

Ellinger

Myers

Lawless

Beard

Feigel

Crosbie

McChord

Martin

Henson

Lane

SERVICES COMMITTEE

April 7, 2009

1:00 P.M.

A G E N D A

1. Peddler's License - Stinnett (1-20)
2. Dog Tethering Sub Committee - Beard (21-24)
3. Private Solid Waste Providers - Gorton (25-56)
4. Items in Committee (57-58)

"Services Committee, to which should be referred matters relating to public safety, public works, urban county courts, and constitutional officers."

Council Rules & Procedures, Section 2.102(3)

LEXINGTON-FAYETTE URBAN COUNTY COUNCIL
Memorandum

TO: Services Committee

FROM: Paul Schoninger
Staff to Council

DATE: February 17, 2009

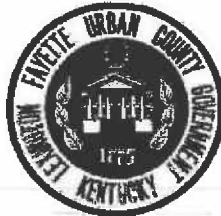
SUBJECT: Peddler Licensing

Please find attached a memo from the Law Department to Councilmember Chuck Ellinger addressing several questions re peddler licensing. I have included KRS 367.510 as that addresses door to door solicitation as well.

Should you need any further information please do not hesitate to contact me at 258-3208.



Paul Schoninger
Staff to Council



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Chuck Ellinger, II, At-Large Councilmember
Chairman Services Committee

FROM: Department of Law

DATE: February 11, 2009

RE: Peddler Licensing
Log No. 09-CC0175

This memorandum is in response to the following questions raised by the Council Services Committee at its February 3, 2009 meeting:

1. Is solicitation for non-profit purposes subject to the peddler license?
2. What is the effect of the posting of a "no solicitation" notice(s) on a private property or within a neighborhood?

As further explained in the attached Department of Law memoranda dated October 15, 2007, July 13, 2006, September 23, 2004, and July 20, 1993, door-to-door solicitation is not regulated in Fayette County other than to require certain persons defined as "peddlers" to obtain a peddler license pursuant to Sections 13-13 and 15-7 of the Code of Ordinances, Lexington-Fayette Urban County Government. A peddler is "[a]n individual who carries his merchandise with him while traversing the streets, sidewalks or alleys of Fayette County for the purpose of exhibiting and selling such merchandise." Section 13-1(50) of the Code. Most subscription sales of printed material (i.e., magazines and books) are separately regulated by the Commonwealth of Kentucky through registration pursuant to the Consumer Protection Act (see KRS 367.510, et. seq.). The law in this area has not changed significantly since these memoranda were originally circulated, therefore significant regulation of solicitation *per se* would still be difficult to legally defend.

The Division of Revenue has consistently taken the position that if the underlying purpose of the solicitation is not-for-profit, then the individual is not required to obtain a peddler license. Although this could be clarified in the current ordinance, this position is legally defensible. Therefore, the answer to your first question is no.

HORSE CAPITAL OF THE WORLD

****P.O. Box 34028**

Lexington, KY 40588

(859) 258-3500

Fax: (859) 258-3538

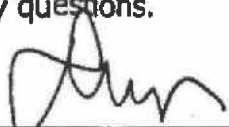
www.lfucg.com

****Please note new mailing address**

Services Chair Chuck Ellinger, II
February 11, 2009
Page 2

Even though posting a "no solicitation" notice should alert solicitors that their conduct is not welcome on certain property, if there is no underlying license violation the only other potential criminal charge that would normally result from such activity is that of trespass. It is this Departments' understanding that in order to successfully prosecute a charge of criminal trespass against a solicitor, he or she would have to "knowingly enter or remain" on the property. (see e.g., KRS 511.080). Whether soliciting in the face of such a notice is sufficient conduct in and of itself to support a charge of trespass is questionable. This is complicated further if the posting of the notice is done at the neighborhood level in a neighborhood that is otherwise accessible to general public. Therefore, you may want to have a representative from the County Attorney's Office provide you with any additional information as to what is legally required to prove such a charge.

Please contact me if you or the Services Committee would like any additional information on this matter or if you have any questions.



David J. Barberie
Attorney Senior

ATTACH

cc: Rebecca Langston, Council Administrator
Bill O'Mara, Director of Revenue
Tim Bennett, Commissioner of Public Safety
Chief of Police Ronnie Bastin

(VIA
E-MAIL)

DJB/X:\Cases\CO\09CC0175\MEMO\DJB0098



Mayor Jim Newberry
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Richard Moloney, Councilmember
FROM: Department of Law
DATE: October 15, 2007
RE: Door-to-Door Activities
Log No. 07-CC1593

This is in response to your request for information on how to handle unwanted door-to-door activities.

On September 12, 2007, you received an electronic mail message from a constituent indicating that a gentleman rang her doorbell and when she answered, the gentleman began to express his personal opinions on issues this particular constituent found to be offensive. In addition to expressing his personal opinions, this gentleman was also handing out flyers. After the gentlemen left the constituent's property, the constituent and a neighbor had another encounter with this gentleman in which they asked him to leave their neighborhood. In the electronic mail message, the constituent did not request that the urban county government take any action, but was informing you of an unpleasant experience. Based on this incident, you have inquired as to whether there is any way to address the concerns raised by the constituent.

Please note that the Code of Ordinances addresses solicitation by peddlers and itinerant merchants; but, it does not address the situation of an individual going door to door expressing personal opinions and distributing literature which supports those opinions. Section 13-1(37) of the Code of Ordinances defines an "itinerant merchant" as "an individual who does not have a permanent business location in Fayette County and who sells items of merchandise by means other than peddling." Additionally Section 13-1(47) of the Code of Ordinances defines a "peddler" as "an individual who carries his merchandise with him while traversing the streets, sidewalks or alleys of Fayette County for the purpose of exhibiting and selling such merchandise."

HORSE CAPITAL OF THE WORLD

**P. O. Box 34028 Lexington, KY 40588-4028 (859) 258-3500 Fax: (859) 258-3538 www.lfucg.com

**Please note new mailing address

Neither of these types of solicitation were encountered by the constituent.

The constituent's electronic mail message was also provided to Capt. David Boggs in the Division of Police who advised that the Division of Police could provide extra patrol in the constituent's neighborhood, but so long as the individual is not "soliciting"¹ and leaves when asked, then his actions are not illegal.

In terms of what constituents can do to prevent this type of activity in the future, constituents may place "no trespass" signs on their properties. If a person fails to obey the "no trespass" signs and the property owner feels that police attention may be necessary (ie. property owner is fearful that he or she may be harmed), then the property owner may call the police to assist with the situation. Additionally, the property owner may have grounds to file a criminal complaint for criminal trespass. However, please note that the Department of Law respectfully defers any opinion relating to filing complaints for criminal trespass or discussions of other possible criminal violations to the County Attorney's Office.

Should you have any questions or need additional assistance, please contact me. I have attached copies of memoranda to former Councilmember Jennifer Mossotti, former Councilmember and Vice Mayor Isabel Yates, and Councilmember Gorton on other aspects of door to door activities that may be helpful to you.


Glenda Humphrey George Attorney Sr.

Attachment

cc: Jim Newberry, Mayor
Joe Kelly, Senior Advisor
Rebecca Langston, Council Office
David Boggs, Division of Police
Marian Zeitlin, Aide to Council

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¹ KRS 367.510 to KRS 367.530 sets forth the regulations for solicitation of subscription sales and printed material. The statutes deal only with solicitor registration. Please note that KRS 367.510 defines a solicitor as "any person engaged in the business of soliciting orders for magazines, periodicals, encyclopedias, books, Bibles, or other printed matter or material on a subscription basis and payable on instalments or on a cash basis or by contract or note, the delivery of which magazine, periodicals, encyclopedias, books, Bibles or other printed material is contingent upon a future event, such as a down payment or one (1) or more installment payments, in any county in this state."



(2)

Mayor Teresa Ann Isaac

LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Vicki Steele, Staff to Council II

FROM: Department of Law

DATE: July 13, 2006

RE: Solicitation
Log No. 13,986.

Attached for Mr. Lane's review are two legal opinions previously issued by this Department relating to the issue of regulating door-to-door solicitations. The two opinions reflect the current state of the law in Kentucky concerning this issue. Please note that these opinions are protected by the attorney-client privilege and **should not** be distributed to the general public.

Please note that although the Code of Ordinances does not address the issue of door-to-door solicitation, citizens may post "No Trespassing" signs on their property and "No Solicitation" signs may be placed on private streets. If the "No Trespassing" or "No Solicitation" signs are posted, any violations must be enforced by the property owners.

If you have any questions concerning this matter, please let me know.

Glenda H. George by L. Sladd
Glenda Humphrey George, Attorney Sr.

Attachment

cc: Teresa Ann Isaac, Mayor
Milton Dohoney, CAO
Council Office

G:\Law\George\Memos\Mem148(solicitation).doc

HORSE CAPITAL OF THE WORLD

200 East Main Street

Lexington, KY 40507

(859) 258-3500

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www.lfucg.com

Lexington
Fayette
Urban
County
Government



DEPARTMENT OF LAW

TO: Jennifer Mossotti
Urban County Council

FROM: Department of Law

DATE: September 23, 2004

RE: Door-to-Door Solicitation
Log No. 11,851

This memorandum is in response to your request for an opinion concerning a complaint you received relating to door-to-door solicitation. Specifically, you want to know whether the Code of Ordinances addresses this issue and what the Government's enforcement powers are with respect to this matter. Please note that the Code of Ordinances does not address this issue. The Code of Ordinances addresses solicitation by peddlers and itinerant merchants; however, a person going door-to-door to sell magazine subscriptions does not fall under either definition.¹

KRS 367.510 to KRS 367.530 sets forth the regulations for solicitation of subscription sales and printed material. However, these sections of the Kentucky Revised Statutes deal only with solicitor registration. KRS 367.510 defines a solicitor as "any person engaged in the business of soliciting orders for magazines, periodicals, encyclopedias, books, Bibles, or other printed matter or material on a subscription basis and payable on installments or on a cash basis or by contract or note, the delivery of which magazines, periodicals, encyclopedias, books, Bibles or other printed material is contingent upon a future event, such as a down payment or one (1) or more installment payments, in any county in this state."

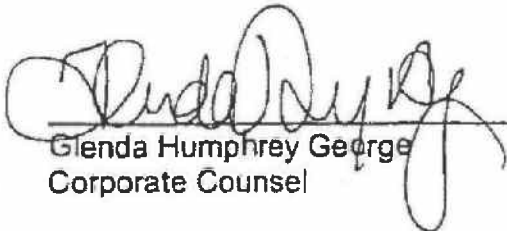
¹ Pursuant to Section 13-1(22) of the Code of Ordinances, an itinerant merchant is defined as "an individual who does not have a permanent business location in Fayette County and who sells items of merchandise by means other than peddling." Pursuant to section 13-1(28) of the Code of Ordinances a Peddler is defined as "an individual who carries his merchandise with him while traversing the streets, sidewalks or alleys of Fayette County for the purpose of exhibiting and selling such merchandise."

Ms. Mossotti
September 23, 2004
Page 2 of 2

KRS 367.513 requires every solicitor to register annually with the county clerk of the county where the solicitation will occur and to pay the county clerk a five dollar service fee. In the case of door-to-door solicitations, the solicitor must show a potential purchaser his or her registration receipt issued by the County Clerk's Office prior to the actual solicitation. Please note that pursuant to KRS 367.515 (3), the registration requirements do not apply to minors soliciting orders for the sole purpose of "obtaining funds for a school band, club or other organization. . ."

If the Government desires to regulate door-to-door solicitations it may. An example of local government regulation would be to pass an ordinance allowing homeowners to post a sign stating "No Solicitors or Peddlers Invited." However, the Government would be unable to regulate the content of the solicitations or even the hours of solicitation because to do so would violate the First Amendment of the U.S. Constitution. Attached for your information is a legal opinion provided to former Councilmember Isabel Yates on door-to-door solicitations after dark. The conclusion in that memorandum was that attempts to limit hours of solicitation door-to-door would be highly subject to court challenge based on the First Amendment to the U.S. Constitution.

If you have any questions concerning this matter, please let me know.



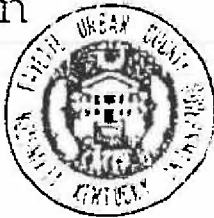
Glenda Humphrey George
Corporate Counsel

Attachment

Cc: Teresa Ann Isaac, Mayor
Milton Dohoney, CAO
Bill McKinney, Council Office

G:GHGmem127

Lexington
Fayette
Urban
County
Government



LD093 22

DEPARTMENT OF LAW

TO: Isabel Yates, 4th District Councilmember

FROM: Department of Law

DATE: July 20, 1993

RE: Door-to-Door Solicitations After Dark
(Log No. 5450)

This memorandum is a follow-up to your inquiry concerning regulating door-to-door solicitations after dark in residential neighborhoods. I discussed this matter with you after your initial inquiry and indicated that there are significant problems in attempting to regulate such activity due to First Amendment speech aspects of the situation.

Enclosed is a memorandum of law concerning this matter which was prepared by one of our law clerks, Tom Bondurant.

As indicated in Tom's memo, the law has evolved to a point where there is not a significant difference between "commercial" speech and "non-commercial" speech in the area of the Government's ability to regulate such activity.

A four-part test has been developed to determine the constitutionality of regulation of commercial speech, such as door-to-door soliciting. If the commercial speech is not misleading and concerns lawful activities, it is protected by the First Amendment. Secondly, any regulation must seek to preserve a substantial Government interest; third, the regulation must directly advance the interest asserted. The final part of the test provides that the regulation must not be more extensive than is necessary to serve the substantial Government interest. This last prong of the test formerly provided that the regulation must be the least restrictive means possible to serve the governmental interest but has now been refined to provide that there must be a reasonable fit between the regulation and the interest served.

