 2013

1:00pm

- | | | |
|---|---------------------|----------------|
| 1. Approval of Summary | Peggy Henson | (1) |
| 2. Nuisance Abatement Forms Update | David Jarvis | (2) |
| 3. Hazardous Materials Ordinance | Clay Mason | (3-30) |
| 4. Public Nuisance Ordinance | Steve Kay | (31-45) |
| 5. Items Referred to Committee | Peggy Henson | (46) |

Future Committee Meetings

March 5th, 2013
April 9th, 2013
May 7th, 2013
June 4th, 2013
July 2nd, 2013
August 13th, 2013
September 10th, 2013
October 1st, 2013
November 5th, 2013

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



Public Safety Committee

January 15th, 2013

Summary and Motions

Vice Mayor Linda Gorton called the meeting to order at 2:30pm. Council Members Chuck Ellinger, Chris Ford, Diane Lawless, Julian Beard, Bill Farmer, Kevin Stinnett, Jennifer Scutchfield, Jennifer Mossotti, Harry Clarke, and Peggy Henson were present.

1. Election of Committee Chair

Motion by Stinnett to nominate Henson as Committee Chair. Seconded by Ellinger. Motion passed without dissent.

Henson accepted the nomination.

Motion by Ellinger to elect Henson as Committee Chair. Seconded by Beard. Motion passed without dissent.

Henson agreed to serve as Committee Chair and asked Stinnett to serve as Vice Chair. Stinnett accepted.

Henson made a motion to adjourn. Seconded by Beard. Motion passed without dissent.

Submitted by Jenifer Benningfield, Council Administrative Specialist.



LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
DIVISION OF CODE ENFORCEMENT

2

24 Hour Emergency Notice to Abate

Date: _____

INSPECTION MADE: _____

RE-INSPECTION DUE: _____

RE: PROPERTY _____

You are hereby given **notice to abate** this emergency nuisance violation within **24 hours** or appeal this notice within ten (10) days.

An inspection was made of the above-referenced property on the date shown pursuant to Chapter 12 of the Code of Ordinances of the Lexington-Fayette Urban County Government and KRS 381.770. Nuisance violations were found that need to be corrected. The findings of the inspection are listed below:

- ☐ Trash and Debris _____
- ☐ Indoor Furniture Outside—Must be removed from exterior of property. _____
- ☐ **Public Safety Issue** _____
- ☐ Other _____

If you do not abate this nuisance within 24 hours or appeal this notice within this period, **the government will abate the nuisance and you will be deemed to have waived your appeal right.** If abatement by the government is required, the Division of Code Enforcement will send you a bill for the cost of abatement including an administrative fee of \$75.00. If the bill is not paid within seven (7) days following its mailing, a Notice of Lien Claimed by the Urban County Government for the cost of abatement and the administrative fee will be filed against the property. Civil penalties of not less than \$100 not more than \$1000 may be assessed against you pursuant to Section 12-8.2 of the Code of Ordinance if two or more notices have been or are issued on this property within a 12 month period.

If you wish to request a hearing before the Administrative Hearing Board, you must do so in writing, within the period set forth in Section 12-8.3 of the Code of Ordinances, and addressed to Secretary of Administrative Hearing Board, 101 East Vine Street, Suite 500, Lexington, KY 40507.

You may file an appeal of this 24 Hour Emergency Notice in writing to the Division of Code Enforcement within 10 days. **But you must remove the items within 24 hours or you will be billed for the abatement.** Under Section 12-8.2, any owner who is issued two or more notices on the same property within a twelve (12) month period may be assessed civil penalties of not less than \$100 not more than \$1000.

Please take immediate steps to comply with this demand for abatement within 24 hours. If you have any questions concerning this notice, please contact me at _____.

Thank you.

Attempt to contact owner: _____

Code Enforcement Officer

Time: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 16A OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PERTAINING TO HAZARDOUS MATERIALS, AND PROVIDING FOR . . . ; ALL EFFECTIVE ON JULY 1, 2013.

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

Section 1 - That Section 16A-1 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-1. - Definitions

(1) *Clean up contractor* means those individuals or companies that have been trained in Hazardous Waste Operations and Emergency Response ("HAZWOPER") and Occupational Safety and Health Administration ("OSHA") standards and have the resources and ability to clean up hazardous materials.

(1)(2) *Closure* means the time at which handling of hazardous material permanently ceases at a facility or ceases for a period of sixty (60) days or more.

(2)(3) *Discharge* means any spilling, pouring, leaking, emitting, pumping, emptying, discharging, escaping, injecting, dumping, or disposing of any hazardous materials.

(3)(4) *Exempt discharge* means any discharge which is exempted from reporting requirements pursuant to this chapter.

(4)(5) *Facility* means a building or buildings, appurtenant structures and surrounding land area used by a person at a single location or site.

(5)(6) *Handle* means to store, maintain, treat, process, use, generate, dispose of, or otherwise manage, but does not mean transportation of hazardous materials except transportation of such materials within a facility.

~~(6)~~(7) *Hazardous materials* means any chemical, biological or radiological compound, gas, oil, gasoline, lubricant, or other petroleum products, substance, solution or mixture which because of its quality, quantity, concentration, physical or infectious characteristics, or any combination thereof, when released into the environment, presents or may present harmful or potentially harmful effects to human health or welfare or the environment. Hazardous materials shall only include any substance, mixture, element, compound or solution in concentration greater than one (1) percent by volume designated pursuant to the Federal Water Pollution Control Act (otherwise known as the Clean Water Act) and the Comprehensive Environmental Response, Compensation and Liability Act and any petroleum products as defined in this section.

