

**CITY OF FORT MITCHELL  
KENTON COUNTY, KENTUCKY  
ORDINANCE 2026-02**

**AN ORDINANCE REPEALING THE CITY OF FORT MITCHELL'S CODE OF  
ORDINANCES CHAPTERS 41 AND 92 AND ADOPTING NEW CODE OF  
ORDINANCES CHAPTERS 41 AND 92.**

**WHEREAS**, the City of Fort Mitchell desires to update its Code of Ordinances in order to comply with recent statutory change and adoption of the "Interlocal Agreement for the Kenton County Joint Code Enforcement Board"; and

**WHEREAS**, the City of Fort Mitchell desires amend its current Code of Ordinances Chapters 41 and 92; and

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF FORT MITCHELL,  
COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

SECTION I

That Chapter 41 of the City of Fort Mitchell Code of Ordinances be amended as follows:

CHAPTER 41: CODE ENFORCEMENT BOARD

Section

- 41.01 ~~Definitions~~ Purpose
- 41.02 ~~Powers, creation, and membership~~ Definitions
- 41.03 ~~Board membership~~ Creation and membership
- 41.04 ~~Meetings; organization of the Board~~ Enforcement powers
- 41.05 ~~Conflict of interest~~ Appointment of members; term of office; removal from office; oath; compensation; organization of board; meetings; quorum; conflict of interest; minutes and records
- 41.06 Powers of the Code Enforcement Board
- 41.07 Enforcement proceedings
- 41.08 Hearing, notice and final order
- 41.09 Presentation of cases
- 41.10 Appeals; final judgment

41.11 Ordinance civil fine schedule

41.12 Liens

41.13 ~~Civil Remedies-Immediate action~~

~~41.14 State statutes adopted by reference~~

~~41.15 Lienholder notification system~~

~~41.16 Lie~~

#### § 41.01 PURPOSE

The purpose of this subchapter is to conform to all provisions of KRS 65.8801 through 65.8839, commonly known as the "Local Government Code Enforcement Boards Act" and any subsequent amendments thereto.

#### § 41.02 DEFINITIONS.

When used in this subchapter, the words, phrases and terms defined in KRS 65.8805 shall have the same meaning as those provided in that statute.

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~—ABATEMENT COSTS. A city's necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing; all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve the public health, safety and welfare in accordance with any city ordinance.~~

~~—CODE ENFORCEMENT BOARD. An administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839.~~

~~—CODE ENFORCEMENT OFFICER. A city police officer, safety officer, citation officer, or other public law enforcement officer with the authority to issue a citation.~~

~~—FINAL ORDER. Any order:~~

~~—(1) Issued by the code enforcement board following a hearing in accordance with § 41.08(E);~~

~~—(2) Created because a violator neither paid nor contested the citation within seven days as provided in § 41.07(F); or~~

~~—(3) Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in § 41.08(C).~~

~~—IMMINENT BANGER. A condition which is likely to cause serious or life-threatening injury or death at any time.~~

~~—ORDINANCE. An official action of the local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinances adopted by the city legislative body which embodies all or part of an ordinance.~~

~~—OWNER. A person, association, corporation, partnership or other legal entity having a legal or equitable title in real property.~~

~~—PREMISES. A lot, plot or parcel of land, including any structures upon it.~~

§ 41.023 POWERS, CREATION, AND MEMBERSHIP.

(A) Pursuant to KRS 65.8811(1)(a), the city shall participate in a Joint Code Enforcement Board through an interlocal agreement executed with other participating city and county members. This Joint Code Enforcement Board shall operate in lieu of a City Code Enforcement Board and have jurisdiction and authority throughout the City of Fort Mitchell, Kentucky, in the same manner as a City Code Enforcement Board created under KRS 65.8811(1).

(B) The city's representation on the Joint Code Enforcement Board is established through the interlocal agreement with the participating cities and/or Kenton County, and any and all amendments to the interlocal agreement. The city shall appoint one member and one alternate member to the Kenton County Joint Code Enforcement Board. All appointments shall be made by the Mayor, with approval of the City Council. Members of the Kenton County Joint Code Enforcement Board shall serve consistent with the provisions of the interlocal agreement.

(C) All appointments to the Kenton County Joint Code Enforcement Board shall be for a term of three years. Upon expiration of a term, a member or alternate member may be re-appointed by the Mayor, with approval by the City Council.