In a recent case in the Federal Sixth Circuit Court of Appeals in Cincinnati, the Court held that the benefits of regulation by the Government must outweigh the burden placed on commercial speech

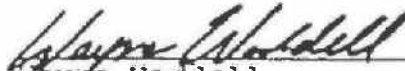
Memo to Isabel Yates
July 20, 1993
Page 2

by the regulation and in a close case, the Government is not given the benefit of the doubt concerning the validity of the regulation.

Of particular note is the case cited in Tom's memorandum styled Wisconsin Action Coalition v. City of Kenosha in which a Federal Appeals Court invalidated an ordinance prohibiting door-to-door solicitation from 8 p.m. to 8 a.m. The Court held that although the ordinance was designed to protect "privacy and peaceful enjoyment of the home...", the city did not present any evidence at all that the ordinance would further the city's legitimate interest in protecting privacy and peaceful enjoyment of the home." The Court noted that less restrictive means were available, including trespass laws and posting of signs by residents, and the city had not shown that these measures would be ineffective nor that an 8 p.m. cutoff was necessary. Although this case was decided before the "reasonable fit" test was developed, the factual situation of that case is similar to that outlined in your letter and raises significant doubts about the validity of meaningful restrictions on after-dark door-to-door solicitations in Lexington.

As outlined in our discussion and the enclosed memorandum, any local ordinance limiting hours of solicitation door-to-door would be highly subject to court challenge on a First Amendment basis due to existing case law and particularly in light of the absence of evidence that such solicitations present a significant problem to the community which can only be reasonably addressed by significant time limitations.

We remain available if you need further information or assistance regarding this matter.


Wayne Waddell
Corporate Counsel

WW/sce\231.

cc: Pam Miller, Mayor
Council Office
Joe Famularo, Commissioner of Public Safety

Lexington
Fayette
Urban
County
Government



DEPARTMENT OF LAW

TO: Wayne Waddell, Corporate Counsel
FROM: Tom Bondurant, Law Clerk
DATE: May 28, 1993
RE: Can LFUCG Regulate Door-to-Door
Salesmen after Dark?

The question presented here is whether the Urban County Government can limit the hours of commercial peddlers, canvassers, and solicitors so as to safeguard the comfort and privacy of Lexington residents. Based on an analysis of the constitutional issues involved, I have concluded that a carefully written ordinance, supported by sufficient empirical data and research, could accomplish these goals. However, the research necessary to justify enactment may be prohibitive at this time.

The Urban County Government's authority to regulate comes from its general police power. Naturally, the exercise of that power cannot infringe upon First Amendment rights and freedoms. For example, a city cannot issue an ordinance outlawing all door-to-door solicitation after 8 p.m., since many charitable organizations receive substantial amounts of money from such solicitations, and to limit such a major source of cash flow would be to limit the scope of such an organization's activities. Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1258 (7th Cir. 1985). Furthermore, charitable, political, and religious organizations are seen as providing vital services of information on topics of concern to the average citizen, and the courts have no desire to limit the free flow of information in a democratic society. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 96 S.Ct. 1817, 1826, 48 L.Ed.2d 346 (1976); New York Community Action Network v. Town of Hempstead, 601 F.Supp. 1066, 1068-69 (1984).

The Supreme Court has devised a four-part test for determining the constitutionality of a regulation affecting commercial speech. Central Hudson Gas & Electric Corp. v. Public Service Com'n of New York, 447 U.S. 547, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980). First, the expression must "concern lawful activity and not be

Memo to Wayne Waddell
 May 28, 1993
 Page 2

misleading" in order to be protected by the First Amendment. 100 S.Ct. at 2351. Second, the regulation must seek to preserve a substantial government interest; and third, it must directly advance that asserted interest. Finally, the regulation must not be more extensive than is necessary to serve that interest. Id.

This last part of the Central Hudson test had been construed as meaning that the government must resort to the least restrictive means possible, in order to give commercial speech a high level of protection. However, in Board of Trustees of State University of New York v. Fox, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), the least restrictive means standard for this part of the Central Hudson test was altered. Today, legislative bodies need only ensure that their regulations are reasonably proportioned to the interest served. 109 S.Ct. at 3034-35. This "reasonable fit" gives a legislature a wide berth to regulate commercial speech, since, as noted in Fox, no Supreme Court cases invalidating commercial speech regulation "involved a provision that went only marginally beyond what would have adequately served the governmental interest. To the contrary, almost all of the restrictions disallowed under Central Hudson's fourth prong have been substantially excessive, disregarding 'far less restrictive and more precise means.'" Id. at 3034. The Fox court also required the state to justify its restrictions and affirmatively establish a reasonable fit between interest protected and regulation. Id. at 3035. This change in standards "provide[d] the legislative and executive branches needed leeway in a field (commercial speech) 'traditionally subject to governmental regulation.'" Id. (citation omitted).

The Sixth Circuit applied the Central Hudson test most recently in Discovery Network Inc. v. City of Cincinnati, 946 F.2d 464 (6th Cir. 1991), when the City of Cincinnati sought to ban distribution of commercial handbills through public newsracks. Id. at 465. The ordinance prohibiting this distribution was invalidated, based in large part on the court's interpretation of Fox. The Discovery court saw Fox as requiring that the benefits of the regulation must outweigh the burden placed on commercial speech by the regulation. Id. at 468. Additionally, Discovery said that Fox did not give a legislative body "the benefit of the doubt in close cases," because to do so would create a "glaring inconsistency" with Fox's apparent rejection of the rational basis test. Id. at 469. Further, under the modified Central Hudson test, the ordinance was not a "reasonable fit" between "the ends asserted and the means chosen to advance them." Id. at 468. The ordinance, banning newsracks containing commercial handbills, was intended to advance public safety and aesthetic interests, and was excessive because it would eliminate a substantial part of the distributor's

Memo to Wayne Waddell
 May 28, 1993
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business while promoting "paltry gains in safety and beauty." Id. at 471. The Discovery court found that less restrictive means, relating to the design and maintenance of the newsracks, would serve the same end without imposing such a heavy burden on commercial speech. Id. at 472.

The Discovery court also found the ordinance unconstitutional on grounds that it was neither content-neutral nor a valid content-based restriction. Id. at 472-73. The ordinance was not content-neutral because it banned only commercial speech (and not non-commercial speech), id. at 472; and was not a valid content-based restriction, since under a least restrictive means test it placed a "substantially greater burden on commercial speech than [was] necessary to alleviate the city's aesthetic and safety concerns." Id. at 473.

However, an ordinance prohibiting door-to-door commercial solicitation between 8 p.m. and 9 a.m. could pass constitutional scrutiny. The first part of the Central Hudson/Fox test would be satisfied, because nocturnal door-to-door commercial solicitation is an expression which concerns lawful activity and is not misleading. The protection of citizens' safety and comfort in their homes is a substantial governmental interest, thereby fulfilling the second part. Hynes v. Mayor and Council of Borough of Oradell, 425 U.S. 610, 96 S.Ct. 1755, 1759-60, 48 L.Ed.2d 243 (1976). Prohibiting nocturnal door-to-door commercial solicitation would directly advance that interest, so the third requirement is met. Finally, restricting only commercial door-to-door solicitation by (effectively) a few hours of the evening and early morning seems to be a reasonable fit to protect the interests advanced. This is not a total ban on all forms of commercial solicitation. Nothing prohibits door-to-door solicitation before 8 p.m. or after 9 a.m., and nothing prevents an enterprising salesman from using the hours affected by the ordinance to contact prospective customers through other channels, such as the telephone or the mails. Thus, the burden imposed on commercial solicitation is slight, since there is no evidence that commercial door-to-door solicitation produces a substantial amount of income when done during the restricted hours. Of course, since this ordinance would only affect commercial speech, it would not be considered content-neutral by the Sixth Circuit. However, since the ordinance would impose comparatively light restrictions on commercial speech, it could pass the least restrictive means test and subsequently be recognized as a valid content-based restriction.

Of course, the city must show that commercial solicitation fosters evils not preventable by less restrictive means. In Wisconsin Action Coalition v. City of Kenosha, supra, the Seventh

Memo to Wayne Waddell
May 28, 1993
Page 4

Circuit invalidated an ordinance prohibiting door-to-door solicitation of contributions from 8 p.m. to 8 a.m. In so doing, it noted that although the ordinance was designed to protect "privacy and peaceful enjoyment of the home ...", the City did not present any evidence at all that the Ordinance would further the City's legitimate interests in protecting privacy and peaceful enjoyment of the home." Id. at 1257. The court explained that less restrictive means were available, including trespass laws and the posting of signs by residents, and the City had neither shown that these measures would be ineffective nor put on evidence demonstrating that an 8 p.m. cutoff time was necessary. Id.

Wisconsin Action Coalition was decided before the "reasonable fit" test came into being, so a similar situation might produce a different result today. However, it seems likely that, even under a more relaxed standard, LFUCG would have to prove the reasonableness of its ordinance. This would undoubtedly entail a significant amount of study and research into the area of nocturnal door-to-door solicitation, just to amass enough data to make the ordinance defensible in court. Therefore, it is my conclusion that an ordinance regulating nocturnal door-to-door solicitation is possible, but may not be entirely feasible, due to the possible costs involved in its justification.



Tom Bondurant
Law Clerk

TB/sce\2.

367.510 "Solicitor" defined.

As used in KRS 367.513 to 367.530 unless the context requires otherwise, "solicitor" means any person engaged in the business of soliciting orders for magazines, periodicals, encyclopedias, books, Bibles, or other printed matter or material on a subscription basis and payable on installments or on a cash basis or by contract or note, the delivery of which magazines, periodicals, encyclopedias, books, Bibles, or other printed material is contingent upon a future event, such as a down payment or one (1) or more installment payments, in any county in this state.

Effective: July 1, 1974

History: Amended 1974 Ky. Acts ch. 281, sec. 1, effective July 1, 1974. -- Created 1972 Ky. Acts ch. 55, sec. 1.

**367.513 Registration of solicitor of subscription sales of printed material --
Information required.**

Beginning July 1, 1974, every solicitor shall register annually with the county clerk of the county in which such solicitations are to occur and shall furnish to the county clerk the following information:

- (1) Whether solicitations shall be made in person or by telephone, and if made in person shall give an adequate description, including state of issue and license number, of any motor vehicle to be used in soliciting sales of printed material, or the telephone number from which telephone solicitations shall be made;
- (2) His name and Social Security number;
- (3) The mailing address and telephone number of his permanent residence; and
- (4) The name, address and telephone number of the company or organization he represents, if any.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 498, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 281, sec. 2, effective July 1, 1974.

367.515 Registration fee -- Display of registration receipt -- Exceptions.

- (1) Upon registration, every solicitor shall pay the county clerk a fee pursuant to KRS 64.012, and the county clerk shall issue the solicitor a numbered receipt to be effective for a period of one (1) year from the date of registration.
- (2) Prior to actual solicitation, the solicitor shall display to the potential purchaser the registration receipt issued by the county clerk if soliciting in person or cite to the potential purchaser the number of the registration receipt if soliciting by telephone.
- (3) The provisions of KRS 367.513 to 367.530 shall not apply to minors soliciting orders for articles mentioned in KRS 367.510 when such sales are made for the sole purpose of obtaining funds for a school band, club or other organization and such sales are approved in writing by the superintendent of the school system at which the minors are students. The written approval of the superintendent shall identify the product or products being sold, the solicitors to be involved and the duration of sales and shall be filed with the county clerk.

Effective: January 1, 2007

History: Amended 2006 Ky. Acts ch. 255, sec. 31, effective January 1, 2007. -- Amended 1978 Ky. Acts ch. 384, sec. 499, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 281, sec. 3, effective July 1, 1974.

367.520 Voidable contracts for sale of printed material.

All orders or contracts for magazines, periodicals, encyclopedias, books, Bibles, or other printed matter or material shall be void and unenforceable at the option of the purchaser if the person or persons soliciting such order or contract is in violation of the provisions of KRS 367.513 and 367.515.

Effective: July 1, 1974

History: Amended 1974 Ky. Acts ch. 281, sec. 4, effective July 1, 1974. -- Created 1972 Ky. Acts ch. 55, sec. 2.

367.530 Permanent registration books maintained.

All county clerks in the Commonwealth shall maintain a book or other similar record on a permanent basis containing the registrations and other information required to be filed under KRS 367.513. Said book shall be a public record.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 500, effective June 17, 1978. --
Amended 1974 Ky. Acts ch. 281, sec. 5, effective July 1, 1974. -- Created 1972 Ky.
Acts ch. 55, sec. 3.

367.540 Statement of magazine subscription date.

All magazines excluding newspapers mailed into and received in Kentucky shall have included on the label affixed to the magazine or its mailing wrapper the expiration date of the subscriber's subscription written so as to be understandable to an average subscriber.

History: Created 1972 Ky. Acts ch. 55, sec. 4.

ORDINANCE _____

AN ORDINANCE AMENDING SECTION 4-19 OF THE CODE OF ORDINANCES, RELATING TO DOGS RUNNING AT LARGE, TO PROHIBIT THE CHAINING OR TETHERING OF AN UNATTENDED DOG; PROVIDING EXCEPTIONS; PROVIDING REQUIREMENTS FOR USE OF A CHAIN OR TETHER; AND PROVIDING A PENALTY FOR VIOLATION.