Radiological compounds or nuclear material shall be regulated by this chapter subject to the limits contained in the Atomic Energy Act, as amended, 42 U.S.C. 2011 et seq. and other applicable federal and state laws.

(8) *Hazardous Materials Commander or HMC* means the Officer in Charge of Special Operations for the division of fire and emergency services, or other designee by the Chief of the division of fire and emergency services.

(9) *Hazardous Materials Platoon Leader or HMPL* means the commanding officer for each of the three platoons for the division of fire and emergency services.

~~(7)~~ (10) *Hazardous Materials Team or HMT* means a specially trained and equipped multi-disciplinary unit responsible for the implementation of the inspection, enforcement and emergency response provisions of this chapter.

~~(8)~~ (11) *Owner/operator* means the owner of a facility as well as any person with whom rests decision-making authority over the facility.

~~(9)~~ (12) *Person* means an individual, trust, firm, corporation, joint stock

company, partnership, consortium, association, cooperative, joint venture, city, county, city and county, district, the state or any department or agency thereof, the United States or any department of agency thereof, or other commercial or legal entities.

~~(10)~~ (13) *Petroleum product* means gasoline, oil and lubricants of any kind or in any form, including but not limited to virgin, used and mixtures of petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

~~(11)~~ (14) *Secondary containment* means a system installed so that any volume of hazardous materials discharged from the primary system of containment will be prevented from reaching the environment beyond the system for the period of time anticipated to be necessary for the detection and recovery of the discharged hazardous materials.

~~(12)~~ *TAC* means the Technical Advisory Commission on Hazardous Materials.

~~(13)~~ (15) *Unauthorized discharge* means any discharge which is made unlawful pursuant to section 16A-3.

~~(14)~~ (16) *Underground storage tank* means any one (1) or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten (10) percent or more beneath the surface of the ground. Such term does not include any:

- (a) Farm or residential tank of eleven hundred (1100) gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Septic tank;
- (c) Pipeline facility (including gathering lines) regulated under federal law;
- (d) Surface impoundment, pit, pond or lagoon;

(e) Storm water or waste water collection system;

(f) Flow-through process tank;

(g) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(h) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in (a) through (h) above.

Section 2 – That section 16A-4 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-4. - Reporting; reportable quantities.

(1) It shall be unlawful for any owner/operator or other person in possession or control of any facility where hazardous materials are handled to fail to report to the division of fire and emergency services ~~any of the following:~~

~~(a) A[any] unauthorized or nonexempt discharge in a quantity equal to or exceeding those quantities identified as reportable quantities under the Clean Water Act and the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR part 302 and amendments thereto;~~

~~(b) Any discharge of a petroleum product which results in a visible sheen or film on the surface of water or a discharge of ten (10) gallons or more of a petroleum product other than to waters;~~

~~(c) Any discharge which results in injury or death regardless of the quantity of~~

~~material discharged.~~

~~(2) Upon advice or request of a person, who handles hazardous materials, the HMC or HMT, or other person, the TAC may recommend to the council the revision of the reportable quantity for any material referenced above in subsection (1) of this section.~~

~~(3)~~(2) Subsection (1) of this section shall not apply to:

(a) The discharge of any hazardous material under a permit authorized by any ordinance of the urban county government.

(b) A discharge which is authorized pursuant to state or federal law.

(c) Material deposited in or conducted into the urban county government sewer system through lawful drains in accordance with the ordinances of the urban county government relating thereto.

(d) Discharges which do not cause hazardous materials to leave the premises where such discharge occurred, provided such materials are collected in secondary containment, except that any discharge on premises in a location where such materials could enter the soil or any drain, well, groundwater, surface water, storm sewer or sanitary sewer must be recorded even where such material has been contained to the satisfaction of the person discharging such material. Such record shall identify the date and time of the discharge, the hazardous material discharged, the quantity discharged, and action taken to clean up the affected area and to dispose of discharged material. This record must be kept on site and made available to the HMT upon request.

(e) Application of agricultural chemicals in the ordinary course of agricultural operations.

(f) Application of hazardous materials in the ordinary course of any treatment of

property for insects, weeds or any other treatment, provided such application is in the ordinary course of business and the person making the application has obtained any permit or license required by any law other than this chapter.

(g) Application or use of hazardous materials only in conjunction with residential use of property.

(h) Application or use of hazardous materials only in the manner for which such hazardous materials were intended according to manufacturer's specifications and recommendations or application of such materials according to good industry practices.

~~(4)~~(3) Persons otherwise exempted from reporting requirements pursuant to section 16A-4(3)(f) and (h) herein must report spills or intentional or unintentional discharges which occur during such applications which are not within the ordinary course of business or within manufacturer's specifications and/or recommendations.

~~(5)~~(4) ~~Upon notification as outlined herein, the division of fire and emergency services will immediately notify the HMT. It is not intended that the notice to the division of fire and emergency services required by this section be deemed compliance with any reporting requirement of any state or federal law.~~

~~(6)~~(5) A person is subject to the reporting requirements contained in this section even though such person is not subject to registration pursuant to this chapter.

~~(7)~~(6) When a discharge occurs from a transportation accident, the first responders-division of police and/or division of fire and emergency services-shall be responsible for reporting such discharge according to the requirements of this section for other discharges.

Section 3 – That Section 16A-5 of the Code of Ordinances be and hereby is

amended to read as follows:

Sec. 16A-5. – Restoration.

