

CHAPTER 94: NUISANCES

Section

General Provisions

- 94.01 Definitions
- 94.02 Common law and statutory nuisances
- 94.03 Certain conditions declared a nuisance
- 94.04 Abatement procedure

Noise

- 94.20 Noise pollution
- 94.99 Penalty

GENERAL PROVISIONS

§ 94.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“AUTOMOBILE PARTS.” Any portion or parts of any motor driven vehicle as detached from the vehicle as a whole.

“CONSTRUCTION OR DEMOLITION ACTIVITY.” The erection (including excavation), demolition, alternation, or repair of any building, structure or roadway, or any utility related construction, for which all necessary and proper government permits have been obtained.

“DWELLING.” Any part of any building or its premises used as a place of residence or habitation or for sleeping by any person.

“HIGHWAY.” Any road, street, avenue, alley, boulevard, lane, court, or bridge, viaduct, or trestle and the approaches to them.

“INOPERATIVE CONDITION.” Unable to move under its own power due to defective or missing parts, and which has remained in such condition for a period of not less than ten consecutive days.

“MOTOR VEHICLE.” Any style or type of motor driven vehicle used for the conveyance of persons or property.

“NOISE.” The intensity, frequency, duration and character of sound or sounds from a source or sources.

“NUISANCE.” Public nuisance.

“PARKING LOTS.” Any off-street parking facility for public use, and the approaches to same, whether publicly or privately owned, and shall include but not be limited to parks, shopping centers,

restaurants, entertainment centers, car washes, banking or financial institutions, whether publicly or privately owned, operated or controlled.

“PERSON.” Any person, firm, association, partnership, joint venture, corporation or any private entity of any nature.

“PLAINLY AUDIBLE.” Capable of being distinctly heard by a person with normal hearing.

“ROADWAY.” That portion of the highway designed for ordinary use for vehicular travel, including the berm, shoulder or any public property adjacent thereto.

“SCRAP METAL.” Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

“SOLID WASTE.” Any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste, coal mining by-products, refuse and overburden), and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges.

“UNFIT FOR FURTHER USE.” In a dangerous condition; having defective or missing parts; or in such a condition generally as to be unfit for its originally intended purpose.

“UNFIT FOR HUMAN HABITATION.” Dangerous or detrimental to life or health because of: want of repair, defects in the drainage, plumbing, lighting, ventilation, or construction; infection with contagious disease; or the existence on the premises of an unsanitary condition likely to cause sickness among occupants of the dwelling.

“UNREASONABLE PERIOD OF TIME.” A period of time in excess of that necessary to accomplish:

- (1) A danger warning with a horn or other audible signaling device; or
- (2) The preservation or protection of property or the life, safety or welfare of a person or persons by use of an audible signaling device.

“UNREASONABLY LOUD, HARSH OR EXCESSIVE NOISE.” Any noise plainly audible at a distance of 50 feet from its point of origination or emanation.

“VEHICLE.” Any machine or device in, on, or by which any person or property is or may be transported or drawn on any highway, roadway or parking lot.

(Ord. 452, passed 12-11-90; Am. Ord. 729, passed 8-24-01; Am. Ord. B2005-20, passed 6-28-05)

§ 94.02 COMMON LAW AND STATUTORY NUISANCES.

In addition to what is declared in this chapter to be a public nuisance, those offenses which are known to the common law and statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this chapter or in accordance with any other provision of law.

(Ord. 452, passed 12-11-90)

§ 94.03 CERTAIN CONDITIONS DECLARED A NUISANCE.

It shall be unlawful for the owner, occupant, or person having control or management of any land within the city to permit a public nuisance to develop thereon. The following conditions are declared to be public nuisances:

(A) Dwellings unfit for human habitation. The erection, use, or maintenance of a dwelling which is unfit for human habitation.

Cross-reference:

Property Maintenance Code, Ch. 155

(B) Dangerous buildings adjoining streets. Any building, house, or structure so out of repair and dilapidated that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property using or being upon the streets or public way of the city adjoining the premises, by reasons of the collapse of the building, house, or structure or by the falling of parts thereof or of objects therefrom.

Cross-reference:

Property Maintenance Code, Ch. 155

(C) Dangerous trees or stacks adjoining street. Any tree, stack, or other object standing in such a condition that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property upon the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.

Cross-reference:

Property Maintenance Code, Ch. 155

2006 S-18

(D) Dilapidated buildings. Any building, house, or structure which is so out of repair and dilapidated that it constitutes a fire hazard liable to catch on fire or communicate fire, or which due to lack of adequate maintenance or neglect, endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property.