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

Section 1 – That Section 4-19(b) of the Lexington-Fayette Urban County

Government Code of Ordinances be and hereby is amended to read as follows:

- (b) (i) Dogs shall be confined behind a fence or within an enclosed area ~~[or otherwise securely restrained]~~ at all times while on the owner's or harborer's property. A dog may be unconfined ~~[or unrestrained]~~ while on the owner's or harborer's property where the dog is in the company of the owner or harborer and the dog is under the owner's or harborer's direct control and supervision.
- (ii) A person, including an owner or harborer, may not restrain a dog with a chain or tether unless the person is holding the chain or tether or the person remains with the dog. This prohibition does not apply to a temporary restraint during a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity. This prohibition also does not apply when required to protect the safety or welfare of a person or the dog, if the person remains with the dog throughout the period of restraint. A person restraining a dog with a chain or tether shall attach the chain or tether to a properly fitting collar or harness worn by the dog. A person may not wrap a chain or tether directly around a dog's neck. A person may not restrain a dog with a chain or tether that weighs more than 1/18 of the dog's body weight. A chain or tether used to restrain a dog must, by design and placement, be unlikely to become entangled.

Section 2 – That Section 4-19(e) of the Lexington-Fayette Urban County

Government Code of Ordinances be and hereby is amended to read as follows:

- (e) The owner or harborer of any dog found running at large or improperly chained or tethered in violation of this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for a first offense, not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for a second offense during a thirty-six-month period, not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for a third offense during a thirty-six-month period, and not less than five hundred dollars (\$500.00) for

a fourth and each subsequent offense during a thirty-six-month period.

Section 3 – That this Ordinance shall become effective upon its date of passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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Summary of Dog Tethering Sub Committee January 22, 2009

The meeting was held from 4:00 PM to 5:45 PM on January 22, 2009 in the 5th floor conference room. Councilmember's Beard and Blues were present on the committee. Councilmember Crosbie was out of town. Also present were Keith Horn of the Law Department, Rick Curtis of Public Safety and Allison Hallett for Councilmember Crosbie from the L.F.U.C.G... There were also members of SOAR (Speak Out and Rescue) Kentucky; representatives of the Lexington Humane Society, employees of the U.S. Postal Service, other citizens and Councilmember Ellinger.

Keith Horn discussed how he used Austin Texas ordinance to prepare his initial draft. Mary Ann Fugate (SOAR) introduced that SOAR would like the ordinance to address more than just tethering. Susan Malcomb (Lexington Humane Society) cautioned that we need to be careful of what the committee addressed. The opinion was shared by Councilmember's Beard and Blues. Keith Horn advised if the committee looked at a broader ordinance the committee may want to go back to the Services Committee and request that. There was further discussion from all parties. Councilmember Blues then stated that the committee needed to answer two questions: 1) Does the ordinance want to be a complete ban and 2) If not a complete ban – what exceptions and how do we define accompany in the ordinance.

On a motion from Councilmember Blues the subcommittee voted unanimously to only address Anti Tethering in the Ordinance.

There was further discussion. The members of SOAR volunteered to arrange someone from Louisville Animal Control to come and speak about how their Dog Tethering ordinance has worked. SOAR members also offered to send additional local and state laws on this issue.

All present agreed that someone with the County Attorneys office should attend the next meeting to speak on prosecuting offenders of this ordinance if it is enacted and their opinion.

The committee then instructed Keith Horn to prepare a draft ordinance that was not a total ban and defined accompany of the animal and bring it back to the next sub committee meeting.

The next meeting was scheduled for Thursday February 12th with a time to be determined so the Lexington Humane Society could attend. **The next meeting is now scheduled for Thursday February 12th at 3:00 PM.**

The meeting was adjourned at 5:45 PM.

Dog Tethering Sub Committee Summary of February 12, 2009 Meeting

The meeting was very well attended. Councilmember's Beard, Blues, Crosbie and Lawless were at the meeting. There were several members of SOAR, a representative of the US Postal Service, several members of the Lexington Humane Society, Pam Rogers of the Humane Society of America, Dr. Gilles Meloche of the Louisville Metro Animal Services, Lee Turpin of the Fayette County Attorney's office, L.F.U.C.G. staff and other citizens.

Councilmember Beard restated that this subcommittee was only looking at Dog Tethering and not outdoor shelter guidelines. He stated that he would be glad to look at that issue in the future, but not at this time. He also stated that House Bill 137 if passed by the state would address the issue of outdoor shelter. Councilmember Crosbie agreed.

Dr. Meloche discussed Louisville's dog tethering ordinance and how it was a civil charge and not a criminal charge. Discussion followed this, with the county attorney and Lexington Animal Control and most of the others who spoke in favor of this type of system. Keith Horn said it may not be easy to form a hearing board and may take some time.

The subcommittee voted unanimously (4-0) to remove the wording in the draft ordinance that pertained to where the dog could be tethered as long as it was visible to the home and someone was home. A person must be with the dog if it is on a chain or tether.

With the new wording Councilmember Lawless wanted to make sure that well meaning and caring dog owners were not penalized. Animal control stated that the ordinance could give them the flexibility to determine if the violation should be written up or not. Councilmember Crosbie did not want the ordinance to be something that could be used by a neighbor to be vindictive.

After further discussion, Councilmember Lawless made a motion to have staff look into making this ordinance a civil matter and having a administrative hearing board hear appeals. It passed (4-0).

The meeting was adjourned.

ARTICLE I. IN GENERAL**Sec. 16-1. Definitions.**

(a) With relation to article II of this chapter:

(1) *Apartment complex, townhouse complex or condominium complex* shall mean a group of two (2) or more individual apartment, townhouse or condominium buildings constructed on one (1) taxable parcel of land and containing seven (7) or more individual units.

(2) *Approved landscape waste containers* shall mean biodegradable paper bags or polyethylene containers on wheels provided by the urban county government and intended to hold both woody and nonwoody landscape waste, or polyethylene or metal containers up to thirty (30) gallons, with lids, that are labeled "Yard Waste Only".

(3) *Ashes* shall mean the residue from the burning of wood, coal, coke and other combustible materials in homes, stores, institutions and small industrial establishments for the purpose of heating, cooking and disposing of waste combustible material. Cinders that are produced in large quantities at steam-generating plants are not included within the meaning of the term.

(4) *Building rubbish* shall mean the waste material resulting from the construction, remodeling, repair and demolition operations on commercial buildings, houses and other structures.

(5) *Director, division of solid waste* shall mean the director of the division of solid waste of the urban county government or his authorized deputy, agent or representative.

(6) *Dumpster* shall mean a metal tank designed or intended to be mechanically dumped into a packer-type garbage truck.

(7) *Garbage* shall mean animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods, paper and other kitchen type wastes generated from normal household activities. It is composed largely of putrescible organic matter and its natural moisture content. It includes a minimum amount of free liquids. Garbage originates primarily in home kitchens, and also may originate in stores, markets, restaurants, hotels and other places where food is stored, prepared or served.

(8) *Hazardous waste* shall mean ammunition, explosives, pathological waste, pesticides, herbicides, propane tanks, toxic industrial waste, radioactive waste and other toxic materials which are harmful to public waste.

(9) *Kitchen facilities* shall mean equipment arranged in a room or some other space in a structure which facilitates the preparation of food including, but not limited to, a combination of two (2) or more of the following--a range, microwave oven, dishwasher, kitchen sink or refrigerator.

(10) *Nonwoody landscape waste* shall mean grass clippings, leaves, garden vegetation, weeds and twigs (pencil thin), free of other debris or refuse.

(11) *Recyclable materials* may include, but is not limited to various grades of paper, aluminum and tin cans, glass and plastics.

(12) *Roll cart container* shall mean a large, durable polyethylene refuse container on wheels, complete with attached lid. Roll cart containers are designed to be rolled to the curb by residents or proprietors. Carts are designed to be dumped automatically by refuse vehicles. Carts are designed to hold both garbage and trash. Carts are provided by the urban county government and remain the property of the urban county

government.

(13) *Roll cart container equivalent* shall mean any regularly recurring volume of garbage and/or trash, up to a ninety (90) gallon capacity, which is collected by the urban county government but not contained in a roll cart container or dumpster.

(14) *Shall* is mandatory; *may* is permissive.

(15) *Special handling wastes* shall mean wastes which cannot be properly or safely handled by a packer-type garbage truck (front or rear loading) without resulting in damage to government equipment. This waste shall include but is not limited to tires on rims, wooden pallets, lumber, large engine parts, large furniture, large scrap metal and shavings, bricks, building rubbish, concrete blocks, commercial stoves, excavated earth, food processing waste, metal drums, large wire bindings, heavy packing material, boiler house cinders, sewage, process sludge, liquids and hazardous or toxic materials of any sort.

(16) *Townhouse or condominium* shall mean a single-family residence sharing a common wall with one (1) or more single-family residences.

(17) *Trash* shall mean a variety of both combustible and noncombustible solid waste from materials from homes, stores and institutions.

(18) *Woody landscape waste* shall mean tree limbs or trunks not more than six (6) inches in diameter.

(b) With relation to article III of this chapter:

(1) *Access road* means a road designed and constructed so that traffic will flow smoothly and will not be interrupted by ordinary inclement weather.

(2) *Applicant* means any person making application for a permit to operate a landfill.

(3) *Approved, authorized or designated landscape waste containers* shall mean biodegradable paper bags with the official seal of the urban county government.

(4) *Construction permit* means a permit for:

(i) A landfill not previously permitted;

(ii) A permitted landfill which seeks substantial modifications in the scope of its permitted activities; and

(iii) A landfill whose permit has lapsed and has not been renewed within sixty (60) days.

(5) *Department of health* shall mean the Lexington-Fayette County Health Department or its successor.

(6) *Hazardous waste* shall mean explosives, pathological waste, pesticides, herbicides, toxic industrial waste, radioactive waste and other toxic materials which are harmful to public waste.

(7) *Junked motor vehicle* shall mean one that does not have lawfully affixed thereto both an unexpired license plate and a current motor vehicle safety certificate and the condition of the vehicle is wrecked, dismantled, inoperative, abandoned or discarded upon any public or private property, excepting those at lawfully licensed and properly operating junkyards.

(8) *Landfill* means a solid waste disposal site or facility.

(9) *Nonwoody landscape waste* shall mean grass clippings, leaves, garden vegetation, weeds and twigs (pencil thin), free of other debris or refuse.

(10) *Open burning* means any fire wherein the production of combustion is emitted directly into the outdoor atmosphere and is not directed thereto through a stack or

chimney, incinerator or other similar device.

(11) *Operator* means any person responsible for the construction and/or operation of the landfill.

(12) *Permit* means permission, in whatever form, by the commissioner of public works and the department of health.

(13) *Person* means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm or other entity whatsoever.

(14) *Plan* means the detailed plans and specifications for the disposal site or facility, which shall include all material, description and information set forth in the application for permit and upon which said permit was approved by the department of health and the commissioner of public works.

(15) *Putrescible* means organic solid waste subject to decomposition by bacteria, fungi and oxidation, except trees, brush and the like not requiring daily cover.

(16) *Recyclable materials* may include but is not limited to various grades of paper, aluminum and tin cans, glass and plastics.

(17) *Refuse* means all nonputrescible waste.

(18) *Salvage* means the controlled removal of reusable materials.

(19) *Sanitary landfill* means a landfill at which putrescible and other solid waste may be disposed pursuant to a method of disposing of said waste on land without creating nuisances or hazards to public health or safety, by utilizing the principles of engineering to confine the refuse to the smallest practicable volume and to cover it with a layer of earth at the conclusion of each day's operation, or at such more frequent intervals as may be necessary.

(20) *Scavenging* means the manual sorting of refuse either in the trucks or at the place of the fill, or in unconfined truck discharge areas by individuals not associated with the landfill operation.

(21) *Solid waste* means all putrescible or nonputrescible refuse in solid form. Solid waste includes but is not limited to garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid commercial and industrial wastes including explosives, pathological wastes and radioactive materials.

(22) *Solid waste collector* shall mean any person who collects or transports solid waste.

(23) *Solid waste disposal site or facility* means any place at which solid waste is disposed of by incineration, land filling or any other approved method.

(24) *Spoiled food* shall mean any food which has been removed from sale by the United States Department of Agriculture, Food and Drug Administration, Kentucky State Department of Health, Lexington-Fayette County Department of Health, or any other regulatory agency having jurisdiction in judging food unfit for consumption.

(25) *Vector* shall mean any insect or animal which transmits diseases from one person or animal to another.

(26) *Woody landscape waste* shall mean tree limbs or trunks not more than six (6) inches in diameter.

(c) With relation to articles V and VI of this chapter:

(1) *Act or the Act* shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) *Approval authority* shall mean the director of the division of water in an NPDES

state with an approved state pretreatment program and the administrator of the EPA in a non-NPDES state of NPDES state without an approved state pretreatment program. 28

(3) *ASTM* shall mean the American Society for Testing and Materials.

(4) *Authorized representative of industrial user.* An authorized representative of an industrial user may be:

(1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

(2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;

(3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

(5) *BOD (denoting biochemical oxygen demand)* shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in parts per million by weight.

(6) *Building drain* shall mean the part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner surface of the building wall.

(7) *Building sewer* shall mean the extension from the building drain to the point of connection with the public sewer or other place of disposal.

(8) *Categorical standards* shall mean National Categorical Pretreatment Standards or pretreatment standard.

(9) *Categorical user* shall be defined by the industrial categories described in title 40 of the Code of Federal Regulations (40 CFR).

(10) *City* shall mean Lexington-Fayette Urban County Government.

(11) *Combined sewer* shall mean a sewer receiving both surface runoff and waste water.

(12) *Commissioner of public works* shall mean the commissioner of public works of the urban county government or his authorized deputy, agent or representative.

(13) *Contractor.* The person having the contract for the work in question.

(14) *Cooling water* shall mean the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollution added is heat.

(15) *Control authority.* The term "control authority" shall refer to the "approval authority," defined hereinabove, or the superintendent if the city has an approved pretreatment program under the provisions of 40 CFR 403.11.

(16) *Director, division of sanitary sewers* shall mean the person designated by the city to supervise the operation of the publicly-owned treatment works and who is charged with certain duties and responsibilities by this article, or his duly authorized representative.