(D) Each member and alternate member appointed by the city to the Kenton County Joint Code Enforcement Board shall have resided within the boundaries of the city for a period of at least one year prior to the date of the member's appointment, and shall reside there throughout the term in office.

(E) In the event that the appointed member of the city vacates his or her membership on the Kenton County Joint Code Enforcement Board, the city shall, following the procedures in KRS 65.8811, fill the vacancy within 60 days. If the Mayor has not filled the vacancy within 60 days, then the remaining member of the Kenton County Joint Code Enforcement Board shall fill the vacancy with another person who meets the qualifications in KRS 65.8811. All vacancies shall be filled for the remainder of the unexpired term.

(F) Any member or alternate member appointed by the Mayor to the Kenton County Joint Code Enforcement Board, pursuant to KRS 65.8811, may be removed by the Mayor for misconduct, inefficiency, or willful neglect of duty. In the event of removal, the Mayor shall submit a written statement to the member subject to removal, and to the City Council, setting forth the reasons for removal. The member so removed shall have the right to appeal the removal to the Kenton County Circuit Court.

(G) Any member or alternate member shall, prior to entering their duties, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(H) The members of the Kenton County Joint Code Enforcement Board may be compensated or reimbursed per the terms of the interlocal agreement, and its amendments.

(I) No member or alternate member appointed by the city to the Kenton County Joint Code Enforcement Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city.

(J) A copy of the governing interlocal agreement shall be maintained in the Office of the City Clerk for inspection by the public.

~~—(A) There is hereby created within the city pursuant to KRS 65.8801 to KRS 65.8839, a Code Enforcement Board which shall be composed of five members, all of whom shall be residents of the city for a period of at least one year prior to the creation of the Board and shall reside there throughout the term in office.~~

~~—(B) The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances when a violation of the ordinance has been classified as a civil offense.~~

~~—(C) The Code Enforcement Board shall not have the authority to enforce any ordinance regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.~~

#### § 41.034 BOARD MEMBERSHIP. ENFORCEMENT POWERS

(A) The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances when a violation of the ordinance has been classified as a civil offense.

(B) The Code Enforcement Board shall not have the authority to enforce any ordinance regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.

~~—(A) Members of the Code Enforcement Board shall be appointed by the executive authority of the city, subject to the approval of the legislative body.~~

~~—(B) The terms of the members and alternate members of the Board shall be for three years.~~

~~—(C) The executive authority may appoint, subject to the approval of the legislative body, two alternate members to serve on the Code Enforcement Board in the absence of regular members. Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply to regular members of the Code Enforcement Board.~~

~~—(D) The executive authority may appoint, subject to the approval of the legislative body, two alternate members to serve on the Code Enforcement Board in the absence of regular members.~~

~~Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply to regular members of the Code Enforcement Board.~~

~~—(E) Any vacancy on the Board shall be filled by the executive authority, subject to approval of the legislative body, within 60 days of the vacancy. If the vacancy is not filled within that time period, the remaining Code Enforcement Board members shall fill the vacancy. A vacancy shall be filled for the remainder of the unexpired term.~~

~~—(F) Membership requirements, vacancies, removal and oaths of members shall be as required by statute. Board members must take the oath of office prescribed in Section 228 of the Kentucky Constitution.~~

~~—(G) The City Council may provide compensation, reimbursement for expenses and education of members as it may, from time to time, order.~~

~~—(H) A Board member may be removed from office by the executive authority for misconduct, inefficiency or willful neglect of duty. The executive authority shall submit a written statement to the member and the legislative body setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.~~

~~—(I) No member of the Board may hold any elected or non-elected office, paid or unpaid, or any position of employment with the city.~~

§ 41.04 05 MEETINGS; ORGANIZATION OF THE BOARD. APPOINTMENT OF MEMBERS; TERM OF OFFICE; REMOVAL FROM OFFICE; OATH; COMPENSATION; ORGANIZATION OF BOARD; MEETINGS; QUORUM; CONFLICT OF INTEREST; MINUTES AND RECORDS

Membership, oath and terms of office, quorum, vacancies, removal of members, and other statutory requirements related to the Board's activities shall be as stated in the Local Government Code Enforcement Board Act and as set forth by the interlocal agreement for the Kenton County Joint Code Enforcement Board filed of record with the Kenton County Clerk in Book \_\_\_\_\_, Page \_\_\_\_\_, as incorporated by reference as set forth herein.