Cross-reference:

Property Maintenance Code, Ch. 155

(E) Accumulation of solid waste.

(1) An accumulation on any premises of solid waste. Solid waste shall be kept in a covered container originally designed and manufactured for the outdoor storage of solid waste and designed and manufactured for the outdoor storage of solid waste and shall be disposed of weekly in accordance with Ch. 51 of this code.

(F) Noxious odors or smoke. Emission into the surrounding atmosphere of odor, dust, smoke, or other matter which renders ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible.

(G) Noise. Emission of noise which is noxious enough to destroy the enjoyment of dwellings or other uses of property in the vicinity by interfering with the ordinary comforts of human existence.

(H) Storage of explosives or combustible material. The storage of combustible or explosive material which creates a safety hazard to other property or persons in the vicinity.

(I) Weeds and grasses. The existence of thistles, burdock, jimson weeds, ragweeds, milkweeds, poison ivy, poison oak, iron weeds, and all other noxious weeds and grasses in excess of a height of 12 inches.

(J) Open wells. The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private premises in any open or unfenced lot or place.

(K) Trees and shrubbery obstructing streets and sidewalks. The growing and maintenance of trees with less than 14 feet clearance over streets or less than eight feet over sidewalks, or the growing and maintenance of shrubbery in excess of three feet in height within the radius of 20 feet from the point where the curb line of any street intersects the curb line of another street. No shrub shall be planted between the curb line and the property line of any street within a radius of 20 feet from the point where the curb line of any street intersects with the curb line of another street.

(L) Junk; scrap metal, motor vehicles. The storage of unlicensed motor vehicles in an inoperative condition, motor vehicles unfit for further use, automobile parts, or scrap metal within the city limits except on premises authorized by the city for such purposes.

(M) Open burning. The open burning of leaves, brush, construction materials, or other debris without specific authorization from the Chief of the Bardstown-Nelson County Volunteer Fire Department or his designee.

(Ord. 452, passed 12-11-90; Am. Ord. 573, passed 2-14-95; Am. Ord. B2005-20, passed 6-28-05)

Cross reference:

Robbery and burglar alarms, see Ch. 100

§ 94.04 ABATEMENT PROCEDURE.

(A) It shall be the duty of the Housing Inspector of the City of Bardstown or other responsible officer designated by the Mayor to serve or cause to be served a notice upon the owner or occupant of any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter and to demand the abatement of the nuisance within five days unless the nuisance constitutes an immediate danger to the health and well being of the community. If such danger is present, the nuisance shall be abated within 24 hours of notice. Notice shall be served upon persons by certified mail, but if the whereabouts of the persons is unknown and cannot be ascertained by the Housing Inspector in the exercise of reasonable diligence, the Housing Inspector shall make an affidavit to that effect, and the serving of notice may be made by publication in a newspaper of general circulation for two consecutive days. A copy of the notice shall be posted in a conspicuous place on the premises affected by the notice and it shall be recorded in the office of the County Clerk.

(B) If the person so served does not abate the nuisance within prescribed amount of time, the city may proceed to abate the nuisance, keeping an account of the expense of the abatement, and the expense shall be charged and paid by the owner or occupant.

(C) Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for 60 days after it has been rendered, the City Clerk may file with the County Clerk a statement of lien claims. This statement shall contain a legal description of the premises, the expenses and costs incurred, the date the nuisance was abated, and a notice that the city claims a lien for this amount. Notice of the lien claim shall be mailed to the owner of the premises if his address is known. However, failure to record the lien claim or to mail the notice, or the failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges as provided in division (D) below.

(D) Property subject to a lien for unpaid nuisance abatement charges shall be sold for nonpayment and the proceeds of the sale shall be applied to pay the charges after deducting costs, as is the case in the foreclosure of statutory liens. This foreclosure shall be in equity in the name of the city.

(E) The City Attorney is authorized and directed to institute such proceedings, in the name of the city, in any court having jurisdiction over the matter, against any property for which the bill has remained unpaid 60 days after it has been rendered.
(Ord. 452, passed 12-11-90)

NOISE

§ 94.20 NOISE POLLUTION.

(A) It shall be unlawful for any person, association, firm or corporation operating a restaurant, hotel, summer garden or other place of refreshment or entertainment to permit, or for any person in or about such restaurant, hotel, summer garden or other place of refreshment or entertainment to engage in playing or rendition of music of any kind, singing, loud talking or other noises on or about the premises, in such manner as to disturb the peace and quiet of the neighborhood, having due regard for the places of residence, hospitals, or other residential institutions and on any other conditions affected by such noises.