(17) *Direct discharge* shall mean the discharge of treated or untreated waste water directly to the waters of the state.

(18) *Discharger* shall mean any person that discharges or causes a discharge to a public sewer.

(19) *Domestic waste water* shall mean the water-carried wastes produced from

noncommercial or nonindustrial activities and which result from normal human living processes. 29

(20) *Effluent* shall mean the liquid overflow of any facility designed to treat, convey or restrain waste water.

(21) *Engineering manuals*. That set of seven (7) documents used to provide the standards for the design, review, construction and inspection of infrastructure in Lexington-Fayette County. These are also known as the division of engineering manuals or as the manuals. The division of engineering manuals consist of the procedures manual for infrastructure development (also known as the procedures manual), the construction inspection manual (also known as the inspection manual), geotechnical manual, the roadway manual, structures manual, stormwater manual, and the sanitary sewer and pumping station manual (also known as the sewer manual). These manuals, including the definitions therein, are hereby adopted and incorporated into this Code by reference. From time to time, the urban county government may revise, modify, or amend the manuals in conformance with the procedures established in the procedures manual. When any manual is cited by this Code, the current edition, latest revision shall be referenced.

(22) *Environmental Protection Agency or EPA* shall mean the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

(23) *Fats, oil and grease* shall mean organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All shall be referred to herein as "grease".

(24) *Grab sample* shall mean the sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

(25) *Garbage* shall mean animal and vegetable waste resulting from the handling, preparation, cooking and service of food in home kitchens, stores, markets, restaurants, motels, hotels and other places where food is stored, prepared or served. Specifically excluded are food-processing wastes from canneries, slaughterhouses, packing plants and similar industries.

(26) *Grease trap or interceptor* is a device for separating and retaining waterborne greases and grease complexes prior to the wastewater exiting the interceptor and entering the sanitary sewer collection system.

(27) *Holding tank waste* shall mean any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

(28) *Indirect discharge* shall mean the discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the Act (33 U.S.C. 1317) into the POTW (including holding tank waste discharge into the system).

(29) *Industrial waste water* shall mean all water-carried wastes and waste water of the community excluding domestic waste water and uncontaminated water, and shall include all waste water from any producing, manufacturing, processing, institutional, commercial, agricultural or other operation where the waste water discharged includes waste of nonhuman origin.

Industrial user shall mean a source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to section 402 of the Act (33 U.S.C. 1342).

(30) *Interference* shall mean the inhibition or disruption of the POTW treatment

processes or operations which contribute to a violation of any requirement of the city's NPDES or KPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act, (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to title IV of SWDA) applicable to the method of disposal or use employed by the POTW. 30

(31) *Main line* means a pipe which is eight (8) inches or greater in diameter designed and used to transport sanitary sewage, owned by the urban county government and contained in the public right-of-way or an approved, recorded easement.

(32) *National Categorical Pretreatment Standard or pretreatment standard* shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to a specific category of industrial users.

(33) *National Prohibitive Discharge Standard or prohibitive discharge standard* shall mean any regulation developed under the authority of section 307(b) of the Act and 40 CFR section 403.5.

(34) *Natural outlet* shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

(35) *National Pollutant Discharge Elimination System or NPDES permit* shall mean a permit issued pursuant to section 402 of the Act (33 U.S.C. 1342).

(36) *New source* means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of federal pretreatment standards under section 307(c) provided that:

(1) The building, structure or facility or installation is constructed at a site at which no other source is located; or

(2) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) The production or waste water generating processes are substantially independent of an existing source at the same time.

(37) *Night soil house* shall mean that designated area of the urban county government sewage system located on the Old Frankfort Pike. The night soil house is to be considered as part of the sanitary sewage system and is to be used primarily for the dumping of wastes from residential septic tanks.

(38) *Ordinance* shall mean, unless otherwise specified, this chapter.

(39) *Person* shall mean any individual, partnership, committee, association, corporation, public agency, firm, company, and any other organization or group of persons, public or private.

(40) *pH* shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(41) *Pollution* shall mean the manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

Pollutant shall mean any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(42) *Pretreatment or treatment* shall mean the reduction of the amount of pollutants,

the elimination of pollutants, or the alteration of the nature of properties in waste water to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological process, or process changes by other means, except as prohibited by 40 CFR section 403.6(d). 31

(43) *Pretreatment requirements* shall mean any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an industrial user.

(44) *Properly shredded garbage* shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any direction.

(45) *Public sewer* shall mean a sewer controlled by the urban county government to which owners of abutting properties may have access. In general, the public sewer shall include the main sewer in the street and the service branch to the curb or property line, or to a main sewer upon private property and any such sewers which are connected with the sewerage system of the urban county government.

(46) *Publicly-owned treatment works (POTW)* shall mean a treatment works as defined by section 212 of the Act (33 U.S.C. 1292) which is owned in this instance by the city. This definition includes any sewers that convey waste water to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, "POTW" shall also include any sewers that convey waste waters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

(47) *Sanitary sewer* shall mean a sewer which carries domestic and/or industrial waste water and to which storm water, surface water and groundwater are not intentionally admitted.

(48) *Sewerage* shall mean waste water.

(49) *Sewerage system* shall mean all facilities for collecting and pumping waste water.

(50) *Sewerage works* shall mean all facilities for collecting, pumping, treating and disposing of waste water.

(51) *Sewer* shall mean a pipe or conduit for carrying waste water.

(52) *Shall* is mandatory; *may* is permissive.

(53) *Significant industrial user* shall mean all categorical industrial users and any noncategorical industrial user that:

(1) Discharges twenty-five thousand (25,000) gallons per day or more of process waste water ("process waste water" excludes sanitary, noncontract, cooling and boiler blowdown waste waters); or

(2) Contributes to a process water stream which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, TSS, etc.) capacity of the treatment plant; or

(3) Has a reasonable potential, in the opinion of the control or approval authority, to adversely affect the POTW treatment plant (inhibition, pass-through of pollutants, sludge contamination, or endangerment of POTW workers).

(54) *Significant violation* means a violation that meets one (1) or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all of the measurements taken during a

six-month period prior to the end of each calendar quarter exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(b) Technical review criteria (TRC)--Violations defined here as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period prior to the end of each calendar quarter equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment effluent limit (daily maximum or longer term average) that the director, division of sanitary sewers, determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a waste water discharge permit or other order issued hereunder for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations which the director, division of sanitary sewers, determines will adversely affect the operation or implementation of the local pre-treatment program.

(55) *Slug* shall mean any discharge of water or waste which in concentration of any given constituent or in quantity or flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average 24-hour concentration or flow during normal operation.

(56) *Standard drawings*: The current edition, latest revision of the standard drawings which are promulgated by the division of engineering to provide design standards for public (or when appropriate, private) infrastructure.

(57) *Standard methods* shall mean the current edition of "Standard Methods for the Examination of Water and Wastewater" and as published by the American Public Health Association.

(58) *State* shall mean the Commonwealth of Kentucky, or an authorized agency thereof having regulatory authority.

(59) *Storm sewer or storm drain* shall mean a sewer which carries storm and surface water and drainage, but excludes domestic and industrial waste waters, other than unpolluted cooling water.

(60) *Suspended solids* shall mean the solids that either float on the surface of or are in suspension in water, waste water or other liquids and which are removable by laboratory filtering.

(61) *Toxic pollutant* shall mean any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environment Protection Agency under the provisions of CWA 307(a) or other acts.

(62) *Urban county engineer* shall mean the director of the division of engineering of the urban county government or his authorized deputy, agent or representative.

(63) *User* shall mean any person who contributes, causes or permits the contribution of waste water into the city's POTW.

(64) *Waste water* shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water and storm water as may be present.

(65) *Waste water treatment plan* shall mean any arrangement of devices and structures used for treating waste water.

(66) *Watercourse* shall mean a channel, ditch depression or similar feature in which water occurs, either continuously or intermittently.

(67) *Waters of the state* shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

(d) With relation to article VII of this chapter:

(1) *Annual improvement assessment* means the share of each owner of benefitted property of the annual cost of the sanitary sewer improvement bond issued, or the annual share of an owner required to connect his property to an existing sanitary sewer.

(2) *Assets test* means that any person having assets in excess of either:

(i) Five thousand dollars (\$5,000.00) in liquid assets such as bank accounts, savings, certificates of deposits, stocks, bonds, etc.; or

(ii) Five thousand dollars (\$5,000.00) in equity in assessed value of nonhomestead property;

shall be ineligible to participate in the sanitary sewer financial assistance program, notwithstanding that he meets the income level qualifications set forth in this section. However, motor vehicles for personal use, household furnishings and the benefitted property itself, as well as the buildings located thereon which are occupied by the person seeking the qualify as a home for himself and his family shall not be included in computing assets.

(3) *Benefitted property* shall have the same meaning as the term "benefitted property" in the statute pursuant to which the sanitary sewer improvement is financed. In the case of connection to an existing public sanitary sewer, "benefitted property" shall mean that property required to be connected to such existing public sewer.

(4) *Connection fee* means the cost of installing a service lateral from the main sanitary sewer line to the residence.

(5) *Income* means total cash receipts to the property owner and spouse after taxes from all sources. These sources include money, wages and salaries after any deductions required by law, but not including food or rent in lieu of wages. They include receipts from self-employment or from one's own farm or business after deductions for business or farm expenses.

They include regular payments from public assistance, social security, unemployment and workmen's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility

purposes income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is noncash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing. 34

(6) *Person* means a natural person.

(7) *Program* means the sanitary sewer financial assistance programs.

(8) *Project* means any sanitary sewer improvement project of the urban county government, its agency or instrumentality.

(9) *Qualified property owner* means any person owning benefitted property who meets the assets test and has an annual income equal to or less than one hundred twenty-five (125) percent of the poverty income levels set forth in the poverty guidelines chart established by the Community Service Administration, annually published in the Federal Register, in effect at the time of application. However, the income itself shall be measured by the definition contained in paragraph (5) of this subsection. Any person having a beneficial interest in benefitted property may qualify for the sanitary sewer financial assistance program so long as and only on condition that the owner of the property executed the required mortgages and promissory notes.

(e) With relation to article VIII of this chapter:

(1) *Commissioner* means the commissioner of public works of the urban county government or the authorized deputy, agent or representative of said commissioner.

(2) *Pollution* means the contamination or other alteration of any waters, physical, chemical or biological properties, including change in temperature, taste, color, turbidity, or odor of such waters or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate and official uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(3) *Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

(4) *Urban county government storm sewer system* means a conveyance or system of conveyances, including, but not limited to, roads with drainage systems, urban county streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains which are: (i) owned or operated by the urban county government; and (ii) designed or used for collecting or conveying storm water.

(5) *Person* shall mean any individual, partnership, committee, association, corporation, public agency, firm, company and any organization or group of persons, public or private.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 164-84, § 1, 9-20-84; Ord. No. 173-87, § 3, 7-16-87; Ord. No. 165-89, §§ 1, 2, 8-31-89; Ord. No. 251-89, § 3, 12-14-89; Ord. No. 286-90, § 1, 12-18-90; Ord. No. 234-91, § 1, 11-14-91; Ord. No. 122-93, § 1, 6-17-93; Ord. No. 268-95, § 3, 11-30-95; Ord. No. 43-97, §§ 1, 2, 3-20-97; Ord. No. 196-98, §§ 1-3, 7-2-98; Ord. No. 14-99, §§ 1, 2, 1-28-99; Ord. No. 148-2000, § 1, 6-1-00; Ord. No. 174-2001, §§ 4, 5, 7-5-01; Ord. No. 282-2003, § 1, 12-4-03)

Note: See the editor's note to § 12-4.

Sec. 16-6.1. Recycling at community activities on urban county government property.

(1) A Community Activity subject to these requirements is any event on urban county government property or using urban county government buildings which is reasonably expected

to be attended by three hundred (300) or more individuals in a twenty-four-hour period.

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(2) The agency or individual sponsoring the Community Activity shall designate one person, known as the Coordinator, to be responsible for implementation of these requirements.

(3) No later than thirty (30) days prior to the Community Activity, the Coordinator shall contact the Division of Waste Management and arrange to have the division deposit and collect containers for recyclable waste at the location of the Community Activity. The Coordinator shall be responsible for the arrangement of the containers for recyclable waste throughout the Community Activity. The Coordinator shall be responsible for educating others associated with the Community Activity about what and how to recycle, and encouraging persons associated with the Community Activity to recycle.

(4) Failure to contact the division as provided in subsection (3) may result in cancellation of the Community Activity.

(5) The division shall provide containers specifically designed to collect recyclable waste and the Coordinator for the Community Activity shall ensure that the recyclable waste containers are properly positioned and that the recyclable wastes and containers are returned to a central location/container to be collected by the division.

(6) All organizers of Community Activities are encouraged to require providers of goods and vendors at the Community Activity to package their items in locally reusable or recyclable material.

(7) The division shall provide all reasonable assistance to the Coordinator to plan for, organize and otherwise successfully collect and dispose of recyclable waste at the Community Activity.

(8) The Director of the division is authorized to promulgate regulations to carry out the purposes of this section.

(Ord. No. 134-2008, § 1, 6-12-08)

Sec. 16-2. Enforcement.

The commissioner of the department of public works is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the provisions of this chapter, including the following powers in addition to any other herein granted:

(1) To enter upon all properties within the urban county for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter.

(2) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter.

(3) To delegate any of his functions or powers under this chapter to such officers, agents and employees as he may designate.

