

Public Safety Committee

Peggy Henson – 11th District - Chair
Kevin Stinnett – 6th District – Vice Chair
Chuck Ellinger – At Large
Shevawn Akers – 2nd District
Diane Lawless – 3rd District
Bill Farmer – 5th District
George Myers – 8th District
Jennifer Mossotti – 9th District
Harry Clarke – 10th District
Ed Lane – 12th District

Staff:

Jenifer Benningfield

AGENDA
PUBLIC SAFETY COMMITTEE
March 5th, 2013
1:00pm

- | | | |
|--|--------------|-------|
| 1. Approval of Summary | Peggy Henson | (1-3) |
| 2. 24 Hour Nuisance Abatement Form | David Jarvis | (4-8) |
| 3. FEMA Hazard Mitigation Grant Program Update | Pat Dugger | |
| 4. Items Referred to Committee | Peggy Henson | (9) |

Future Committee Meetings

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

February 5th, 2013

Summary and Motions

Chair Peggy Henson called the meeting to order at 1:01pm. Council Members Jennifer Mossotti, Harry Clarke, Peggy Henson, Kevin Stinnett, Chris Ford, Shevawn Akers, Diane Lawless, Ed Lane and Bill Farmer Jr. were present. Chuck Ellinger was absent.

1. Approval of Summary

Motion by Farmer to approve the summary. Seconded by Akers. Motion passed without dissent.

2. Nuisance Abatement Forms Update

David Jarvis from the Division of Code Enforcement came to the podium to speak. He presented the updated 24 Hour Notice to Abate form.

Clarke said that there were sections of the form that were unclear to him. He had concerns about the first sentence, which reads 'you are hereby given notice to abate this emergency nuisance violation within 24 hours or appeal this notice within ten (10) days.' Jarvis said that the violator could appeal the actual notice, not the abatement. Jarvis went on to say that any owner who is issued two or more notices on the same property within twelve (12) months could be assessed civil penalties. Clarke asked why anyone would be able to appeal the violation. Jarvis said that it could be that a landlord wants to appeal the violation because it was their tenant who placed an illegal item outside and thus they were cited.

Mossotti asked how frequently they have to give the 24 Hour Notice to Abate. Jarvis said that it is cyclical. They have had anywhere from 10-50 per year. He said that most of the violations are around the University of Kentucky campus. Many of the properties are landlord-tenant situations.

Jarvis said that they did add the section that denotes when they attempted to contact the property owner. Jarvis said that most property owners are responsive. He hopes the updated form will be even more effective.

Akers asked Jarvis to explain the process if a property owner is not responsive. Jarvis said that they usually place a lien on the property and if enough time passes the property can be foreclosed on.

Farmer asked Jarvis how the form differs from the form they currently use. Jarvis said that this is a form specific to an emergency abatement and it does provide clarity on certain issues. Jarvis said that he would like to make the notice a bright color as well.

Lawless reminded Council Members that Code Enforcement did not have a different form to use for a 24 Hour Abatement Notice. Lawless said that she is also pleased that the Council voted to increase the fines a few years ago. Lawless said that many times the violation is a public safety issue and abatement is necessary for safety.

Lane asked Jarvis what method they use to give notice. Jarvis said they post it on the property, they call or they send letters. Jarvis said that the property owner has 10 days to appeal.

Jarvis said that a violation is an emergency if it is a public safety issue, impediment to traffic flow and/or a public health issue (food or diapers).

Akers noted that she is not satisfied with the use of the word 'or.' She said that it is misleading and confusing.

Clarke said that the first sentence has dangerous wording. He said that it implies you can abate the nuisance or appeal. Jarvis said that they want to revise the document by moving the bolded statement from the sixth paragraph to the first paragraph.

Myers asked Jarvis to change the first sentence to inform the violator that they must abate or they will be billed for the abatement. Jarvis agreed with this suggestion.

Mossotti asked Jarvis if he has the staff to enforce this. Jarvis said yes, they are fully staffed.

Henson asked Jarvis to make the recommended changes and bring the revised document back to the March 2013 meeting.

3. Hazardous Materials Ordinance

Mason said that the draft will clean up the current ordinance. Hazmat was previously under Emergency Management, but it is now managed by the Division of Fire.

Greg Bayer, from the Division of Fire, came to the podium and presented the draft.

Lane asked Bayer if the changes they made meet best practices for the handling of hazardous materials. Bayer answered yes.

Motion by Lawless to move the Hazardous Materials Ordinance to the full Council for a vote.
Seconded by Lane. Motion passed without dissent.

4. Public Nuisance Ordinance

Leah Boggs, Legislative Aide to Council Member Steve Kay presented the draft ordinance. Boggs said that the proposed changes to the ordinance include the following:

- 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

Lane asked Boggs what would happen if the owner was not a victim but had no control over the criminal act. Boggs said that those circumstances would be included under the current ordinance.

