

CHAPTER 92: NUISANCES

Section

- 92.01 Definitions
- 92.02 Common law and statutory nuisances
- 92.03 Certain conditions declared a nuisance
- 92.04 Abatement procedure
- 92.05 Nuisance created by others
- 92.06 Suspension of license
- 92.07 Nuisances abatement actions
- 92.08 Chronic nuisance properties

Miscellaneous

- 92.15 Filling unsterilized water tanks
- 92.16 Objects within right-of-way
- 92.17 Musical devices

- 92.99 Penalty

§ 92.01 DEFINITIONS.

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

"ABATE." To repair, replace, remove, destroy or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable city department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community.

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

"CONTROL." The ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;

"CHRONIC NUISANCE PROPERTY." Any real property on which any combination of three or more nuisance activities occur or exist during a 90-day period;

"DRUG-RELATED ACTIVITY." Any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined under KRS Chapters 217 and 218A, legend drug as defined in KRS Chapter 217, or imitation controlled substances as defined in KRS Chapter 217 and 218A;

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

"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.

"NUISANCE." Public nuisance.

"NUISANCE ACTIVITY." Means and includes:

(1) Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:

(a) Abandoned and junk vehicles;

(b) Fire prevention;

(c) Health and sanitation;

(d) Noise control;

(e) Animals;

(f) Nuisances - Williamstown Code of Ordinances Chapter 92;

(g) Building Regulations - Williamstown Code of Ordinances - Zoning Ordinance;

(h) Rental Inspections; and

(i) Zoning Code and Subdivision Regulations - Williamstown Code of Ordinances.

(2) Any criminal conduct as defined by state law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:

(a) Stalking;

(b) Harassment;

(c) Failure to disperse;

(d) Disorderly conduct;

(e) Assault;

(f) Any domestic violence crimes;

- (g) Reckless endangerment;
- (h) Prostitution;
- (i) Patronizing a prostitute;
- (j) Public disturbance noises;
- (k) Any firearms/dangerous weapons violations;
- (l) Drug-related loitering;
- (m) Any dangerous animal violations; and
- (n) Any drug-related activity.

(3) For purposes of this chapter, "NUISANCE ACTIVITY" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.

"PERSON." Natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;

"PERSON RESPONSIBLE FOR PROPERTY" or "PERSON RESPONSIBLE." Unless otherwise defined, any person who has titled ownership of the property or structure which is subject to § 92.08, an occupant in control of the property or structure which is subject to § 92.08, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to § 92.08 and/or any person who has control over the property and allows a violation of this section to continue.

"PREMISES AND PROPERTY." May be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential property;

"RENTAL UNIT." Any structure or that part of a structure, including but not limited to single family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons;

"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.

"UNFIT FOR FURTHER USE." In a dangerous condition; having defective or missing parts; or in such a condition generally as to be unfit for further use as a conveyance.

"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.

(Am. Ord. 2011-16, passed 7-19-11; Am. Ord. 2013-11, passed 6-3-13)

Cross-reference:

For other definitions relevant to this chapter, see § 10.02

§ 92.02 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.

(Am. Ord. 2011-16, passed 7-19-11) Penalty, see § 92.99

§ 92.03 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.

(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 reason of the collapse of the building, house, or structure or by the falling of parts thereof or of objects therefrom.

(C) Dangerous trees or stumps adjoining street. Any tree, stump, 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.

(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.

(E) Accumulation of rubbish. An accumulation on any premises of filth, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger of its catching or communicating fire, its attracting and propagating vermin, rodents, or insects, or its blowing of rubbish into any street, sidewalk, or property of another.

(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. The existence of thistles, burdock, jimson weeds, ragweeds, milkweeds, poison ivy, poison oak, iron weeds, and all other noxious weeds and rank vegetation 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 8 feet over sidewalks, or the growing and maintenance of shrubbery in excess of 3 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) Keeping of animals. The keeping of cattle or poultry within 50 feet or of hogs and goats within 200 feet of a dwelling other than the dwelling of the owner of the animal, or failure to keep the animal's pen, yard, lot or other enclosure in a sanitary condition and free from preventable offensive odors.

(M) Junk; scrap metal; motor vehicles. The storage of 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.

(Am. Ord. 2011-16, passed 7-19-11) Penalty, see § 92.99

§ 92.04 ABATEMENT PROCEDURE.

(A) It shall be the duty of the City Administrative Officer or other responsible officer designated by the legislative body 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 Director in the exercise of reasonable diligence, the Director 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 five days, 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/Treasurer 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) In the alternative, the city may cause costs and expenses for unpaid nuisance abatement charges to appear on city utility bills and shall be cause to terminate city utility services if said costs are not paid or abated within 60 days of the city incurring said costs and they remain unpaid.