(1) Any Owner/operator or Person who discharges, or causes or permits the discharge of any hazardous material into the environment shall be responsible for taking cost-effective remedial action to return the environment to the extent practicable to the condition and quality which existed prior to such discharge, even if the quantity discharged is less than the reportable discharge quantity listed above. Any Owner/operator or Person who discharges or causes or permits a discharge of any hazardous material into the environment, which requires any urban county government HazMat team member, any member of the Division of Fire and Emergency Services, or any agent of the urban county government to spend public funds for the response to the release, its abatement, cleanup or removal, shall be liable to the urban county government for the urban county government's actual and necessary costs, including but not limited to the cost of urban county government personnel and equipment utilized, expended in response to the discharge.

(2) Persons not subject to registration requirements pursuant to this chapter shall remain responsible for the proper cleanup and disposal of any discharged material.

~~(3) Pursuant to the Hazardous Materials Emergency Response Management Program, adopted pursuant to this chapter, it shall be the responsibility of the emergency response team (ERT) or the regional response team (RRT), as identified in such program, to assure that the environment is restored and damages repaired to an acceptable degree. The person who is responsible for the discharge shall cooperate fully with the ERT and/or RRT to facilitate the proper restoration of the environment and damaged property.~~ In the event of a discharge of hazardous materials, the HMC or

HMPL or their designee shall be authorized to:

(a) Direct the Owner/operator or Person responsible for the discharge of hazardous materials to properly restore the environment and damaged property;

(b) Authorize personnel from the division of fire and emergency services to undertake efforts to restore the environment and damaged property; or

(c) Authorize the hiring of a Clean up contractor by the division of fire and emergency services to undertake efforts to restore the environment and damaged property.

(4) Should the hiring of a Clean up contractor be authorized, it shall be the responsibility of the Clean up contractor as an agent for the responsible party, to assure that the environment is restored and damages repaired to an acceptable degree. A written report documenting the actions taken shall be submitted to the HMC of the division of fire and emergency services. The responsible party shall cooperate fully with the cleanup contractor, local, state, and federal authorities.

Section 4 – That Section 16A-6 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-6. - Closure of facilities.

Upon closure or termination of handling of hazardous materials at a registered facility, the person who owns or operates said facility shall notify the urban county government in writing of such closure. In the event the facility handled extremely hazardous substances (EHS) or required Tier 2 submits, the Local Emergency Planning Committee (LEPC) shall also be notified.

Nothing contained in this section is intended to supersede any requirement of

state or federal law related to procedures for closure of facilities. ~~The HMT shall work in coordination with state or federal authorities to assure the safe closure of facilities.~~

Section 5 – That Section 16A-7 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-7. - Hazardous materials inventory.

~~(1) By May 18, 1986, all persons handling hazardous materials in any quantity, except those persons exempted from registration requirements as provided in section 16A-10, shall be required to provide information on the type, quantity and location of materials handled to the urban county government. A one-page form shall be prepared by the government and made available for this purpose.~~

(1) Those facilities required by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Title III, and any regulations promulgated thereunder, to submit annually an emergency and hazardous chemical inventory form shall be subject to the reporting requirements of this section.

(2) Any facility that reports Tier II information to the Fayette County Local Emergency Planning Committee (FCLEPC) and the division of fire and emergency services shall be required to use the electronic reporting software specified by that agency.

~~-(2)~~ (3) Any person who begins handling hazardous materials after May 18, 1986, shall complete an inventory form within thirty (30) days after first handling such materials.

Section 6 – That Section 16A-8 of the Code of Ordinances be and hereby is

deleted in its entirety.:

~~Sec. 16A-8. -- Implementation process.~~

~~(1) By August 19, 1986, specific definitions and regulations shall be developed for the following groups:~~

~~(a) Persons handling hazardous materials in underground storage tanks;~~

~~(b) Persons having existing spill prevention or contingency plans under current state or federal law.~~

~~(2) By November 19, 1986, specific definitions and regulations shall be developed for the following groups:~~

~~(a) Persons handling hazardous materials in bulk storage facilities;~~

~~(b) Persons who have had a history of unauthorized discharges.~~

~~(3) All persons defined as part of the above-referenced groups shall have six (6) months from date of regulations to register with the urban county government.~~

~~(4) The HMT and TAC shall evaluate the information obtained from the hazardous materials inventory and may recommend to the urban county council that additional groups be required to register under the provisions of this chapter. Priorities for determining who should be required to register shall be based on the nature of materials handled, potential threats to persons or the environment and relative costs of regulation.~~

~~(5) The HMT and TAC shall evaluate the information obtained from the hazardous materials inventory and shall develop a public education program for the public at large and for specific groups identified through the inventory process.~~

Section 7 – That Section 16A-9 of the Code of Ordinances be and hereby is

deleted in its entirety

~~Sec. 16A-9. — Registration; regulations.~~

~~(1) Groups identified through section 16A-8 of this chapter shall be required to register with the urban county government on a form provided by the government at a time specified pursuant to this chapter or by regulations promulgated thereto. Registration shall not be required for any person unless and until specific regulations for each affected group are adopted pursuant to this chapter.~~

~~(2) All proposed regulations shall be reviewed by the TAC for recommendations to the urban county council. All proposed regulations shall be discussed by council at regular work sessions prior to adoption. All interested persons shall be given an opportunity to comment on the proposed regulations prior to adoption.~~