Lane asked about sidewalks. Lane asked if criminal activity that takes place on the sidewalk in front of the property would count as a violation. The representative from the Division of Police said that these situations are dealt with on an individual basis. She said that the property owners usually work with the Division of Police in these instances.

Lawless spoke in favor of the ordinance. She thanked everyone for their work on it.

Clarke asked for clarification on the revisions. He asked Boggs if the only changes were those listed in her presentation. Boggs said that those were the only changes and reminded Clarke that everything else will stay the same.

Clarke asked why the Public Nuisance Ordinance is listed under Chapter 12-Housing. Mike Sanner from the Law Department said that this chapter applies to all structures in Fayette County. The appeal rights are the same as those of code enforcement.

Myers asked Ronnie Bastin, the Chief of Police, if the ordinance is one that they need to do their jobs more effectively. Bastin said yes. He said that they are not trying to issue more citations, but they need a tool to provide an incentive for citizens to meet with them to resolve problems.

Myers also asked if the Housing Authority properties would be included. A representative from the Division of Police responded yes, the current ordinance covers those properties.

Henson thanked everyone who worked on the draft.

Stephen Marshall and Craig Hardin, members of the public, spoke on the issue. They had concerns about the draft.

Motion by Akers to move the draft Public Nuisance Ordinance forward to the full Council for a vote. Seconded by Lawless. Motion passed without dissent.

5. Items Referred to Committee

Motion by Farmer to adjourn. Seconded by Akers. Motion passed without dissent.

Submitted by Jenifer Benningfield, Council Administrative Specialist



Lexington-Fayette Urban County Government
Division of Code Enforcement

24 Hour Emergency Notice to Abate

Owner Address: _____

Date: _____

Inspection Made: _____

Re-Inspection Date: _____

Violation Address: _____

You are hereby given notice to abate an emergency nuisance on the property listed above within 24 hours. You must remove the items within 24 hours or you will be billed for the cost of the abatement.

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 abated. The findings of the inspection are as follows:

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

If you do not abate this nuisance within 24 hours the government will abate the nuisance and you will be deemed to have waived your appeal right. If the government is required to abate the nuisance, the Division of Code Enforcement will send a bill for the cost of the abatement to the property owner, including an administrative fee of seventy five dollars (\$75.00). If the bill is not paid within seven (7) days following the mailing of the bill, a Notice of Lien claimed for the cost of the abatement will be placed against the property. In the event the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill.

In addition, civil penalties of not less than one hundred dollars (\$100.00) and no more than one thousand dollars (\$1,000.00) may be imposed if more than one (1) notice to abate a nuisance has been issued to the same owner, on the same property, within a twelve-month period. These civil penalties will be added to the bill for the cost of abatement.

While you must abate the nuisance violation stated above within 24 hours, any person affected by a notice to abate has the right to appeal. Your appeal would only dispute the fact there was a violation and not the abatement.

If you wish to appeal, you must do so in writing, within the 10-day period set forth in Section 12-8.3 of the Code of Ordinances. Please address requests to:

Secretary of Administrative Hearing Board, 101 East Vine Street, Suite 500, Lexington Kentucky 40507.

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 _____.

Code Enforcement Officer

Attempt to Contact Owner: _____

Time: _____



Lexington-Fayette Urban County Government
Division of Code Enforcement

24 Hour Emergency Notice to Abate

Owner Address: _____

Date: _____

Inspection Made: _____

Re-Inspection Date: _____

RE: PROPERTY

Violation Address: _____

You are hereby given notice to abate ~~this~~an emergency nuisance violation within 24 hours or appeal this notice within ten (10) days on the property listed above within 24 hours. You must remove the items within 24 hours or you will be billed for the cost of the abatement.

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~~abated. The findings of the inspection are ~~listed below~~as follows:

- ☐ Trash and Debris: _____
- ☐ Indoor Furniture Outside-Must be removed from the 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 to abate the nuisance, the Division of Code Enforcement will send you a bill for the cost of the abatement to the property owner, including an administrative fee of seventy five dollars (\$75.00). If the bill is not paid within seven (7) days following its the mailing of the bill, a Notice of Lien Claimed by the Urban County Government claimed for the cost of the abatement and the administrative fee will be filed placed 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.~~ In the event the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill.

In addition, civil penalties of not less than one hundred dollars (\$100.00) and no more than one thousand dollars (\$1,000.00) may be imposed if more than one (1) notice to abate a nuisance has been issued to the same owner, on the same property, within a twelve-month period. These civil penalties will be added to the bill for the cost of abatement.

While you must abate the nuisance violation stated above within 24 hours, any person affected by a notice to abate has the right to appeal. Your appeal would only dispute the fact there was a violation and not the abatement.

If you wish to ~~request a hearing before the Administrative Hearing Board~~appeal, you must do so in writing, within the 10-day period set forth in Section 12-8.3 of the Code of Ordinances, ~~and addressed to~~. Please address requests to:

Secretary of Administrative Hearing Board, 101 East Vine Street, Suite 500, Lexington, ~~KY~~ Kentucky 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 _____.