(4) To promulgate regulations which may be necessary to carry out and effectuate the provisions of this chapter.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 164-84, § 1, 9-20-84; Ord. No. 251-89, § 4, 12-14-89)

ARTICLE II. REFUSE COLLECTION**Sec. 16-3. Roll cart container service.**

(a) The urban county government will provide a roll cart container to every residential property which is currently within the full urban service district or a partial district which provides for refuse collection. For multi-unit residential properties, the urban county government will, subject to the provisions of Code of Ordinances section 16-4(b), provide a roll cart container for each unit which contains kitchen facilities. Roll cart containers for recyclable materials will be provided to the above-noted properties upon request. Residents who have received a medical exemption from the roll cart collection by the urban county government may be provided a refuse collection container but will not be subject to ordinances regulating placement of roll cart containers or roll cart containers for recyclable materials at the curblane but will be subject to all other applicable ordinances.

(b) The urban county government will, subject to the provisions of code of ordinances section 16-4(b), provide a roll cart container or containers to office, commercial and industrial units, apartment complexes or other buildings in the urban county which are currently in the full urban service district or a partial district which provides for refuse collection.

(c) The urban county government may provide an additional roll cart for the separate collection of recyclable materials to any property receiving the roll cart container service.

(d) The commissioner of the department of public works and the director of the division of solid waste will determine the appropriateness and feasibility of roll cart container(s) at locations in the downtown collection area. If roll cart container(s) are not deemed feasible or appropriate at a given location, the commissioner or director shall designate appropriate containers for setout and collection at the location.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 286-90, § 2, 12-18-90; Ord. No. 43-97, § 3, 3-20-97; Ord. No. 14-99, § 3, 1-28-99; Ord. No. 112-2001, § 1, 5-24-01)

Sec. 16-3.1. Civil citations.

(a) All civil citations issued pursuant to this article shall be issued by the director, division of solid waste or his representative and shall contain:

- (1) The date and time of issuance;
- (2) The name and address of the person to whom the citation is issued;
- (3) The date and time the offense was committed;
- (4) The facts constituting the offense;
- (5) The section of the code of ordinances violated;
- (6) The name of the code enforcement officer issuing the citation;
- (7) The maximum civil fine that may be imposed for each violation;
- (8) The specific civil fine of less than the maximum that will be imposed if the person does not contest the citation;
- (9) The procedure for payment of the civil fine or contesting the citation; and
- (10) A statement that if the person fails to contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the board to

contest the citation and that the determination of the code enforcement officer that a violation was committed shall be final. 37

(b) After issuing a citation to an alleged violator, the code enforcement officer shall notify the environmental hearing board by delivering a copy of the citation to the administrative official designated by the board.

(Ord. No. 282-2003, § 2, 12-4-03)

Sec. 16-3.2. Violation; penalty.

(a) For any violation of article II of this section, other than a violation of section 16-10, the civil fines associated with the issuance of a citation are as follows:

(1) The civil fine imposed upon the issuance of the first citation within any twelve-month period shall be a maximum of one hundred dollars (\$100.00) but shall be fifty dollars (\$50.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(2) The civil fine imposed upon the issuance of the second citation of the same nature within any twelve-month period shall be a maximum of two hundred dollars (\$200.00) but shall be one hundred dollars (\$100.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(3) The civil fine imposed upon issuance of the third citation of the same nature within any twelve-month period shall be a maximum of three hundred fifty dollars (\$350.00) but shall be one hundred seventy-five dollars (\$175.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(4) The civil fine imposed upon issuance of the fourth or more citation of the same nature within any twelve-month period shall be a maximum of five hundred dollars (\$500.00) but shall be two hundred fifty dollars (\$250.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(b) For violation of section 16-10 the civil fines associated with the issuance of a citation are as follows:

(1) The civil fine imposed upon the issuance of the first citation within any twelve-month period shall be a maximum of twenty-five dollars (\$25.00) but shall be fifteen dollars (\$15.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(2) The civil fine imposed upon the issuance of the second citation of the same nature within any twelve-month period shall be a maximum of fifty dollars (\$50.00), but shall be thirty-five dollars (\$35.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5;

(3) The civil fine imposed upon issuance of the third or more citation of the same nature within any twelve-month period shall be a maximum of seventy-five dollars (\$75.00) but shall be fifty dollars (\$50.00) if the person committing the offense does not appeal the citation in accordance with section 16-16.5.

(Ord. No. 282-2003, § 3, 12-4-03)

Sec. 16-4. Dumpster container service.

(a) The urban county government will provide collection service for dumpster containers at any multifamily residential structure, office, commercial and industrial unit, or other building within the full urban services district or a partial urban services district which provides for refuse collection, upon request and subject to the approval of the commissioner of public works.

(b) Dumpster containers will be required to be furnished at the expense of the owner at the following locations:

- (1) Apartment buildings, townhouses or condominiums of seven (7) units or larger.
 - (2) All office, commercial and industrial units or other buildings, including apartment complexes, townhouse complexes and condominium complexes, which, as determined by the commissioner of public works, generate a sufficient amount of refuse to warrant the use of a dumpster (approximately eight (8) cubic yards per any collection day or three (3) or more roll cart containers of refuse normally).
 - (3) Exempt from this requirement are existing apartment buildings, office, commercial and industrial units or other buildings which the commissioner of public works determines either do not have sufficient space to properly locate a dumpster or have special circumstances which make the use of a dumpster at that location wholly impracticable. Any property owner aggrieved by a determination of the commissioner of public works may appeal to the environmental hearing board established in article IX. Existing properties which have sufficient space but do not have dumpster collection may be required to change type of service by the commissioners of public works within one hundred twenty (120) days of formal written notice.
 - (4) Where rollcart containers are permitted pursuant to exemption by the commissioner, the urban county government shall make a maximum of two (2) collections per week from each exempted establishment.
- (c) The urban county government may provide an additional dumpster collection service for the separate collection of recyclable materials to any property receiving dumpster collection service. Recycling dumpster containers must be furnished at the expense of the owner in accordance with subsection (b) above.
- (d) The director, division of solid waste shall have the authority to designate the location for collection with consideration for such factors as: convenience for customers; hazardous conditions such as cables, utility poles, equipment clearance, animals; and collection costs.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 286-90, § 3, 12-18-90; Ord. No. 97-2001, § 1, 5-3-01; Ord. No. 296-2004, § 1, 12-2-04)

Sec. 16-4.1. Dumpster screening requirements; requirements for obtaining permit; location and maintenance of dumpsters.

(a) All dumpsters shall be screened except when located in any B-4, I-1 or I-2 zone. Dumpsters in the B-4, I-1 and I-2 zones shall be screened when located within one hundred (100) feet of any zone except B-4, I-1 or I-2. Existing properties with dumpsters located in these zones and which are not screened may be required to be screened within one hundred twenty (120) days of formal written notice by the director of the division of solid waste. The screening requirements shall be as follows:

- (1) The dumpster area must be screened on three (3) sides using material consisting of stone, brick, concrete block, wood or a continuous planting of evergreens. Screens of stone, brick, concrete block or wood shall have eighty (80) percent opacity (80% solid); evergreen plantings shall be placed two (2) per side on three (3) sides and be six and one-half (6 1/2) feet tall and one and three-quarter (1 3/4) inches in diameter at installation. Whenever evergreens are used as screening material, they shall be promptly replaced if and when they should die.
- (2) The average height of screening material shall be one (1) foot more than the height of the dumpster but when walls or fences are used, shall not exceed eight (8) feet in height.
- (3) The opening for removal of the dumpster for collection must be a minimum of twelve

(12) feet in width (for each additional dumpster, add ten (10) feet) and when doors are provided, some means of retaining the door in an open position while servicing must be provided. 39

(4) A concrete pad large enough to support the dumpster and the front wheels of the dumpster collection vehicle may also be required where the existing foundation, as determined by the director of the division of solid waste, is not adequate to support the dumpster and the collection vehicle.

(b) No dumpster or screening as required above, regardless of whether collection service will be provided by the urban county government or by private hauler, shall be permanently placed or constructed upon any site without first obtaining a permit from the director of the division of solid waste. In order to obtain such permit, an application accompanied by a plat of the property on which the dumpster and screening is to be located, drawn to scale and showing the location of all structures, public rights-of-way, and the location of the proposed dumpster and all required screening, shall be submitted to the director of the division of solid waste. The plat shall contain a statement that it is a true and accurate depiction of the site shown thereon and be signed by the owner or person who has charge, care of control of the premises. A fee in the amount of twenty-five dollars (\$25.00) shall be paid to the director of the division of solid waste prior to issuance of any dumpster and screening permit.

(c) No dumpster shall be located closer than ten (10) feet to any abutting residential property line. No dumpster shall be located in such a manner that the unscreened side shall be visible from any public right-of-way. Whenever, in the opinion of the director of the division of solid waste, a dumpster and/or the screen cannot be located upon a particular side so as to conform with these requirements, or there are special circumstances which make the requirements wholly impracticable, the director may designate a location for the dumpster which in his discretion is the most accessible and aesthetically appropriate or make exemptions from the requirements as necessary. Any property owner aggrieved by the determination of the director of the division of solid waste may appeal to the environmental hearing board established in article IX.

(d) All dumpsters, regardless of whether collection service will be provided by the urban county government or by private hauler, shall be maintained in a safe and sanitary condition and shall be cleaned by the owner/occupant of the dumpster site as often as necessary to prevent the dumpster from becoming malodorous. Litter and debris shall not be allowed to accumulate around the dumpster, and all refuse shall be deposited in such manner as to prevent it from blowing out of the dumpster.

(e) No special handling waste, hazardous waste, medical waste, paints, solvents, flammable liquids or hot ashes shall be placed in any dumpster for which the urban county government provides collection service. The commissioner of public works, upon consultation with the director of the division of solid waste, is hereby authorized to promulgate further regulations regarding dumpsters in order to provide standards for the location and maintenance of not in conflict with this section.

(f) Any person who fails to perform the duties required of him by the provisions of this section or who shall cause a dumpster to be located, maintained or filled in violation of this section shall, for every offense not abated within forty-eight (48) hours following notice to the person responsible for payment of the solid waste disposal fee for the dumpster, be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and each day's continuance of any such violation shall be a separate offense, and the urban county government may choose to abate the condition in accordance with section 16-8. In lieu of the above fine, a civil citation may be issued in accordance with sections 16-3.1 and 16-3.2(a). In addition to the above remedies, where collection would pose a safety or health threat or may damage collection equipment, service may be suspended by the government when prohibited material or items are placed in the dumpster, until such time as the prohibited material is removed.

(Ord. No. 173-87, § 1, 7-16-87; Ord. No. 14-99, § 4, 1-28-99; Ord. No. 97-2001, §§ 2--4, 5-3-01; Ord. No. 282-2003, § 4, 12-4-03; Ord. No. 296-2004, § 2, 12-2-04)

Sec. 16-5. Special handling waste collection.

The urban county government does not collect special handling wastes or hazardous wastes. Residential units, office, commercial and industrial units and other buildings shall contract privately for the removal of special handling wastes and hazardous wastes.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 5, 1-28-99)

Sec. 16-6. Refuse collection procedures.

(a) It shall be the duty of owners, proprietors, occupants or persons in charge of every dwelling house, office, commercial and industrial unit or other building in the urban county to place or cause to be placed all garbage and trash accumulating on the premises in regulation roll cart containers provided by the urban county government. Exceptions include residents who have received a medical exemption, units having dumpster collection, residences or buildings where roll carts are not feasible for collection and those units serviced privately. The container provided by the government shall be rolled to the curb by residents, owners or occupants on their regularly scheduled collection day. Both garbage and trash may be placed in the roll cart container. No person shall block access to or cause access to be blocked to a roll cart container that has been placed for collection at the curb.

(b) It shall be the duty of owners, proprietors, occupants and persons in charge or control of, and using, any place or premises in the urban county fronting on a street, alley or other public right-of-way to maintain the portion of the street, alley or other public right-of-way adjacent to the place or premises in a condition free from solid waste. For the purposes of this section, the portion of a street, alley or other public right-of-way adjacent to a place or premises includes any walkway, trail, sidewalk, parkway, curb and gutter, and the travel lane portion of the roadway on the side of the street or alley adjoining the property.

(c) Anything left or placed within a three-foot radius of any refuse container shall be deemed as placed or left there for collection, and the urban county government and its employees shall not be liable for the removal thereof; however, improper preparation or placement of items for collection shall be subject to the abatement process set forth in section 16-8(d).

(d) The director, division of solid waste shall have the authority to designate the location for collection with consideration for such factors as: convenience for residents; hazardous conditions such as cables, utility poles, equipment clearance, animals; and collection costs.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 6, 1-28-99; Ord. No. 97-2001, § 5, 5-3-01; Ord. No. 296-2004, § 3, 12-2-04)

Sec. 16-7. Containers for ashes.

Ashes will be kept in a separate, metal container not less than five (5) gallons nor more than thirty (30) gallons in size. Ashes containing hot embers shall not be placed in containers for collection.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-8. Procedure for using roll cart containers.

(a) It will be the responsibility of the property owners and/or occupant(s) of said property to keep the roll cart container provided by the urban county government reasonably secure and in good condition. If the urban county government container needs replacement due to normal wear and tear or because of some manufacturer's defect, a new container will be provided or

repairs will be made at no charge. The urban county government will replace stolen or vandalized containers unless the urban county government determines that the property owner and/or occupant(s) clearly has been negligent in the care of his container. If so, the property owner and/or occupant(s) may be required to purchase replacement containers. 41

(b) The roll cart container may be filled to capacity as long as the lid can be closed and latched. The recommended weight capacity of two hundred (200) pounds shall not be exceeded. Within a cart, garbage and trash shall be contained in disposable plastic bags. The bags shall be leak proof, of sufficient strength to resist tearing under normal handling, and shall be securely tied. No special handling wastes, hazardous wastes, medical waste, bricks, dirt, engine blocks or other excessively heavy material, hot ashes, paints, solvents or flammable liquids shall be placed in the container. Any canine feces (dog excrement) placed in the container must be contained in a securely closed doubled plastic bag.