~~(3) "Underground Storage Tank Regulations—Petroleum Products," dated June 28, 1990, are hereby adopted, incorporated herein by reference, and filed with the urban county clerk as a part of the public records of this government.~~

~~(4) "Underground Storage Tank Regulations—Nonpetroleum Products," dated April 25, 1989, are hereby adopted, incorporated herein by reference, and filed with the urban county clerk as a part of the public records of this government.~~

~~(5) "Underground Storage Tank Regulations—Petroleum Products (Farm)," dated February 20, 1992, are hereby adopted, incorporated herein by reference and filed with the urban county clerk as part of the public records of this government.~~

Section 8 – That Section 16-10 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-10. — Exemptions.~~

~~(1) Persons shall not be required to register under the provisions of this chapter for engaging in the following:~~

~~(a) Handling agricultural chemicals in the ordinary course of agricultural operations other than warehousing or bulk storage of such chemicals for resale or commercial application;~~

~~(b) Handling otherwise regulated hazardous materials only at temporary construction sites;~~

~~(c) Handling otherwise regulated materials only by temporary storage on display in a retail outlet for the purpose of retail sale to individual consumers and the temporary storage of such materials in a shipping or receiving area of such retail outlet for purposes of later display for retail sale;~~

~~(d) Handling otherwise regulated hazardous materials contained in equipment for operation of that equipment (i.e., propelling fuel, lubricant, coolant or otherwise) shall not be subject to registration; other handling of such hazardous materials not exempted herein shall be registered;~~

~~(e) Handling hazardous materials only in conjunction with residential use of property;~~

~~(f) Handling hazardous materials through such materials being received for analysis at a professional testing or research laboratory;~~

~~(g) Handling otherwise regulated materials only for in-house janitorial, laundry and building maintenance purposes;~~

~~(2) Persons who are exempted from registration as described in this section are still subject to reporting requirements contained in section 16A-4.~~

Section 9 – That Section 16A-11 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-11. - Spill prevention and control plan (SPC plan).

~~(1) Any person who is required to register under section 16A-9 must prepare, maintain and implement a "Spill Prevention and Control Plan" hereinafter referred to as the SPC plan. Individualized SPC plan requirements and forms shall be developed by the TAC for each group required to register. A spill prevention and control plan ("SPC") shall be prepared by the owner/operator or other person in possession or control of any facility where the amount of hazardous materials handled are equal to or in excess of a reportable quantity as defined by the United States Environmental Protection Agency, and shall be kept on site at all times.~~

~~(2) Where spill prevention or contingency plans are already in existence, the hazardous materials coordinator shall have authority to exempt a registrant from any specific SPC plan requirement and/or to impose additional or differing requirements where reasonably necessary to assure compliance with the intent of this chapter. The hazardous materials coordinator may determine that existing plans are in whole or in part sufficient to comply with the intent of this chapter.~~

~~(3)~~(2) All persons that have or that are required to prepare an SPC plan shall sign a certificate stating that they have read, understand and agree to implement the plan.

~~(4)~~ (3) Copies of the SPC plan shall be kept on the premises affected and shall be readily available to inspectors upon request any time during working hours and any time during emergency situations.

~~(5)~~ (4) The SPC plan shall be updated every three (3) years or when changes of

operation occur at the facility or some other change occurs which may affect the adequacy of the existing SPC plan. If no changes of operation have occurred since the last SPC plan update, a written statement to that effect from the owner/ operator of the facility shall be sufficient to update the SPC plan.

~~(6) The hazardous materials coordinator shall review and approve all SPC plans and shall have the authority to require the owner/operator to implement specific preventive and/or contingency measures or otherwise amend the SPC plan. Such requirements shall be according to the most appropriate technology available for prevention of hazardous materials incidents and management of hazardous materials. Options for compliance shall be provided in guidance documents prepared by the urban county government, and the hazardous materials coordinator may require only the most feasible option.~~

~~(7) Whenever a reported incident or unlawful discharge occurs, the hazardous materials coordinator shall review the SPC plan for facilities involved and may require amendments if necessary. The hazardous materials coordinator shall notify the registered party in writing of any such required amendment.~~

~~(8) (5) The hazardous materials coordinator~~ The division of fire and emergency services, HMC, HMPL and division of water quality and other applicable local and state agencies ~~shall have the authority to review a facility's hazardous materials management practices when such facility has a discharge and does not have an existing SPC or SPCC plan. The hazardous materials coordinator may recommend to the owner/operator improvements in hazardous materials handling practices.~~

~~(9) (6)~~ General provisions for the SPC plan shall include:

(a) Information to identify firm and facility where materials are handled;

- (b) Description of facility and site;
- (c) Identification of hazardous materials storage, transfer and process areas, including a map;
- (d) Techniques to prevent and control discharges;
- (e) Measures to ensure against fire and explosion;
- (f) Self-inspection and monitoring schedules;
- (g) Contingency plan, including spill notification procedures and availability of spill control equipment;
- (h) Employee training in handling and disposal of hazardous materials;
- (i) Hazardous materials data sheets (HMDS) where appropriate.