Code Enforcement Officer

Attempt to Contact Owner: _____

Time: _____

LFUCG CODE OF ORDINANCES

Chapter 12 - HOUSING

ARTICLE I. - IN GENERAL

Sec. 12-7. - Abatement of nuisance.

- (a) *Notice to abate:* It shall be the duty of the commissioner of public safety, citation officers as specifically authorized by ordinance, or others authorized by ordinance to serve or cause to be served a notice upon the owner of any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter. Such notice shall describe the nuisance so maintained and shall demand abatement of such nuisance within ten (10) days of notice, unless such nuisance constitutes an immediate danger to health and well-being of the community, in which case the notice shall demand abatement within twenty-four (24) hours of the notice. The notice shall also include the following:
- (1) A statement to the effect that if the situation is not remedied within the prescribed time, the urban county government will proceed to abate the nuisance;
 - (2) A statement to the effect that the cost of abatement constitutes a lien against the property in favor of the urban county government;
 - (3) A statement to the effect that if the urban county government is required to abate the nuisance, the commissioner of public safety will send a bill for the cost of the abatement, to include the administrative cost, not to exceed two hundred fifty dollars (\$250.00), to the property owner, and if the bill is not paid within seven (7) days following the mailing of the bill, that a notice of lien claimed for the cost of the abatement will be placed against the property. The property owner shall further be informed that in the event the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill;
 - (4) A statement to the effect that civil penalties of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) may be imposed if more than one (1) notice to abate a nuisance has been issued to the same owner, on the same property, within a twelve-month period and that civil penalties so imposed will be added to the bill for the cost of abatement, if any; and
 - (5) The procedure and time frame established by [section 12-8.3](#) for appealing the notice to abate or the imposition of civil penalties, when applicable.
- (b) *Service of notice to abate:* Notice to abate and/or a notice of civil penalty shall be personally served upon the owner or shall be mailed 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 commissioner of public safety or his designated officer 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. If notice is made by publication, a copy of such notice shall be posted in a conspicuous place on the premises affected by the notice. If the property owner employs or utilizes a management company or other agent for the maintenance of the property, the owner may designate, in writing on a form provided by and filed with the division of code enforcement, the name and address of the company or agent to which said notices shall also be provided; however, it shall remain the responsibility of the property owner to comply with the provisions of this Code. The property owner shall be responsible for updating any such information filed with the division of code enforcement as necessary.
- (c) *Abatement by urban county government:* If the owner so served does not abate the nuisance or file a notice of appeal within ten (10) days, the urban county government may proceed to abate such nuisance, keeping an account of the expense of the abatement; and such expense, including an administrative cost fee and the cost of publication, if any, shall be charged to and paid by such owner

LFUCG CODE OF ORDINANCES

Chapter 12 - HOUSING

ARTICLE I. - IN GENERAL

or occupant. The ten-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 mail, on the third day following mailing.
 - (3) Where notice is by publication and posting, on the third day following the initial day of publication.
- (d) *Lien*: The urban county government shall have a lien against the property for its costs incurred in such nuisance abatement and for any civil penalties assessed for violations of [chapter 12](#). 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 commissioner [of] public safety or the citation officer, setting forth the property in question, the amount of the urban county government's cost of abatement, the date of abatement, and that the notice provisions of this section were complied with before abatement. The commissioner of public safety or his designee shall bill the property owner of such premises at least once following abatement or the assessment of a civil penalty. No notice of lien claimed shall be filed against the property in the case of abatement until seven (7) days have elapsed since the bill is sent, and in the case of a civil penalty, no notice of lien claimed shall be filed against the property until the time for appeal has expired. 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 (e).
- (e) *Property to be sold*: Property subject to a lien for unpaid nuisance abatement charges or unpaid 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.
- (f) *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 nuisance abatement or civil penalties remains unpaid for twenty-one (21) 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.
- (g) *Release of lien*: The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (d) upon payment in full of the nuisance abatement cost 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.
- (h) *Unenforceable liens*: The commissioner of law is hereby authorized to make the determination that liens shall not be filed for the cost of nuisance abatement if the cost of nuisance abatement is five hundred dollars (\$500.00) or less and the cost of collection of the lien would be greater than the lien itself, or when intervening in existing litigation is not cost effective, or when the lien would not be enforceable as a matter of law. All liens now of record meeting these criteria may be released upon signature of the mayor and all prior releases of such liens are hereby ratified and adopted as an act of this council.

(Ord. No. 268-95, § 1, 11-30-95; Ord. No. 83-97, § 1, 5-29-97; Ord. No. 339-99, § 8, 12-7-99; Ord. No. 13-2010, § 4, 1-28-10)

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	03/05/2013
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	11/13/2012
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, 03/05/2013
Hazardous Materials Ordinance	Gorton	04-Dec-12	02/05/13
Public Nuisance Ordinance	Henson		02/05/2013
Tenant Transition and Household Disposal	Ford	12-Feb-13	