~~—(A) Meetings.~~

~~—(1) Regular meetings of the Code Enforcement Board shall be held pursuant to a schedule established by the board. Meetings other than those regularly scheduled shall be special meetings or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act.~~

~~—(2) All meetings and hearings of the Code Enforcement Board shall be public meetings held in accordance with the requirements of KRS 65.8815(5) and the Kentucky Open Meetings Act.~~

~~—(B) Organization of the Board.~~

~~—(1) The Board shall elect a chairperson from its members. The chairperson shall be the presiding officer and a full voting member of the Board. In the absence of the chair, the remaining~~

~~members of the Board shall select a member to preside in place of and exercise the powers of the chair.~~

~~—(2) The presence of at least a majority of the board's entire membership shall constitute a quorum. An affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken.~~

~~—(3) Minutes shall be kept for all proceedings of the Board and the vote of each member on any issue decided by the Board shall be recorded in the minutes.~~

#### ~~§ 41.05 CONFLICT OF INTEREST.~~

~~—Any member of the Code Enforcement Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest, shall disqualify himself from voting on the matter in which he has an interest, and shall not be counted for purposes of establishing a quorum.~~

#### ~~§ 41.06 POWERS OF THE CODE ENFORCEMENT BOARD.~~

~~The Kenton County Joint Code Enforcement Board shall have the powers and duties as set forth by the interlocal agreement filed of record with the Kenton County Clerk in Book \_\_\_\_\_, Page \_\_\_\_\_ as incorporated by reference as set forth herein.~~

~~—The City of Fort Mitchell Code Enforcement Board shall have the following powers and duties:~~

~~—(A) To adopt rules and regulations to govern its operations and the conduct of its hearings consistent with this charter.~~

~~—(B) To conduct hearings to determine if there has been a violation of an ordinance over which it has jurisdiction.~~

~~—(C) To subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas issued by the Code Enforcement Board may be served by any code enforcement officer.~~

~~—(D) To take testimony under oath. The chairman shall have the authority to administer oaths for the purpose of taking testimony.~~

~~—(E) To make findings of fact and issue orders necessary to remedy any violation of a city ordinance or code provision which the Board is authorized to enforce.~~

~~—(F) To impose civil fines, as authorized, on any person found to have violated an ordinance over which the board has jurisdiction.~~

#### ~~§ 41.07 ENFORCEMENT PROCEEDINGS.~~

~~The following requirements shall govern all enforcement proceedings before the Code Enforcement Board:~~

~~(A) Enforcement proceedings before the Board shall only be initiated by the issuance of a citation by a Ceode Enforcement Officer.~~

(B) Except when immediate action is necessary to pursuant to § 44.14 as provided in § 41.17, if a Code Enforcement Officer believes, based on his or her personal observation or investigation, that a person has violated a city ordinance, he or she shall issue a notice of violation allowing the alleged violator a specified period of time to remedy the violation without incurring a fine. If the alleged violator fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

(C) The Code Enforcement Officer shall issue a citation by one of the following methods:

(1) Personal service to the alleged violator;

(2) Leaving a copy of the citation with any person 18 years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or

(3) ~~Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular, first-class mail to the owner of record of the property, if no one is on the premises at the time the citation is issued.~~ Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator; or

(4) If, in the exercise of reasonable diligence, the issuance of a citation using the methods set out in paragraphs (1) to (3) of this subsection is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises.

(D) The citation issued by the code enforcement officer shall contain the following information:

(1) The date and time of the issuance;

(2) The name and address of the person to whom the citation is issued;

(3) The physical address of the premises where the violation occurred;

(4) The date and time the offense was committed or discovered;

(5) The facts constituting the offense;

(6) The section of the code or the ordinance number violated;

(7) The name of the code enforcement officer;

(8) The civil fine that may be imposed for the violation, including, if applicable:

(a) The civil fine that will be imposed if the person does not contest the citation; and

(b) The maximum civil fine that may be imposed if the person elects to contest the citation;

(9) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(10) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the Code Enforcement Board to contest the citation; the determination that the

violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to Kenton District Court.