(F) 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.

(Am. Ord. 2011-16, passed 7-19-11)

§ 92.05 NUISANCE CREATED BY OTHERS.

For the purposes of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware of.

(Am. Ord. 2011-16, passed 7-19-11)

§ 92.06 SUSPENSION OF LICENSE.

(A) Whenever it is brought to the attention of the legislative body that a nuisance exists and the legislative body deems that there is an immediate threat to the public health, safety, welfare, the legislative body may by majority vote suspend the license of any person conducting business upon the premises where the nuisance exists.

(B) The Clerk/Treasurer shall cause notice of the suspension to be served personally upon the licensee or at the premises where the nuisance exists.

(C) Upon application of the licensee, the legislative body may remove the suspension upon such terms as it may direct.

(Am. Ord. 2011-16, passed 7-19-11)

§ 92.07 ABATEMENT OF NUISANCES.

At the direction of the Mayor and/or the City Administrator, the City Attorney is authorized and directed to institute on behalf of the city common law nuisance abatement actions against any person or properties which the city has determined to constitute a nuisance, or the City Attorney may institute on behalf of the city a declaratory judgment action for determination of whether or not a nuisance exists and the methods by which the city may abate such nuisance.

(Ord. 1994-4, passed 4-4-94; Am. Ord. 2011-16, passed 7-19-11)

§ 92.08 CHRONIC NUISANCE PROPERTIES.

(A) Prohibition.

(1) Any property within the City of Williamstown which is a chronic nuisance property is declared a public nuisance and in violation of this section and subject to the remedies provided herein; and

(2) Any person responsible for property, who permits property to be a chronic nuisance property shall be in violation of this section.

(B) Abatement procedure for chronic nuisance properties.

(1) When the Code Enforcement Officer, or his designee(s), receives documentation or information confirming the occurrence of three or more nuisance activities within a 90-day period on or at any premises or property, the Code Enforcement Officer, or his designee(s), shall review such documentation or information to determine whether it describes the nuisance activities enumerated in this section. Upon such a finding, the Code Enforcement Officer, or his designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.

(2) The warning shall be sent by certified mail, return receipt requested, and contain:

(a) the street address or a legal description sufficient for identification of the property;

(b) a concise description of the nuisance activities that exist, or that have occurred on the property;

(c) a demand that the person responsible for such property respond to the notice within ten days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;

(d) offer the person responsible an opportunity to abate the nuisance activities giving rise to the violation; and

(e) a statement describing that the property could be subject to closure and civil penalties and/or costs assessed up to two hundred dollars (\$200.00) per day if the property is declared a chronic nuisance property.

(3) The Code Enforcement Officer or his designee(s) shall serve or cause to be served the warning and notice to abate upon the person responsible by certified mail, return receipt requested, or may personally serve the person responsible in accordance with the procedures set forth in KRS 381.770(4) and KRS 65.8825(4).

(4) If the person responsible fails to respond to the warning within the time prescribed, the Code Enforcement Officer, or his/her designee(s) shall issue a notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a citation for a civil infraction, punishable by a maximum penalty of two hundred dollars (\$200.00). If the person responsible fails to respond to the warning, notice or citation, the matter shall be referred for enforcement.

(5) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Code Enforcement Officer, or his designee(s), and the person responsible may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Code Enforcement Board or other city enforcement board or agency and any additional appropriate entity or office for appropriate official enforcement action. Provided, that in the event the Code of Enforcement Officer or his designee(s) determine that the person responsible has taken reasonable steps to abate the nuisance activity, the city shall not commence an enforcement action under this chapter, notwithstanding the continuance of the nuisance activity.

(6) It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic nuisance property.

(C) Enforcement and penalties.

(1) In addition to other remedies set out in this section or by statute, should the chronic nuisance property not be abated at the time stated in the notice to abate, the Code Enforcement Officer shall be authorized to issue any appropriate citation. Upon failure of the property owner to request a hearing before the Code Enforcement Board, an order may be issued condemning and vacating the premises or portions thereof to the extent necessary to abate the chronic nuisance property. Any close and vacate order shall be for a period of less than one year from the date of closing and rescind within 14 days of an abatement. If the property consists of multi-unit dwellings, and the nuisance activity has occurred solely within a single unit, the condemnation and vacate order may be limited to the single unit.

(2) Upon the issuance of any order provided for in this section, a copy of the order shall be served on the owner of the property in the same manner as the warning and shall be conspicuously posted on the property.

(3) In addition to an order condemning and vacating the property, a maximum civil penalty of \$200 shall be imposed for any violation of this section. However, if the responsible party does not appeal the citation to the Code Enforcement Board, then the civil penalty shall be reduced to \$175.