~~(10)~~ (7) All SPC plans shall include an implementation schedule for prevention and containment measures which are to be undertaken. The schedule shall identify those measures which may be implemented immediately due to insubstantial cost factors. More costly measures shall be implemented as soon as practical, and all measures shall be completed and implemented within two (2) years from the date of the plan. ~~The hazardous materials coordinator shall have authority to require revisions to submitted implementation schedules. Upon a demonstration of substantial need, the hazardous materials coordinator may grant an extension of the time for implementation based on available financial resources, relative hazard and any other circumstances affecting the facilities.~~

~~(11) The urban county government shall prepare guidance documents to assist persons in complying with the provisions of this chapter. These documents shall include options for prevention and containment measures which are to be considered by persons preparing and reviewing the SPC plan. The ultimate standard for preparation~~

~~and review of SPC plans is the prevention and control of releases in order to protect human health and the environment.~~

Section 10 – That Section 16A-12 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-12. - Hazardous materials ~~coordinator (HMC)~~commander.

~~The mayor shall appoint a person to act as hazardous materials coordinator (HMC)~~Fire Chief of the division of fire and emergency services, or his or her designee from within the division's Special Operations Division , shall be the Hazardous Materials Commander ("HMC") for Fayette County. The HMC must have experience in and be qualified in the area of hazardous materials management. The HMC shall be responsible for the ~~inspection, enforcement and~~ emergency response functions of this chapter. The HMC shall be a member and the leader of the hazardous materials team and shall coordinate all activities of that team, ~~including the responsibility to assure that an adequate number of inspectors are properly equipped and properly trained to analyze SPC plans and inspect facilities for hazardous or potentially hazardous conditions.~~ The HMC shall be responsible for implementation of the emergency response management consistent with best practices regarding mitigation of hazardous materials program ~~adopted pursuant to this chapter and shall serve as the "Local On-Scene Coordinator" as outlined in that program.~~

Section 11 – That Section 16A-13 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-13. – Hazardous materials team (HMT).~~

~~A hazardous materials team shall be established as a specially trained and equipped multi-disciplinary unit which shall implement the inspection, enforcement and emergency response functions of this chapter. The HMT shall be comprised of not less than eight (8) members, consisting of members from the division of fire and emergency services, the division of streets and roads, the division of sanitary sewers, the division of police and the county health department, all appointed by the mayor.~~

Section 12 - That Section 16A-14 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-14. - Hazardous materials team ("HMT").

~~(1) The HMT shall be responsible for maintaining an inventory of hazardous materials handled within the county from information obtained from the hazardous materials inventory and from registration forms. Such inventory shall include but not be limited to information on the type, quantity and location of hazardous materials in the county. Special attention shall be given by the HMT to environmentally sensitive areas as defined by regulation pursuant to this chapter.~~

~~(2)~~ (1) The HMT shall review and analyze regular delivery and shipment routes of hazardous materials transported within the county and may propose regulations, not inconsistent with this chapter or any applicable state or federal law, designating traffic routes and other specific procedures for transportation of hazardous materials.

~~(3) The HMT shall review and analyze hazardous materials handling practices by all persons who handle hazardous materials to determine their potential impact on public health and the environment and may propose regulations designating approved handling practices.~~

~~(4)~~ (2) The HMT shall perform periodic inspections of every site or facility which handles hazardous materials in reportable quantities according to published guidelines to assure compliance with the provisions of this chapter. Inspections may include but are not limited to a request to review the on-site copy of a facility's SPC Plan and performance of tests, generally accepted in the industry, to determine if unsafe conditions exist. Every effort shall be made to coordinate such periodic inspections with other required local inspections by state, federal or other governmental entity, in order to minimize inconvenience and duplication. ~~Inspection reports shall be prepared, a copy kept in urban county government files, and one (1) copy given to the inspected facility.~~

~~(5)~~ (3) The HMT shall cooperate with federal, state and other local authorities in protecting life, property, and the environment ~~in carrying out the intent of this chapter.~~

~~(6)~~ (4) The HMT shall propose and promulgate rules and regulations not inconsistent with this chapter to provide for implementation of the team's duties and responsibilities.

~~(7)~~ (5) The HMT shall be responsible for ~~management~~ monitoring the mitigation of all incidents involving hazardous materials, including emergency response and oversight of cleanup activities by a licensed cleanup contractor.

~~(8)~~ The HMT shall prepare an annual performance report which shall include a review of inspections conducted, incidents to which the urban county government responded, the number and types of facilities using hazardous materials, and any recommendations for improvement in the government's hazardous materials program. This report shall be delivered to the mayor and urban county council.

Section 13 – That Section 16A-15 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-15. Technical advisory commission on hazardous materials (TAC).~~

~~The technical advisory commission on hazardous materials (TAC) is hereby established.~~

~~The TAC shall consist of twenty-one (21) members, as follows:~~

~~Hazardous materials coordinator (ex officio).~~

~~Chief, division of fire and emergency services or his designee (ex officio).~~

~~Chief, division of police or his designee (ex officio).~~

~~Commissioner of public works (ex officio).~~

~~Director, division of streets and roads (ex officio).~~

~~Director, division of sanitary sewers (ex officio).~~

~~Environment planner, urban county government (ex officio).~~

~~Representative from county health department.~~

~~Four (4) members who are professionals in the field of hazardous materials management.~~

~~Five (5) members who are representatives of regulated industry.~~

~~Two (2) members who are representatives of concerned environmental groups or concerned citizens-at-large.~~

~~One (1) urban county council member.~~

~~Representative from office of the mayor.~~

~~Members designated as "ex officio" shall have full rights to vote on decisions of the commission. Appointments of members, other than ex officio, shall be made by the mayor, subject to council approval, for a term of four (4) years; except that the initial terms of the appointed members shall be staggered according to the requirements of the charter. The membership of the council member shall be deemed to have terminated upon his/her leaving office as a member of the council.~~