(E) After issuing a citation to an alleged violator, the Code Enforcement Officer shall notify the Code Enforcement Board ~~and city~~ by delivering a copy of the citation to the ~~City Administrator's Office~~ Board Chairman.

(F) (1) The person to whom the citation is issued shall respond to the citation within seven days of the date of issuance by either paying the civil fine or requesting, in writing, a hearing ~~before the Board~~ to contest the citation. ~~The request for a hearing shall be delivered to the City Administrator's office. The request shall include the name and address of the person requesting the hearing so that the city may notify the person of the hearing.~~ If the person fails to respond to the citation within seven days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

#### § 41.08 HEARING, NOTICE AND FINAL ORDER.

(A) When a hearing has been requested, the Code Enforcement Board shall schedule a hearing.

(B) Not less than seven days before the date of the hearing, the Code Enforcement Board shall notify the requester of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

(C) (1) Any person requesting a hearing who fails to appear at the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the citation as issued shall be deemed a final order determining the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

(D) All testimony at the hearing shall be taken under oath and recorded. Testimony shall be taken from the Code Enforcement Officer, the alleged violator, and any witnesses to the violation offered by the Code Enforcement Officer or alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(E) The Code Enforcement Board shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, an order dismissing the citation shall be entered. If it determines that a violation was committed, an order may be issued upholding the citation. The Code Enforcement Board may impose a fine up to the maximum authorized by ordinance, or require the offender to remedy a continuing violation to avoid a fine, or both.

(F) (1) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions reached and the date the order was issued. A copy shall be furnished to the person named in the citation.

(2) If the person named in the citation is not present when the final order is issued, the order shall be delivered to the person by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

#### § 41.09 PRESENTATION OF CASES.

Each case before the Code Enforcement Board may be presented by an attorney selected by the city, a Code Enforcement Officer for the city, or by a member of the city's administrative staff. ~~shall be presented by an attorney selected by the city, a code enforcement officer for the city, or by a member of the city's administrative staff. The City Attorney may either be counsel to the Code Enforcement Board or may present cases before the Code Enforcement Board, but shall in no case serve in both capacities.~~

#### § 41.10 APPEALS; FINAL JUDGMENT

(A) An appeal from any final order of the Code Enforcement Board following a hearing conducted pursuant to § 41.08(E) may be made to the Kenton County District Court within 30 days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the Code Enforcement Board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

(B) If no appeal from a final order of the Code Enforcement Board is filed within the time period set forth in division (A), the Code Enforcement Board's order shall be deemed final for all purposes.

#### § 41.11 ORDINANCE CIVIL FINE SCHEDULE.

Violations of ordinances that are enforced by the Kenton County Joint Code Enforcement Board shall be subject to the schedule of civil fines as set forth by separate ordinance. ~~the city code enforcement officer and Board shall be subject to the following schedule of civil fines:~~

~~—(A) If a citation for a violation of an ordinance is not contested by the person charged with the violation, the penalties set forth in this division and in accordance with the citation and the specific ordinance violated shall apply.~~

~~(1) Each section violated within a five year period, except for violations of the chronic nuisance ordinance as set forth in §§ 92.15 through 92~~

~~§ 41.12 LIENS, FINES, CHARGES AND FEES.~~

~~(A) A lienholder of record who has registered pursuant to § 44.12(B) may, within 45 days from the date of issuance of notification under § 44.12(C):~~

~~(1) Correct the violation, if it has not already been abated; or~~

~~(2) Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.~~

~~(B) Nothing in this section shall prohibit the city from taking immediate action if necessary under § 44.14.~~

~~(C) The lien provided by § 44.12 shall not take precedence over previously recorded liens if:~~

~~(1) The city failed to comply with the requirements of § 44.12 for notification of the final order; or~~

~~(2) A prior lienholder complied with division (A) above.~~

~~(D) A lien that does not take precedence over previously recorded liens under division~~

~~(C) above shall, if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.~~

~~(E) The city may record a lien before the 45-day period established in division (A) above expires. If the lien is fully satisfied prior to the expiration of the 45-day period, the city shall release the lien in the County Clerk's Office where the lien is recorded within 15 days of satisfaction.~~

~~(F) Failure of the city to comply with §§ 44.12 or 44.13, or failure of a lien to take precedence over previously filed liens as provided in division (C) above, shall not limit or restrict any other remedies the city has against the property of the violator.~~