(c) All establishments that are exempt from using the urban county government roll cart container or establishments that use containers for occasional excess garbage and trash in addition to the one provided by the urban county government will comply with the following regulations. All containers and receptacles must have covers. Regulation garbage containers shall be watertight containers equipped with tight-fitting covers sufficient to keep out water, prevent disturbance by animals and entrance of insects. Containers shall be not less than five (5) nor more than thirty (30) gallons' capacity. All standard garbage containers shall be equipped with suitable handles by which they may be lifted. Tied plastic bags may be used for occasional excess trash placed at the curb.

(d) Material placed at the curb which does not meet the requirements set forth in this section or material which has not been properly prepared pursuant to section 16-9(a) or properly prepared and scheduled for special collection pursuant to section 16-14 shall, if not abated within the time period provided in the notice to abate, be subject to abatement by the urban county government with all costs for such abatement to be billed to the property owner pursuant to the procedures set forth in this article and the property owner shall further be subject to civil fines as set forth in this article.

(e) When refuse is not properly prepared in accordance with this section or section 16-9(a), or properly prepared and scheduled for special collection pursuant to section 16-14, it shall be deemed a nuisance pursuant to KRS 381.770, and a notice to abate shall be affixed to the front door of the residence or structure by the director, division of solid waste or his designee, listing the date and time the notice was issued and the defect to be cured before collection is continued and directing the abatement of the defect, either by proper preparation or removal of the refuse from the curb, within seven (7) days, unless such defect constitutes an immediate danger to the health and well being of the community, in which case the notice shall demand abatement within forty-eight (48) hours of the notice. The time period to abate shall commence upon attachment of the notice. A copy of this notice shall also be mailed, via regular mail, or transmitted by fax to the owner of the property as determined by reference to the records of the property valuation administrator, or to the owner's designee if the owner has filed notice of a designee pursuant to section 16-10(f). This notice shall further state that if the urban county government is required to abate the condition, the government will send a bill for the cost of the abatement, to include an administrative cost, to the property owner and that 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 abatement will be placed against the property. This notice shall further state that a civil fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) may be imposed if the violation continues or two (2) or more notices to abate have been issued to the same owner on the same property within any twelve-month period and that any civil fine so imposed will be in addition to the bill for the cost of abatement.

(f) If the violation is not abated following the expiration of the period of time to abate provided for in the notice, the urban county government may abate the condition and bill the property owner for the costs associated with such abatement, which shall include preparation and handling time, equipment expense, disposal fee, and an administrative fee of seventy-five dollars (\$75.00).

(g) If a property owner has previously been issued a notice to abate a condition on the property pursuant to subsection 16-8(e) in any twelve-month period, upon either the failure of the owner to timely abate the condition or the commission of another offense of the same nature in violation of this section involving that property the director, division of solid waste or his designee, is authorized, in addition to issuing any necessary notice to abate, to issue a citation containing the information specified in section 16-3.1. An additional citation is authorized to be issued for each further violation of the same nature occurring within in any twelve-month period, subject to any pending appeal of a previously issued citation. Citations, if issued, shall not preclude the government from abating the conditions and billing the property owner for the cost of abatement.

(h) The citation shall be served upon the property owner or his section 16-10(f) designee, by personal service or by fax transmission or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll or to the owner's designee by personal service or by regular mail or by fax transmission to the designated address.

(i) The urban county government shall have a lien against the property for its costs incurred in abating a nuisance condition pursuant to this article and any civil fines assessed for violations of this article, except those assessed pursuant to section 16-10(d). This lien shall be superior to and have priority over all other subsequent liens on the property except state, county, school board, and city taxes pursuant to KRS 65.8835 or KRS 381.770. 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 works or the citation officer, setting forth the property in question, the amount of the cost of abatement or civil fine, if any, the date of abatement, and that the notice provisions were complied with before abatement. The commissioner of public works or his designee shall bill the property owner at least once following abatement or the assessment of a civil fine. 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 fine, no notice of lien claimed shall be filed against the property until the time for appeal has expired and the environmental hearing board has entered a final order. 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 (k).

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

(k) *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 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.

(l) *Release of lien:* The mayor is hereby authorized and directed to execute a release of the lien provided for in subsection (i) 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.

(m) *Unenforceable liens:* The commissioner of law is hereby authorized to make the determination that liens shall not be filed for the cost of abatement if the cost of nuisance abatement is fifty dollars (\$50.00) 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. 43

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 7, 1-28-99; Ord. No. 97-2001, § 6, 5-3-01; Ord. No. 282-2003, §§ 5--10, 12-4-03; Ord. No. 296-2004, § 4, 12-2-04)

Sec. 16-9. Maintenance and placement of roll cart container.

(a) Refuse containers and recycling containers shall be maintained in good condition. Any container that is not provided by the urban county government and does not conform to the provisions of this chapter or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof must be promptly replaced by a proper receptacle. The combined weight of the any refuse container and its contents shall not exceed sixty (60) pounds. All bulk trash accumulated in residential, commercial or manufacturing buildings, such as cardboard containers, wooden crates and similar refuse, shall be flattened and tied in bundles or packed in suitable containers of a size that may be readily handled by one (1) collector, and in no case shall such bundle or container be larger than three (3) feet by four (4) feet. Woody landscape waste shall not exceed six (6) inches in diameter and shall be cut into lengths not exceeding four (4) feet and tied into bundles not to exceed sixty (60) pounds which can be readily handled by an individual collector. All nonresidential establishments which do not use dumpsters will comply with the regulations listed above. When any container is found to be in bad condition or when the refuse is not properly prepared in accordance with this section, a notice shall be affixed to the front door of the residence or structure by the director, division of solid waste or his representative, listing the defect to be cured before collection is continued. A copy of this notice shall also be mailed, via regular mail or transmitted by fax, to the owner of the property as determined by reference to the records of the property valuation administrator or to the owner's designee if the owner has filed notice of a designee pursuant to section 16-10(f). Failure to properly prepare refuse for collection shall entitle the urban county government, after such notice, to abate the defect and bill the property owner for the cost of such abatement as set forth in section 16-8.

(b) For residents who have received a medical exemption from roll cart collection, garbage containers shall be kept or placed at the most accessible place at the rear of the house or building or in unlocked areas or passageways thereof at ground level. Containers must be clearly visible to collectors as they enter the rear yard. Garbage containers shall not be kept upon the street, sidewalk, other public place, front yard or premises or below ground. Containers should not be kept in garages, on patios or in enclosed areas. Residents with exemptions from roll cart collection shall place receptacles for trash at the curb.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 8, 1-28-99; Ord. No. 97-2001, § 7, 5-3-01)

Sec. 16-10. Refuse collection schedules.

(a) In all areas of residential urban county government collection, garbage service will be provided once each week on the same day of each succeeding week. Collection of recyclable materials and landscape waste in approved landscape waste containers will be provided once each week on the same day as garbage service. Trash that will not fit in the roll cart container and that is properly prepared pursuant to this article will be collected once per week. When a scheduled refuse collection day falls on an urban county government holiday, refuse will be collected on a makeup collection day. The commissioner of public works retains the right to adjust schedules in response to emergencies or severe weather.

(b) Roll cart containers, receptacles for properly prepared trash, roll cart containers for recyclable materials, approved landscape waste containers and any other waste subject to collection by LFUCG be placed at the curb line for collection but shall not remain at the curb line longer than a reasonable time necessary for collection. Urban county government containers,

other receptacles for trash and ashes and any other waste subject to collection by LFUCG shall be placed at the curb no sooner than 5:00 p.m. (October 15 to April 15) and no sooner than 7:00 p.m. (April 16 to October 14) on the evening prior to collection and no later than 5:00 a.m. on the day of collection. Urban county government containers and other receptacles shall be removed from the curb no later than 7:00 p.m. in the evening on the day of collection. Roll carts and other receptacles shall be kept in the rear yard when not at the curb for collection. Properties which do not have rear yard access may be exempt from this provision upon approval of an alternative storage location by the director of the division of solid waste. Nonwoody landscape waste must be contained in approved landscape waste containers and must not be placed in any other type container. Approved landscape waste containers must not contain material other than landscape waste.

(c) When a violation of subsection (b) has occurred the director, division of solid waste, or his designee shall affix a notice to the front door of the residence or structure or to the roll cart container and serve upon the property owner, by personal service or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll, or to the owner's designee and to the occupant(s) if readily determinable, a notice describing the violation and listing the date and time of the violation and informing the property owner or his designee and the occupant(s) that a civil fine of not less than fifteen dollars (\$15.00) nor more than seventy-five dollars (\$75.00) may be assessed if two (2) notices of violation have previously been issued concerning the same property within a twelve-month period.

(d) When a property has previously been noticed two (2) times within any twelve-month period for violation of the foregoing restrictions regarding placement and removal of roll cart containers, receptacles or other waste subject to collection by LFUCG at the curb at designated time, or the placement of waste in an inappropriate container, upon the commission of another offense in violation of this section of the same nature involving that same property the director, division of solid waste or his designee, is authorized to issue the responsible party a citation containing the information specified in section 16-3.1. An additional citation is authorized to be issued for each further violation of the same nature occurring in any twelve-month period, subject to any pending appeal of a previously issued citation. For the purposes of this section the term "responsible party" shall mean the occupant, if readily determinable in accordance with subsection (g). However, in the event that the occupant is not readily determinable, or in the event that the occupant has previously been issued a citation for a violation of this section within the past twelve (12) months and has failed to timely pay the corresponding civil fine or successfully appeal the citation, the citation shall be issued to the property owner.

(e) The citation shall be served upon the responsible party by personal service or by regular mail, and if the responsible party is not the property owner, a copy of the citation shall also be provided to the property owner or his designee pursuant to subsection (f), by personal service or by fax transmission or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll or to the designee's address.

(f) A property owner may file with the commissioner of public works a completed form, provided by the commissioner, that provides the name and address of a management company or designated representative with authority over the subject property to which notices shall be issued pursuant to the provisions of this article II.

(g) Occupant(s) shall be primarily responsible for compliance with the requirements of this section and shall be deemed readily determinable when listed as the party responsible for payment of the solid waste disposal fee at a property or when currently designated by the property owner on a form provided by and filed with the commissioner of public works.

(h) It shall be a defense for a property owner for alleged violations of this section if the readily determinable occupant(s) have vacated the property or the owner has instituted an eviction proceeding against the occupant(s) within thirty (30) days of the third notice of violation and completed the eviction within sixty (60) days of the commencement of the proceeding or as soon as court procedures will allow. It shall be the responsibility of the property owner to provide, in writing, proof of the initiation of eviction proceedings and such other proof necessary to establish this defense.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 286-90, § 4, 12-18-90; Ord. No. 14-99, § 9, 1-28-99; Ord. No. 97-2001, § 8, 5-3-01; Ord. No. 282-2003, §§ 11--14, 12-4-03; Ord. No. 296-2004, § 5, 12-2-04) 45

Sec. 16-11. Dumpster collection schedules.

(a) The urban county government shall make a maximum of two (2) collections per week from each establishment having dumpster containers. If a dumpster is blocked by a vehicle or is obstructed in any other way which prohibits access to a dumpster, the division of solid waste will return for this collection only if collection schedules allow. If more collections are needed by certain establishments, a service charge shall be made for each additional dumpster container collected. The amount of the charge for each additional dumpster container collected shall be determined by the commissioner of public works and shall be an amount sufficient to defray the cost of providing said additional collections. A rate schedule will be published periodically and maintained and will contain the rate for extra dumpster pickups. No dumpster containers will be collected or emptied by the urban county government if its collection equipment is required to pass over a curb. Such containers shall be placed and located as directed by the director of the division of solid waste.

(b) A dumpster container will not be collected when in the opinion of the director of solid waste the container is filled with special handling wastes, hazardous wastes or when the combined weight of the container and its contents is of such an excessive weight as to pose a threat to the proper functioning of the packer truck lifting equipment.

(c) Establishments using dumpster containers shall ensure that the container is placed at a point that is reasonably accessible for the purpose of collection. Such point shall not be in any public street, alley or sidewalk, or upon any public property of any nature. Dumpsters in extremely difficult locations may not be serviced if in the opinion of the director of the division of solid waste a better, safer and more accessible location exists upon the property. Establishments shall see that dumpster containers are maintained in good condition. Any container with ragged edges, serious rust problems affecting the strength of the container or broken sleeves will not be serviced by the urban county government. Formal notice of the required dumpster replacement will be given to property owners and/or tenants. Dumpster containers shall be cleaned as often as necessary by the owner/occupant to ensure that the container does not become malodorous and unsanitary.

(d) Temporary placement of dumpsters on rights-of-way for restoration or demolition work requires a permit from the division of engineering. The urban county government will not service temporary dumpsters.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 10, 1-28-99)

Sec. 16-12. Garbage and refuse collection rates.

(a) The commissioner of public works is authorized to enter into agreements for terms of up to eighteen (18) months with property owners for the provision of garbage and refuse collection if:

- (1) Their property is within the urban services boundary;
- (2) Their property is not located in an urban services district providing garbage and refuse collection; and
- (3) Private garbage and refuse collection is not available.

(b) The rate for the provision of garbage and refuse collection for each property within the urban services boundary which is not located within an urban services district providing garbage and refuse collection shall be \$0.175 per one hundred dollars (\$100.00) of the assessed value of the property per year. If garbage and refuse collection is provided for a fraction of a year, the above-mentioned rate shall be charged on a pro rata basis.

(Ord. No. 1-95, § 1, 1-12-95)

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Sec. 16-13. Downtown collection.