Section 14 – That Section 16A-16 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-16. – Duties of technical advisory commission on hazardous materials.~~

~~(1) The TAC shall advise and assist the urban county government and the HMT on matters relating to this chapter.~~

~~(2) The TAC shall assist the urban county government in the initial implementation of this chapter and, where practical, shall help coordinate the efforts of the various entities affected by such implementation.~~

~~(3) The TAC shall review and make recommendations to the urban county council regarding rules and regulations to be promulgated to facilitate the administration and enforcement of this chapter.~~

~~(4) The TAC shall create a rules and regulations committee within the TAC, consisting of nine (9) members, including the HMC, a representative of the urban county government, a representative of regulated industry, and a representative of concerned environmental groups, which committee, pursuant to section 16A-9, shall develop regulations to be submitted to the entire TAC for review and ultimate recommendations to the council.~~

~~(5) The TAC shall review the HMT's performance of its duties and make recommendations if warranted.~~

~~(6) The TAC shall periodically review the hazardous materials inventory maintained by the HMT to assure that appropriate and adequate information is being maintained.~~

~~(7) The TAC shall review updates to existing hazardous materials lists and may recommend to the urban county council any appropriate amendments to the materials regulated under Section 16A-2 of this chapter.~~

~~(8) The TAC shall submit an annual report to the urban county council on the anniversary date of the adoption of the ordinance creating this chapter [September 19, 1985], detailing the activities of the commission during the past year, including its review of the functions of the HMT, the implementation of the hazardous materials emergency response management program, and including any recommendations on necessary changes to any aspect of this chapter or any program implemented under this chapter.~~

~~(9) The TAC shall review and analyze current and forecasted land use patterns in the county as they relate to hazardous materials management, including identification of surface water and groundwater used for both public and private purposes, and estimation of risks to human life, animal life and the environment from the handling of hazardous materials on said land and report such findings to the planning commission and the urban county council.~~

~~(10) The TAC shall review the manner in which any incident involving hazardous materials is handled pursuant to the emergency response program and report to the urban county council regarding any modifications to such program which may be necessary.~~

Section 15 – That Section 16A-17 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-17. – Meetings of technical advisory commission on hazardous materials:~~

~~The TAC shall meet not less than quarterly. Additional meetings may be called upon giving notice as required by the Kentucky Open Meeting Law.~~

Section 16 – That Section 16A-19 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-19. - Hazardous materials emergency response management program.

~~The urban county government shall adopt a "hazardous materials emergency response management program" which will contain procedures~~ The division of fire and emergency services' Hazardous Materials Team will function under the NIMS, ICS and Unified command system for coordination of efforts at the local level with those at the state and federal level in responding to issues affecting life, safety, property, environmental emergencies, or weapons of mass destruction, which result from the transportation or handling of hazardous materials within the county.

Section 17 – That Section 16A-20 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-20. – Voluntary registration.~~

~~A voluntary registration form will be available for persons who handle hazardous materials, who are not subject to the requirements of this chapter, to allow the urban county government to provide inspection and educational services to assure proper handling techniques are being followed in order to more completely protect persons and property.~~

Section 18 – That Section 16A-21 of the Code of Ordinances be and hereby is deleted in its entirety.

~~Sec. 16A-21. – Compliance information and guidelines.~~

~~The urban county government shall prepare guidelines and provide information regarding compliance with the provisions of this chapter.~~

Section 19 – That Section 16A-24 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16A-24. - Enforcement; notice of violations.

(1) ~~The hazardous materials coordinator~~ The Fire Chief of division of fire and emergency services, or his or her designee from within the Special Operations Division, shall have primary responsibility for enforcement of the provisions of this chapter.

(2) Any person, including private citizens, may initiate action against any person who is violating the provisions of this chapter by notifying the ~~hazardous materials coordinator or HMT~~ division of fire and emergency services' Special Operations Division.

(3) Upon notification or discovery of any violation of the provisions of this chapter, a member of the HMT shall immediately investigate the site upon which the violation is located. If a violation exists, a notice describing the violation shall be served upon the person who is responsible for the premises upon which the violation has occurred, if the identity of the responsible person is known. If appropriate, the notice shall demand abatement of the violation within twenty-four (24) hours unless the violation constitutes an immediate danger to the health and well-being of the community, in which case the notice shall demand that abatement procedures begin immediately. If the violation resulted in hazardous materials being discharged, cleanup procedures shall commence immediately following abatement and shall be completed with all deliberate speed. The notice shall also include the following where appropriate:

(a) A statement that if the situation is not remedied within the prescribed time, the urban county government will proceed to correct the violation, if it is of the type which may be so corrected.

(b) A statement that the person shall be liable for any costs to the urban county government incurred in correcting the violation. The cost shall be incurred by the person or entity when any ~~urban county government~~ division of fire and emergency services HazMat team member, any member of the division of fire and emergency services, or any agent of the urban county government spends public funds for the response to the release, its abatement, cleanup or removal and such cost shall include the urban county government's actual and necessary costs, including but not limited to the cost of urban county government personnel and equipment utilized, expended in response to the discharge or the cost of contracting for the same. The total amount of cost to be charged to the person or entity shall be determined by the HMC or HMPL.

(c) A statement that after the urban county government has corrected the violation, the commissioner of finance will send a bill for the cost of the measures taken to correct the violation, including any administrative cost, to the person responsible; and if the bill is not paid within three (3) months, the urban county government, through its law department, shall have authority to initiate action in any court having jurisdiction over such matter, to recover the government's costs incurred in correcting the violation.