(B) It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, harsh, excessive or unnecessary noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others unless the making and continuing of the noise is necessary for the protection or preservation of property or the life, health or safety of a person or persons.

(C) The following acts are hereby declared loud, disturbing and unnecessary noises in violation of this section, but said enumeration shall not be deemed as exclusive:

(1) The sounding of any horn or other such audible signaling device on any automobile, motorcycle or other vehicle on any highway or other public place, for an unreasonable period of time, except as a danger warning;

(2) The use or operation of any radio, stereo, or other machine or device for the production, reproduction or amplification of sound in any vehicle in such a manner as to create an unreasonably loud, harsh, or excessive noise, that disturbs the peace, quiet or comfort of others;

(3) The use or operation of, or allowing the use or operation of, any radio receiving set, musical instrument, phonograph, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet and comfort of others by creating or allowing a volume greater than is necessary for the convenient hearing of the person or persons who are voluntarily in the room, chamber, or vehicle in which any above described machine, device or musical instrument is located;

(4) Use or operation of any vehicle on any highway in such a manner as to produce any unreasonably loud, harsh, or excessive noise, or to discharge into the open air, or to discharge vehicle exhaust in the open air of any vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

(5) Creation of any unreasonably loud, harsh, or excessive noise in connection with the loading or unloading of any vehicle, or by the operation of any such vehicle; and/or

(6) Use of any mechanical loud speaker, amplifier, sound system, stereo or radio on any moving or standing vehicle for advertising, entertainment or any other purpose, in such a manner as to create an unreasonably loud, harsh, or excessive noise.

(D) In every charge of violation of this section the affidavit shall state the hour at which the offense shall have occurred.

(E) The violation of this section between the hours of 1:00 a.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle from which the noise emanates, shall be prima facie evidence of a violation of this section.

(F) The standards, which shall be considered in determining whether a violation exists, shall include, but not be limited to, the following:

- (1) The volume of the noise;
- (2) The intensity of the noise;
- (3) Whether the nature of the noise is usual or unusual;
- (4) The volume and intensity of background noise, if any;
- (5) The proximity of the noise to a residential area or place of public accommodation such as a hotel, motel, inn, campground and the like;
- (6) The nature and zoning of the area within which the noise emanates;
- (7) The density of inhabitation of the area within which the noise emanates;

- (8) The time of day or night the noise occurs;
- (9) The duration of the noise; and/or
- (10) Whether the noise is recurrent, intermittent or constant.

(G) The following activities shall be exempt from § 94.20:

- (1) Noises originating from safety signals, warning devices and emergency pressure relief valves.
- (2) Noises resulting from any authorized emergency or law enforcement vehicle or training facilities.
- (3) Noises resulting from construction or demolition activity.
- (4) Noises from the use of farm machinery, lawn mowers or other machinery properly muffled which is used for agricultural or landscaping purposes.
- (5) Noises originating or emanating from religious activities, public recreational facilities such as, but not limited to, fairgrounds, sports areas and stadiums, amusement parks and other public amusement establishments.
- (6) The operation of aircraft in conformity with, or pursuant to, federal law, federal air regulations and/or air traffic control instructions.
- (7) Noises emanating from festivals or other periodic activities and celebrations where said activity has applied for and received a license or authorization from the City Council to conduct such events.
(Ord. passed 8-12-41; Am. Ord. 512, passed 9-8-92; Am. Ord. 729, passed 8-24-01) Penalty, see § 94.99

§ 94.99 PENALTY.

(A) Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, on conviction thereof, be fined not less than \$10 nor more than \$500 or imprisoned for not more than 30 days or both, and in addition shall pay all costs and expenses involved in the case. Each day a violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city from taking any other lawful action as is necessary to prevent or remedy any violation.

(Ord. 452, passed 12-11-90)

(B) Violation of the provisions of this chapter or failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25 per violation, plus court costs and reasonable attorneys' fees, which shall be recovered by the city in a civil action in the nature of a debt if not paid by the offender within ten continuous calendar days after citation for the violation offense or other failure to comply with the provisions of this chapter. Each day a violation continues shall be considered a separate offense. The penalty provided herein shall be in addition to any penalty provided for in § 94.99.

(C) Violation of the provisions of § 94.20 shall constitute a violation and be subject to a fine not less than \$50, nor more than \$250.

(Ord. 654, passed - - ; Am. Ord. 729, passed 8-24-01; Am. Ord. 777, passed 7-8-03)