(a) Garbage and trash collection shall be made during an a.m. cycle between 2:00 a.m. and 10:00 a.m. and a p.m. cycle between 2:00 p.m. and 10:00 p.m., including Saturdays and holidays, except Christmas, New Year's, Fourth of July and Thanksgiving within the following area: Main Street from Jefferson Street to Ransom Avenue; Vine Street and High Street from Broadway to Rose Street; Short Street from Felix Street to Deweese Street; Second Street from Broadway to Martin Luther King Jr. Boulevard; Church Street; Barr Street; Water Street; Mechanic Street; Pleasant Street; Broadway from Second Street to High Street; Mill Street; Upper Street and Limestone Street from Third Street to High Street; Market Street; Martin Luther King Jr. Boulevard from Main Street to Third Street; DeWeese Street from Main Street to Second Street; Felix Street; Esplanade; and Cheapside. The aforementioned area shall be known as the downtown collection area. The collection applies to retail stores, hotels, restaurants, office buildings and houses in the center of town.

(b) Residential and nonresidential establishments within the downtown collection area, which do not use dumpsters, should place their receptacles or roll carts at the sidewalk at the curbline no sooner than one (1) hour before a collection cycle and no later than one (1) hour before the end of a cycle. Containers shall be removed from the sidewalks after collection and shall not be permitted to remain there.

(c) The urban county government may provide for separate downtown collection of recyclable materials from curbside receptacles maintained and collected in accordance with the provisions of subsection (a) above.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 89-88, § 1, 5-5-88; Ord. No. 286-90, § 5, 12-18-90; Ord. No. 112-2001, § 2, 5-24-01)

Sec. 16-14. Special collections.

(a) The division of solid waste will pick up carcasses of small animals such as cats, dogs, rabbits, squirrels and rats. It will not pick up the carcasses of large animals such as cows, horses or sheep.

(b) Appliances such as dryers, washing machines, hot water heaters, stoves, refrigerators, freezers and all other freon appliances will be collected free of charge by calling the division of solid waste. Refrigerator and freezer doors must be removed and the unit must be placed chest down on the curb.

(c) Items generated from residential units such as televisions, tires off rims (up to four (4)), furniture, small scrap metal pieces, etc., will be collected free of charge by calling the division of solid waste. Calls must be made at least twenty-four (24) hours in advance of the pickup. There is a maximum of one (1) special pickup per week.

(d) Building rubbish from demolition or remodeling activities will not be collected by the urban county government. Property owners shall contract privately for appropriate collection, removal and disposal of such waste.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 14-99, § 11, 1-28-99)

Sec. 16-15. Private garbage and refuse collection; interfering with containers.

(a) It shall be unlawful for any person to engage in the refuse collection business in the urban county without first obtaining a license from the urban county government.

(b) It shall be unlawful for any person to dump at the urban county government transfer station or the urban county landfill without first obtaining a dumping permit from the commissioner of public works.

(c) No person outside the urban county shall be issued a permit to use the urban county government's disposal site or facilities until such time as the facilities are expanded to properly provide this extended service. No person inside the urban county shall be issued a permit unless he is in the business of refuse collection through a contractual arrangement with his customers living within the urban county, or unless he represents a commercial establishment within the urban county making regular hauls of refuse.

(d) Such license and permit, listed above, may be revoked by the urban county government upon evidence that the nature of collection or disposal is not in conformity with the requirements of this chapter or such further rules as may be adopted.

(e) Refuse collection contractors, as specified in subsection (c) hereof, shall pay the urban county government for dumping at the urban county government landfill such sum as determined by the urban county government to defray the cost of operation.

(f) It shall be unlawful for any person, other than refuse collectors in the division of solid waste and a person duly licensed to collect, haul, convey or transport any of the waste materials herein mentioned, to interfere in any manner with the receptacles containing any such waste materials, or to remove any such receptacle from the location where placed by the owner thereof, or to remove any of the contents of such receptacles.

(g) Notwithstanding any other provisions of this section, the commissioner of public works is hereby empowered, in his discretion, to issue temporary permits for dumping.

(h) Pursuant to subsections (e) and (g) of this section, the "dumping fee" for the use of the urban county government's landfill for demolition and construction refuse and refuse from land subdivision clearing, shall be determined by the commissioner of public works and a rate schedule shall be published periodically and maintained and shall contain the rates for such dumping fees. Any fees imposed by this subsection remaining unpaid for more than thirty (30) days after they are billed shall bear interest at the rate of one and one-half (1 1/2) percent per month.

(i) The department of law is authorized and directed to institute legal proceedings in the name of the urban county government in any court having jurisdiction over such matter for the collection of delinquent landfill dumping fees, and to take any actions necessary in such proceedings to protect the interests of the urban county government. The commissioner of finance shall refer cases to the department of law upon a determination that all other collection efforts have failed.

(j) The mayor is authorized and directed to execute a release of any lien *or* *in rem* filed of record upon payment in full of the delinquent landfill dumping fees and applicable costs or upon conclusion of court proceedings which result in a sale of the property regardless of whether any proceeds of the fees and costs were paid from the proceeds of the sale. The department of law shall cause this release to be filed in the county clerk's office.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 267-86, § 1, 12-18-86; Ord. No. 166-89, § 1, 8-31-89; Ord. No. 114-90, § 1, 6-14-90; Ord. No. 154-91, § 1, 7-18-91; Ord. No. 167-91, § 1, 7-18-91; Ord. No. 145-92, § 1, 8-27-92; Ord. No. 66-93, §§ 1, 2, 4-27-93; Ord. No. 201-95, § 1, 9-7-95; Ord. No. 166-98, § 1, 6-25-98)

Sec. 16-15.1. Appointment of appeals board.

The appeals board referred to in article II of this chapter shall mean the environmental hearing board created and established in article IX of this chapter.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 97-2001, § 9, 5-3-01)

Sec. 16-16. Solid waste disposal--Funding for operational and capital costs.

It is hereby determined that the most accurate, appropriate, effective and equitable method of apportioning and funding the operational and capital costs of solid waste disposal is a user fee for properties within the full urban services district or a partial urban services district providing refuse collection and for other properties receiving collection service from the urban county government.

(Ord. No. 138-95, § 2, 6-20-95)

Sec. 16-16.1. Same--Rates and charges.

Rates and charges for landfill-solid waste disposal are hereby established as follows:

Schedule A: The landfill-solid waste disposal fee for roll cart containers or roll cart container equivalents shall be four dollars and fifty cents (\$4.50) per container per month.

Schedule B: The landfill-solid waste disposal fee for dumpster containers (8CY) shall be forty-eight dollars and twenty cents (\$48.20) per container per month.

Schedule C: The landfill-solid waste disposal fee for dumpster containers (6CY) shall be thirty-six dollars and fifteen cents (\$36.15) per container per month.

Schedule D: The landfill-solid waste disposal fee for dumpster containers (4CY) shall be twenty-four dollars and ten cents (\$24.10) per container per month.

(Ord. No. 138-95, § 3, 6-20-95; Ord. No. 188-95, § 1, 8-31-95; Ord. No. 43-97, § 4, 3-20-97)

Sec. 16-16.2. Same--Billing.

(a) The rates and charges for landfill-solid waste disposal as established by section 16-16.1 shall be billed on a monthly basis.

(b) Bills for landfill-solid waste disposal shall be due when rendered; and the face amount, without penalty or interest, shall be paid on the due date.

(c) All unpaid landfill-solid waste bills are subject to penalty and interest charges to be computed as follows:

(1) Any unpaid landfill-solid waste disposal bill or a portion of any unpaid bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed a penalty of ten (10) percent of the unpaid balance.

(2) In addition to the penalty provided in (c)(1) of this section, any landfill-solid waste disposal bill or a portion of any such bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed an interest charge of one (1) percent per calendar month or a portion of a calendar month against the unpaid balance of such bill.

(d) The department of law is authorized and directed to institute legal proceedings in the name of the urban county government in any court having jurisdiction over said matter for the collection of delinquent landfill-solid waste disposal fees and charges, and to take any action necessary in such proceedings to protect the interests of the urban county government.

(e) The mayor is authorized and directed to execute a release of any lien or lis pendens filed of record upon payment in full of the delinquent landfill-solid waste disposal fees and applicable costs or upon conclusion of court proceedings which result in a sale of the property regardless of the fees and costs paid from the proceeds of the sale. The department of law shall cause this release to be filed in the county clerk's office.

(f) The commissioners of the departments of finance and public works may prescribe such regulations and procedures necessary to carry out the program authorized herein.

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(Ord. No. 138-95, § 4, 6-20-95; Ord. No. 188-95, § 2, 8-31-95; Ord. No. 2-96, § 1, 1-11-96; Ord. No. 44-97, § 1, 3-20-97)

Sec. 16-16.3. Landfill user fee assistance program.

(a) As used in this section, the following terms shall have the meanings given:

(1) *Assets test* means that any person having assets in excess of either:

(i) Five thousand dollars (\$5,000.00) in liquid assets such as bank accounts, savings, certificates of deposit, stocks, bonds, etc.; or

(ii) Five thousand dollars (\$5,000.00) in equity in assessed value of non-homestead property;

shall be ineligible to participate in the program, notwithstanding that he meets the income qualifications set forth in this section. However, motor vehicles for personal use, household furnishings and the benefitted property itself, as well as buildings located thereon which are occupied by the person seeking to qualify as a home for himself and his family, shall not be included in computing assets.

(2) *Income* means total cash receipts to the residential landfill user fee customer household, after taxes, from all sources. These sources include money, wages and salaries after any deductions required by law, but not including food or rent in lieu of wages. They include receipts from self-employment or from one's own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, employment and workers' compensation, strike benefits from union funds, veterans' benefits, training stipends, alimony and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money and receipts: Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is noncash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or nonfarm housing.

(3) *Program* means the assistance program established in this section.

(4) *Qualified customer* means a person responsible for a residential landfill user fee (schedule A) for their place of residence or a person responsible for fees paid to a landfill for dropping off garbage and refuse from their place of residence who meets the assets test and has an annual income equal to or less than one hundred twenty-five (125) percent of the poverty income levels set forth in the poverty guidelines chart established by the community services administration, annually published in the Federal Register, in effect at the time of application. Income shall be measured by the definition contained in subsection (a)(2) of this section.

(b) Qualified customers may receive an assistance grant for fifty (50) percent of their landfill user fee bill (schedule A or drop-off fees paid at a landfill). All payments of landfill user fee bills under the program by the urban county government are subject to the annual appropriation by the urban county council of the funds to make such payments, and neither the establishment of this program nor participation in the program shall constitute a contract between the urban county government and any qualified customer for other than the fiscal year for which funds are appropriated to make payments. In the event funds are not appropriated for any given fiscal

year, customers will be required to pay the full cost for that year.

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(c) The administration of this program shall be under the division of adult services in the department of social services. The commissioners of the departments of finance, public works and social services may prescribe such regulations and procedures consistent with the provisions of this section as deemed necessary to carry out the intentions stated herein.

(Ord. No. 212-95, § 1, 9-21-95; Ord. No. 70-98, §§ 1, 2, 3-19-98)

Sec. 16-16.4. Penalty for violation of this article.

(a) Every person failing to perform the duties required of him or to comply with the provisions of article II shall for every offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), and each day's continuance of such violation shall be a separate offense.

(b) As an alternative remedy to subsection (a), every person who violates any provision of this article may be assessed a civil fine of not less than fifteen dollars (\$15.00) nor more than five hundred dollars (\$500.00).

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 138-95, § 5, 6-20-95; Ord. No. 212-95, § 2, 9-21-95; Ord. No. 14-99, § 12, 1-28-99; Ord. No. 97-2001, § 10, 5-3-01; Ord. No. 282-2003, § 15, 12-4-03)

Note: Formerly section 16-16.

Sec. 16-16.5. Appeal.

(a) Any person affected by a determination of the commissioner of public works under sections 16-4(b)(iii) or 16-4.1(c), the issuance of the initial notice to abate, or the assessment of a civil fine issued in connection with the enforcement of article II shall have the right to request and shall have granted a hearing on the matter; provided that such person shall file, with the environmental hearing board as set forth in article IX, or its designee, a written request for such hearing and the grounds therefore within seven (7) days. The seven (7) day period provided for in this subsection shall be deemed to commence on the day of service of the notice.

(b) Failure to appeal. The notice to abate and assessment of a civil fine for violations of article II of the Code shall represent a determination that the violation has been committed and that determination shall be final, unless appeal is taken to the environmental hearing board within the applicable time period.

(c) An appeal from the board's determination may be made to the Fayette District Court within thirty (30) days of the board's determination pursuant to KRS 65.8831.

(Ord. No. 97-2001, § 11, 5-3-01; Ord. No. 282-2003, § 16, 12-4-03)

ARTICLE III. REFUSE DISPOSAL**Sec. 16-17. Collection and transportation of solid waste.**

- (a) The solid waste collector shall be responsible for satisfactory collection and transportation of all solid waste to a disposal site or facility.
- (b) Vehicles or containers used for the collection and transportation of garbage or refuse containing garbage shall be covered, leakproof, have an enclosed body, be durable and be of easily cleanable construction. These shall be cleaned as often as necessary to prevent a nuisance or insect breeding and shall be maintained in good repair. No vehicle used for collection and transporting of garbage shall be parked in a residential area overnight.
- (c) Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak or spill therefrom, and shall be covered when necessary to prevent blowing of material. If spoilage should occur, the material shall be picked up immediately by the solid waste collector and returned to the vehicle or container and the area properly cleaned.
- (d) The owner of any vehicle used for the collection of garbage and putrescible material must provide adequate facilities for the cleaning of such vehicle.
- (e) No solid waste or junked motor vehicles collected from any source other than a source within the urban county may be deposited without prior written approval of the commissioner of public works. Such approval may only be given when, in the opinion of the commissioner, an emergency situation which may be hazardous to the health and safety of the residents of another county exists.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-18. Design criteria.