(4) In cases where the identity of a person who is responsible for premises upon which a violation has occurred is not known at the time a violation is reported, the urban county government, pursuant to this chapter, shall take reasonable steps to abate any problem and shall take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment. When the identity of the

responsible person is determined, a bill for the cost of measures taken to correct the violation shall be sent to the person and pursued according to the provisions of subsection (3) above.

Section 20 – That Section 16A-25 of the Code or Ordinances be and hereby is amended to read as follows:

Sec. 16A-25. - Penalties.

(1) Any person failing to comply with the inventory provisions of this chapter as specified in section 16A-7 shall be guilty of a violation and and fined one hundred dollars (\$100.00) up to two hundred and fifty dollars (\$250.00) if the violator is an individual or five hundred dollars (\$500.00) if the violator is a corporation per day after having received notification from the urban county government of their failure to comply. Each day's failure to comply shall be deemed a separate ~~offense~~ violation.

~~(2) Any person failing to comply with "Underground Storage Tank Regulations—Petroleum Products," as adopted by section 16A-9(3), shall for every offense be fined not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000.00). Each day's continuance of any such failure or violation shall be a separate offense.~~

~~(3) Any person failing to comply with "Underground Storage Tank Regulations—Nonpetroleum Products," as adopted by section 16A-9(4), shall for every offense be fined not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000.00). Each day's continuance of any such failure or violation shall be a separate offense.~~

~~(4) Any person failing to register as required by section 16A-9 of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00). Each day's failure to register shall be deemed a separate offense.~~

~~(5)~~(2) Any person failing to perform the duties required by the provisions of section 16A-11 relating to SPC plans, section 16A-5 relating to restoration, or section 16A-6 relating to closure shall be guilty of a violation and for every offense be fined not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000.00) up to two hundred and fifty dollars (\$250.00) if the violator is an individual or five hundred dollars (\$500.00) if the violator is a corporation. Each day's continuance of any such failure or violation shall be a separate ~~offense~~violation.

~~(6)~~(3) Any person violating the provisions of section 16A-3 relating to discharges shall for every offense be sentenced to a term of imprisonment not to exceed twelve (12) months in the county detention center, or ~~fined not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000.00)~~ up to five hundred dollars (\$500.00) if the violator is an individual or ten thousand dollars (\$10,000) if the violator is a corporation, or both. Each day's continuance of any such failure or violation shall be a separate offense.

~~(7)~~(4) Any person failing to perform the duties required by the provisions of section 16A-4 relating to the reporting of discharges shall for every offense be sentenced to a term of imprisonment of not to exceed twelve (12) months in the county detention center, or fined in an amount not less than two hundred fifty dollars (\$250.00) nor more than ten thousand dollars (\$10,000.00), or both. Each day's continuance of any such failure or violation shall be a separate offense.

~~(8)~~(5) Any person violating any of the provisions of this chapter shall become liable to the urban county government for any expense, loss or damage caused to the urban county government by reason of such violation, including but not limited to any cleanup, evacuation, administrative or other expenses, including legal expenses, incurred. The commissioner of law is hereby authorized and directed to initiate such proceedings, in the name of the urban county government, in any court having jurisdiction over such matter, as are necessary to recover costs to the urban county government caused by the violation.

Section 21 – That Section 16A-26 of the Code of Ordinances be and hereby is deleted in its entirety

~~Sec. 16A-26. — Appeals.~~

~~(1) Any person adversely affected by any decision of the HMC in applying or interpreting any of the provisions of this chapter may appeal the decision to the appeals board established in this section. The appeal shall be taken by filing written notice thereof with the HMC within thirty (30) days from notification of the decision. The HMC shall immediately notify the chairman of the appeals board of the appeal.~~

~~(2) An appeals board, to be known as the hazardous materials appeals board shall be established. The appeals board shall consist of three (3) members of the TAC, appointed by the mayor to the appeals board, being one (1) representative of regulated industry, one (1) representative of concerned environmental groups or concerned citizens at large, and one (1) representative who is a professional in the field of hazardous materials management, other than the hazardous materials coordinator.~~

~~(3) The duties of the appeals board shall be as follows:~~

- ~~(a) To hear all appeals from decisions of the HMC;~~
- ~~(b) To adopt rules for the conduct of such hearings providing both the appellant and HMC with the opportunity to:~~
 - ~~(i) Offer and examine witnesses and present evidence in support of its case; and~~
 - ~~(ii) Cross-examine witnesses and introduce other evidence to refute opposing evidence.~~
- ~~(c) To render a written decision within thirty (30) days following the hearing of an appeal, such decision to contain findings of fact based upon the evidence adduced at the hearing.~~

Public Nuisance

Public Safety Committee
February 5, 2013

Current ordinance

- Enacted in 1998
- Only residential property
- Applies to each unit not entire property
- 3 occasions within a 12 month period
 - citations and search warrants for gambling, prostitution, or drugs
- Only penalized if not abated
- Doesn't provide exception for situations where owner is victim of crime

Current Procedure

- Owner notified after first instance
- Penalty never imposed
- Only 1 appeal
- Most landlords grateful

Locations not currently covered

District One – 5 locations

- Location #1 – 169 calls for service, 69 substantial calls (assaults, disorders, weapons, etc.), and 35 arrests
- Location #2 – 120 calls for service, 49 substantial calls, and 21 arrests
- Location #3 – 455 calls for service, 180 substantial calls, and 35 arrests
- Location #4 – 64 calls for service, 23 substantial calls, and 8 arrests
- Location #6 – 6 calls for service, 2 substantial calls, and no arrests
- Location #7 - 40 calls for service, 6 substantial calls and 4 arrests