(4) Nothing in this section shall prevent the city from pursuing additional remedies including judicial actions provided by statute or common law to enjoin or otherwise remedy the chronic nuisance.

(E) Summary closure. Nothing in this section prohibits the city from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety.

(F) Penalty upon failure to comply. Upon the failure of the property owner to comply with an order to close and vacate, the Code Enforcement Department may prohibit the furnishing of utility service, to include but not limited to gas, electric, water, and heating oil, to the premises by any public utility holding a franchise to use the streets and public ways of the City of Williamstown; revoke the certificate of occupancy of the premises; or use any other legal remedy available under the laws of the state.

(G) Relief from order. The Code Official may vacate or suspend the provisions of an order to close and vacate upon showing by clear and convincing evidence that the nuisance activity has been abated and will not be maintained or permitted on the property or a unit thereof.

(H) Lien. Pursuant to the provisions of KRS 381.770, the city shall possess a lien against the property for all fines, penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the nuisance activity. The lien shall be superior to and have priority over all other liens on the property except state, City of Williamstown, school board and City of Williamstown taxes, and may be enforced by judicial proceeding.

(Ord. 2013-11, passed 6-3-13)

MISCELLANEOUS

§ 92.15 FILLING UNSTERILIZED WATER TANKS.

(A) No person, firm, corporation, or other entity shall cause or permit any water tank owned by him to be filled in whole or in part or cause or permit anyone to attempt to fill in whole or in part any water tank which has not been fully sterilized, from any facility presently or hereafter provided by the city for the purpose of filling water tanks with water to be utilized for human or domestic consumption.

(B) All nonsterilized tanks shall be filled from a separate facility provided by the city for nonsterilized tanks.

(C) No person, firm, corporation, or other entity shall fill in whole or in part any tank used for storage or transportation of water for human or domestic consumption from any facility of the city, not designated as a facility for sterilized tanks filling.

(Ord. 160, passed 12-2-74) Penalty, see § 92.99(B)

§ 92.16 OBJECTS WITHIN RIGHT-OF-WAY.

(A) No person, firm, or corporation shall place or cause to be placed any fence, shrub, building, or other fixed object, including

dirt, gravel, blacktop, culverts, sidewalks, driveways, or other such objects, within the right-of-way of any public street, alley, or public way within the city limits without first obtaining a permit therefor from the City Building Inspector.

(B) No such permit shall be granted unless a written application therefor be submitted to the City Building Inspector with a scaled drawing of the proposed construction or planting.

(C) No such permit shall be granted unless the City Building Inspector shall first find that such structure or planting will not in any way hamper, impede, or endanger the flow of traffic on the street or way and further that the structure or planting will improve the street or way or its appearance.

(D) Any public building, shrub, or fence found within the right-of-way of any public street, alley, or public way, or municipally owned parking lot in violation of this section may be removed at the expense of the owner or person having control thereof by the City Police or other employees or agents of the city and upon conviction, the owner or person having control thereof shall pay to the city in addition to any fine and court costs imposed, the cost of removal and storage. (Ord. 110, passed 12-4-67) Penalty, see §92.99 (C)

§ 92.17 MUSICAL DEVICES.

(A) No person shall cause to be operated or permit to be operated upon the premises owned or operated by him any record player, jukebox, or other similar device during the hours of 12:00 p.m. to 8:00 a.m.

(B) No person shall cause to be operated or permit to be operated upon the premises owned or operated by him during the hours from 8:00 a.m. to 12:00 p.m. any record player, juke box, or similar device in such a manner as to interfere with or disturb the peace and comfort of those persons living or occupying property in the vicinity of his place of business.

(Ord. passed 9-5-47; Am. Ord. 54, passed 8-63) Penalty, see § 92.99

§ 92.99 PENALTY.

(A) Whoever violates any provision of this chapter for which no penalty is otherwise specifically provided shall be fined not less than \$10 nor more than \$100 for each offense. Each day's continued violation shall constitute a separate offense.

(B) Any person, firm, corporation, or other entity violating any provisions of § 92.15 shall be guilty of a misdemeanor and, on conviction thereof, be fined not more than \$500 or imprisoned for a period of 90 days or both. (Ord. 160, passed 12-2-74)

(C) Any person, firm, or corporation violating any provisions of §92.16 shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than \$10 nor more than \$100 or imprisoned for not more than 30 days, or both. Each day of violation shall constitute a separate offense. (Ord. 110, passed 12-4-67)

(D) Any person convicted of violating any provisions of § 92.17 shall be guilty of a misdemeanor and shall be fined for a first offense not less than \$10 nor more than \$20, for a second offense not less than \$20 nor more than \$50, and for any subsequent offense not less than \$50 nor more than \$100, and confined for not more than 30 days. (Ord. 54, passed 8-63)