- (a) Solid waste disposal facility plans shall be designed in accordance with all applicable statutes, ordinances and regulations by a registered professional engineer.
- (b) Detailed plans, specifications and necessary reports shall be submitted to the commissioner of public works and the department of health for review and approval prior to the receipt of a permit and commencement of operations. Following approval of plans by the commissioner of public works and the department of health, approval must then be obtained from the division of solid waste, department of natural resources and environmental protection.
- (c) Sanitary landfill operations shall be so designed and operated that conditions of unlawful pollution will not be created and injury to ground and surface water avoided which might interfere with legitimate water uses. Water-filled areas not directly connected to natural lakes, rivers or streams may be filled with specific inert material not detrimental to legitimate water uses, and which will not create a nuisance or health hazard. Special approval of the inert material to be used and the location where it was used is required in writing from the commissioner of public works and the department of health. Inert material shall not include residue from solid waste incinerators unless evidence satisfactory to the commissioner of public works and the department of health is submitted substantiating that the residue will not create a hazard to health.
- (d) The subsoil structure shall be such that solid waste will not contaminate groundwaters or streams in the area, unless approved procedures to prevent contamination are utilized.
- (e) The surface contours of the areas shall be such that surface runoff will not flow into or

through the operational or completed fill area. Grading, diking, terracing, diversion ditches, drainage structures or tiling may be approved or required by the commissioner of public works and the department of health. 52

(f) No landfill shall be exposed to a once in five (5) year flood. Landfills exposed to a once in one hundred (100) year flood shall be protected. Where applicable, empirical data shall be used to determine the frequency of flood exposure. Where published data is not available, the frequency of flood exposure shall be established by the unit's hydrograph technique.

(g) Landfills subject to a high groundwater table shall be restricted to sites which:

- (1) Provide greater than two (2) feet of compacted earth between deposited solid waste and the maximum water table;
- (2) Include measures to prevent contamination of groundwater; and
- (3) Provide monitoring facilities.

(h) Landfills shall provide not less than two (2) feet of compacted earth between deposited solid waste and bedrock.

(i) Separate facilities for composting of landscape waste and/or sewage sludge may be provided at the landfill.

(j) The sanitary landfill shall not be located closer than a minimum of six hundred (600) feet from any residential or business property; however, a distance greater than six hundred (600) feet may be required if the commissioner of public works and the department of health deems it necessary.

(k) Disposal of waste presenting special problems shall be separately considered in design of the landfill.

(l) Where stacking of disposal cells is the proposed method of disposal, soil stability shall be considered in the design.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 286-90, § 6, 12-18-90)

Editor's note: Section 6 of Ord. No. 286-90, adopted Dec. 18, 1990, added subsection (i) of this section, thus implicitly redesignating existing subsections (i)--(k) as (j)--(l).

Sec. 16-19. Sanitary landfills; access and site improvement.

(a) All access and site improvements set forth herein shall be made before a landfill is placed in operation.

(b) Access roads to the disposal site shall be of all-weather construction and negotiable at all times of the year by trucks or other vehicles.

(c) This site shall be enclosed with a minimum six-foot chain link fence with two (2) strands of barbwire slanting in and having entrance gates that can be locked and posted. Opening and closing hours and days of operation shall be clearly shown.

(d) Screening of the site with plantings and/or fencing approved by the commissioner of public works and the department of health shall be undertaken during early phases of construction of the sanitary landfill site.

(e) All-weather operational road(s) shall be provided for vehicular movement within the site. Separate operational areas may be operated within the site to allow for wet or dry weather operation and access. When necessary to prevent dust nuisance, operational roads within the site shall be surfaced or treated.

(f) A shelter, convenient for use by operating personnel, shall be furnished. The shelter shall be screened and provided with heating facilities and adequate lighting. Provisions shall also be

made for safe drinking water and sanitary hand-washing and toilet facilities.

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(g) Telephone or radio communications shall be provided at the sanitary landfill site.

(h) Arrangements shall be made for fire protection services when a fire protection district or other public fire protection service is available. When such a service is not available, alternate arrangements shall be made.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-20. Sanitary landfill; sanitary landfill operation.

(a) All operations of the sanitary landfill shall be in accordance with the plan approved by the department of health and the commissioner of public works.

(b) A landfill operation shall be under the direction of a responsible individual on location during operating hours.

(c) Access to the site shall be permitted only when operating personnel are on the site.

(d) Dumping of solid waste on the site shall be confined to the smallest practical area.

(e) Signs providing information on dumping procedures and indicating the hours during which the site is open for public use, penalty for nonconformance dumping and other pertinent information shall be posted at the site entrance.

(f) Unloading shall be supervised. Portable fences shall be used when necessary to prevent litter blowing from the unloading site. The field and surrounding area shall be policed as necessary to collect all scattered material. All wind-blown material shall be returned to the landfill site at least once each day by the owner or operator.

(g) As rapidly as solid waste is admitted to the site, it shall be spread and compacted in shallow layers of approximately two (2) to three (3) inches in depth, depending upon the type of material and the compaction equipment. The completed cell shall consist of the solid waste admitted and compacted during one (1) working day, regardless of overall height and area covered. Large bulky items when not excluded from the site shall be disposed of in a manner approved by the commissioner of public works and the department of health. Spoiled foods shall be compacted and covered immediately and separately from the routine solid waste being deposited at the solid waste disposal site.

(h) Cover material shall be of such quality as to prevent fly and rodent attraction and breeding, blowing litter, release of odors, fire hazards and unsightly appearance, and which will provide a tight seal which permits only minimal percolation of surface water when properly compacted. Cover material shall be free of putrescible materials and large objects and shall be applied as follows:

(1) *Daily cover:* A compacted layer of at least six (6) inches of material shall be used to cover all exposed solid waste at the end of each working day; except that for all surfaces that will not receive an additional depth of refuse or the final cover within sixty (60) days, a compacted layer of at least one (1) foot shall be applied.

(2) *Final cover:* A compacted layer of at least two (2) feet of material in addition to the daily cover shall be placed over the entire surface of all completed portions of the fill within six (6) months following the final placement of refuse. Final cover shall be graded as provided in the approved plan. The surface of the final cover shall be maintained at the plan elevation by the placement of additional cover material where necessary.

(3) All daily and interim cover depths shall be maintained until the landfill is closed.

(4) The area of the landfill being actively worked, as well as the entire site, shall be graded as frequently as necessary to prevent erosion or washing of the fill, to drain rainwater from the fill, and to prevent standing water. No surface water shall drain to the

fill area.

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(i) Provisions shall be made for the routine operational maintenance of equipment at the landfill site and for the prompt repair or replacement of landfill equipment.

(j) Septic tank pumpings and other liquid or hazardous wastes shall not be discharged to a sanitary landfill.

(k) Burning material or any solid waste at a temperature likely to cause fire shall not be deposited in the fill. Said material may be deposited in a separate location of sufficient distance from the fill to prevent fire from spreading to the normal fill area and shall be immediately covered with a sufficient amount of earth to extinguish same.

(l) Insect and rodent control measures shall be employed as required by the commissioner of public works and the department of health.

(m) Salvage operations shall not be permitted in conjunction with a sanitary landfill except under the following conditions:

(1) All salvage operations shall be conducted in a sanitary manner;

(2) Salvage operations shall be confined to an area removed from the operating face of the fill;

(3) Salvage operations shall not interfere with or otherwise delay the fill operations;

(4) All salvage materials shall be removed from the landfill site daily or properly stored so that they will not create a nuisance, rodent harborage or unsightly appearance;

(5) All salvage operations must have a permit from the commissioner of public works.

(n) Large quantities of noncombustible and nonputrescible waste such as boiler-house cinders, broken paving or materials resulting from construction or demolition operations may be disposed of at a sanitary landfill without daily cover. Such material shall be leveled and spread at no more than ninety-day intervals to prevent unsightly appearance or rodent harborage and shall be finally covered as required for a completed landfill.

(o) The following activities shall be prohibited in conjunction with or upon the site of the sanitary landfill:

(1) All scavenging operations;

(2) All feeding of farm or domestic animals;

(3) Deposition of garbage and refuse in standing water;

(4) Open burning.

(p) Adequate numbered types and sizes of properly maintained equipment shall be used in operating the landfill in accordance with good engineering practice and with this article. Emergency equipment shall be available on the site or suitable arrangements made for such equipment from other sources during equipment breakdown or during peak loads.

(q) Unloading shall be supervised.

(r) Vacant land not under use for landfilling purposes or cropped shall be mowed twice a year.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-21. Closing a landfill.

(a) Before earth-moving equipment is removed from the site, an inspection of the entire site shall be made by the department of health and the commissioner of public works to determine compliance with approved plans and specifications. This department must be notified thirty (30) days prior to the last intended use of a sanitary landfill.

(b) Final cover means a compacted layer of not less than two (2) feet of material in addition to any other cover required on a daily or interim basis. Final cover shall be graded as provided in the approved plans and to prevent ponding. For a period of two (2) years, the surface of the final cover shall be maintained at the proper elevation; and all cracked, eroded and/or uneven areas in the final cover shall be repaired during that time.

(c) *Revegetation*: After grading, final cover shall be covered with adequate topsoil, fertilized and seeded with legumes, other native grasses or other suitable vegetation immediately upon completion, unless operations were terminated during winter conditions. If operations were terminated during winter conditions, an appropriate mulch material shall be applied until such appropriate grasses can be planted in the spring. Slopes shall be seeded and covered with straw or similar material to prevent erosion. In order to obtain soil stabilization, the permittee shall be required to repeat this process until vegetation is obtained. Such revegetation shall be repeated not less than once annually.

(d) Other necessary correction work shall be performed before the landfill project is accepted as closed.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-22. Penalties.

Any person who knowingly fails or refuses to obey or comply with or willfully violates any of the provisions of this article or any lawful order issued or rendered under and pursuant to the provisions of this article, upon conviction of such offense, shall be fined not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) for each day the violation continues.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-23. Powers and authority of inspector.

The commissioner of public works, the department of health, the Kentucky Department of Natural Resources and Environmental Protection, Division of Solid Waste, the citizens' committee on solid waste disposal and any other duly authorized employee of the urban county government bearing proper credentials and identification shall be permitted to enter upon a solid waste disposal site for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article and shall be empowered to issue citations for violations of any provisions of this article.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-24. Citizens' committee--Created.

There is hereby created a citizens' committee on solid waste disposal, hereinafter called "the committee."

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-25. Same--Membership; terms.

The committee shall have seven (7) members. The five (5) voting members shall be citizens of the urban county who are not officers or employees of the urban county government, which live within five (5) miles of any permitted solid waste disposal site or facility located within the urban county and shall be appointed by the mayor pursuant to section 7.02 of the Charter. The terms of the citizen

members shall be four (4) years, with initial appointments staggered so that three (3) members shall serve for two (2) years, and two (2) members shall serve for four (4) years, pursuant to section 7.02 of the Charter. Two (2) nonvoting members shall also be on the committee. They shall be representative of the urban county division of fire and emergency services and the urban county health department. These nonvoting members shall be appointed by their respective superiors and shall serve an indefinite term. The citizen members shall serve without compensation.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-26. Same--Meetings.

The committee shall set the time for its meetings. The meetings shall be scheduled to allow time for appropriate inspection and review of sanitary landfill operations within the urban county.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-27. Duties and functions of the committee.

The committee shall:

- (1) Enter upon all properties within the urban county permitted by the board of health as a solid waste disposal site for the purpose of inspection, observation, measurement, sampling, testing and otherwise monitoring the proper construction, maintenance and operation of the solid waste disposal site, and view evidence and interrogate person to the extent required in the performance of their duties and responsibilities.
- (2) Investigate and define causes of failure to comply with the provisions of all statutes, ordinances and regulations applicable to the operation of solid waste disposal sites and facilities.
- (3) Notify the urban county council and the board of health of each instance of noncompliance with statutes, ordinances and regulations governing the operation of solid waste disposal sites and facilities and of the existence of nuisances, sources of filth and causes of sickness that may in their opinion be injurious to the health of the inhabitants of the urban county.
- (4) Recommend to the urban county council and all other regulatory agencies of the urban county government corrective and remedial measures necessary to bring the operation of solid waste disposal sites and facilities into compliance with existing statutes, ordinances and regulations and to eliminate nuisances, sources of filth and causes of sickness arising out of the operation of such a site or facility.

(Ord. No. 126-83, § 1, 7-21-83)

Sec. 16-28. Notification of proposed change in policy, etc.

The commissioner of public works shall notify the committee in writing of any proposed ordinance or change in policy relating to the operation of the sanitary landfill in order to allow time for appropriate review of such matters by the committee.

(Ord. No. 126-83, § 1, 7-21-83)

Services Committee Items

March 31, 2009

Item	Referred By	Date Referred	Status
Golf Carts on Public Roads	Stinnett	3-10-09	
Underground Utilities in New Developments	Feigel	3-3-09	
2003 Public Utilities Ice Storm Task Force	Gorton	2-13-09	Mar 09
Private Solid Waste Providers	Gorton	2-13-09	Spring 09
Dog Tethering/Chaining	Beard	10-28-08	Sub Committee Recommendation
Sign Ordinance	Myers	9-9-08	Spring 2009
Man O War Truck Traffic Restrictions	Feigel	8-19-08	Mar 09
Multi-Way Stop Glendover Dr @ Valley Rd	Beard	7-8-08	Petition Drive
Employee Automobile Usage and Reimbursement	Blues	5-13-08	General Services Reviewing
Zandale Storm Water Ditch	Beard	11-20-07	
Vicious Dogs	Moloney	9-18-07	
Traffic Safety: Streets Adjacent to Christ the King Church	Feigel	10-23-07	NTMP

Item (cont)	Referred By	Date Referred	Status
New Rack Ordinance	Lawless	5-15-07	Self Policing Policies
Door to Door Peddlers	Stinnett	2-27-07	Memo from Law
Imposing Fines for ROW Signage	Myers	11-14-06	
Curb Replacement Program	Gorton	3-12-05	