District Two

- Location #1 – 15 calls for service, 4 substantial calls, and 4 arrests

Locations not currently covered

District Three – 2 locations

- Location #1 – 94 calls for service, 29 substantial calls, and 23 arrests
- Location #2 - 176 calls for service, 51 substantial calls, and 37 arrests

District 4

- Location #1 –126 calls for service, 55 substantial calls, and 16 arrests

District 5

- Location #1 – 12 calls for service, 3 substantial calls and no arrests

District 8

- Location #1 – 98 calls for service, 21 substantial calls, and 16 arrests

Proposed changes

- Applies to all property, not just residential
- Adds assaults, sexual offenses, weapons, and any felony
- Excludes crimes in which the owner or occupant is the victim of the crime and had no control over the criminal act

Questions

ORDINANCE NO. ____-2013

AN ORDINANCE AMENDING SECTION 12-60 OF THE CODE OF ORDINANCES OF THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT RELATED TO PUBLIC NUISANCES TO AMEND THE DEFINATION TO INCLUDE ASSAULT, SEXUAL OFFENSES AND WEAPONS OR ANY OTHER FELONY AND TO PROVIDE AN EXCEPTION WHEN THE OWNER OR OCCUPANT IS THE VICTIM OF THE CRIME AND HAD NO CONTROL OVER THE CRIMINAL ACT; AMENDING SECTION 12-61 CODE OF THE ORDINANCES RELATING TO PUBLIC NUISANCES TO DELETE THE WORD RESIDENTIAL; AMENDING SECTION 12-63 OF THE CODE OF ORDINANCES RELATING TO PUBLIC NUISANCES TO DELETE THE WORD RESIDENTIAL.

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

Section 1 - That section 12-60 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

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 assault, sexual offenses, prostitution, controlled substances, weapons, gambling on the premises or any felony or executed a court-issued search warrant for violation of the laws governing assault, sexual offenses, prostitution, controlled substances, weapons, gambling on the premises or any felony. Instances in which the owner or occupant is the victim of the crime and had no control over the criminal act shall not be considered in the number of occasions including domestic violence calls for service.

Section 2 - That section 12-61 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

Sec. 12-61. - Prohibition.

No owner of 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 3 - That section 12-63 of the Code of Ordinances of the Lexington Urban County Government be and hereby is amended to read as follows:

Sec. 12-63. - Abatement procedure.

(a) Duty to notify owner. Whenever the code official receives information that a public nuisance exists in or upon the 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 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.

(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 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 4 - That this Ordinance shall become effective upon passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

Published:

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ARTICLE II. - PUBLIC NUISANCES

[Sec. 12-60. - Definition.](#)

[Sec. 12-61. - Prohibition.](#)

[Sec. 12-62. - Enforcement.](#)

[Sec. 12-63. - Abatement procedure.](#)

[Sec. 12-64. - Action on failure to comply.](#)

[Sec. 12-65. - Destroying, etc., notice; disobeying order.](#)

[Sec. 12-66. - Multiple unit dwellings.](#)

[Sec. 12-67. - Defense to violation.](#)

[Sec. 12-68. - Hearing.](#)

[Sec. 12-69. - Notice of hearing; conduct of hearing.](#)

[Sec. 12-70. - Written order of hearing officer; appeal.](#)

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 assault, sexual offenses, prostitution, controlled substances, weapons, ~~or~~ gambling on the premises or any felony or executed a court-issued search warrant for violation of the laws governing assault, sexual offenses, prostitution, controlled substances, weapons, ~~or~~ gambling on the premises or any felony. Instances in which the owner or occupant is the victim of the crime and had no control over the criminal act shall not be considered in the number of occasions including domestic violence calls for service.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

Sec. 12-63. - Abatement procedure.

(a) *Duty to notify owner.* Whenever the code official receives information that a public nuisance exists in or upon the ~~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 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.

(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 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.

(Ord. No. 332-98, § 2, 12-10-98)

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 or occupancy of the premises; or
- (c) Use any other legal remedy available under the laws of the Commonwealth.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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.

(Ord. No. 332-98, § 2, 12-10-98)

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

Within a reasonable time after 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 82.720. There shall be no appeals from such orders to the board.

CODE OF ORDINANCES
Chapter 12 - HOUSING
ARTICLE II. - PUBLIC NUISANCES
(Proposed Mark-up)

(Ord. No. 332-98, § 2, 12-10-98)

Public Safety Committee Referrals

ITEM	REFERRED BY	DATE	STATUS
Fleet Management Services	Myers	4-Aug-11	
Compiling a List of Safe Places People can go in Times of Weather or Emergency Needs	Farmer	17-Mar-12	
Abandoned Housing	Myers	10-Apr-12	
Creation of a policy for systematically replacing and maintaining vehicles	PS Link	17-May-12	
appartuses and other recurring costs that are critical to public safety divisions			
Amendment of subsection 14-72(6)(a) of the Code to add a requirement	Blues	11-Oct-12	11/13/12
of a noise disturbance across a dwelling unit boundary			
Infill and Redevelopment Steering Committee Recommendations/Nuisance Abatement Process	Kay	08-Nov-12	12/04/12, 2/05/13
Hazardous Materials Ordinance	Gorton	04-Dec-12	02/05/13
Public Nuisance Ordinance	Henson		02/05/2013