~~—(A) The city may, pursuant to KRS 65.8835, possess a lien on property owned by the person found by a final, non appealable order of the Board or by a final judgment of a court of law if the Board's decision has been appealed, to have committed a violation, for all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement.~~

~~—(B) The lien shall be recorded in the Office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid. The lien shall continue for ten years following the date of the nonappealable final order or final court judgment. The lien may be recorded in the office of the County Clerk.~~

~~—(C) Subject to § 41.16, the lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings, including a foreclosure action.~~

~~—(D) In addition to the remedy prescribed in division (A) of this section, the person found to have committed the violation shall be personally responsible for the amount of all civil fines assessed for the violation and for all charges, fees and abatement costs incurred by the city in connection with the enforcement of the ordinance. The city may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.~~

~~§ 41.13 CIVIL REMEDIES. IMMEDIATE ACTION.~~

~~Nothing in this subchapter shall prohibit the city from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.~~

~~—In addition to the imposition of a lien, the city may institute other civil action and seek an injunction or monetary damages to enforce its ordinances and collect the debts arising from the fines imposed by the Board.~~

~~§ 41.14 STATE STATUTES ADOPTED BY REFERENCE.~~

~~—All of the terms, conditions and procedures of KRS 65.8801 to 65.8839 relating to the organization and powers of the Board, enforcement, procedure, appeals and other matters are hereby adopted by the city and incorporated herein by reference, as if fully rewritten.~~

~~§ 41.15 LIENHOLDER NOTIFICATION SYSTEM.~~

~~—The city shall obtain and maintain priority over previously tiled liens, as provided in § 41.12, in accordance with the following provisions:~~

~~—(A) Individuals and entities, including but not limited to lienholders, may register with the city to receive electronic notification of final orders entered pursuant to this chapter.~~

~~—(B) In order to receive the notification, the registrant shall submit the following information to the [city clerk/ code enforcement staff/ other designated city officer or employee]:~~

~~—(1) Name;~~

~~—(2) Mailing address;~~

~~—(3) Phone number; and~~

~~—(4) Electronic mailing address.~~

~~—(C) A registrant may use the electronic form provided on the city website to submit the information required by division (B) of this section. It shall be the responsibility of the registrant to maintain and update the required contact information with the city. The city shall inform a~~

~~registrant of any evidence received that the electronic mailing address is invalid or not functional so that the registrant may provide an updated electronic mailing address.~~

~~—(D) Once per month, the city shall send electronic mail notification of all final orders entered pursuant to this chapter since the last date of notification to each party registered pursuant to this section. The notification shall provide an electronic link to the city code enforcement database located on the city website. The database shall include the following information regarding each final order:~~

~~—(1) The name of the person charged with a violation;~~

~~—(2) The physical address of the premises where the violation occurred;~~

~~—(3) The last known mailing address for the owner of the premises where the violation occurred;~~

~~—(4) A copy of the full citation;~~

~~—(5) A copy of the full final order; and~~

~~—(6) The status of the final order regarding its ability to be appealed pursuant to this chapter.~~

~~—(E) If an appeal is filed on a final order pursuant to this chapter, the city shall send electronic mail notification to all registrants.~~

~~—(F) Within ten days of the issuance of a final order pursuant to this chapter, the city shall update its code enforcement database to reflect the issued final order, and shall post the notification required by division (D) of this section containing an updated link to the code enforcement database on the city website.~~

~~—(G) The city shall maintain the records created under this section for ten years following their issuance.~~

#### ~~§ 41.16 LIENS.~~

~~—(A) A lienholder of record who has registered pursuant to § 41.15(B) may, within 45 days from the date of issuance of notification under § 41.15(D):~~

~~—(1) Correct the violation, if it has not already been abated; or~~

~~—(2) Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.~~

~~—(B) Nothing in this section shall prohibit the city from taking immediate action if necessary pursuant to § 41.17.~~

~~—(C) The lien provided by § 41.12 shall not take precedence over previously recorded liens if:~~

~~—(1) The city failed to comply with the requirements of § 41.15 for notification of the final order; or~~

~~—(2) A prior lienholder complied with division (A) of this section.~~

~~—(D) A lien that does not take precedence over previously recorded liens under division (C) of this section shall if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.~~

~~—(E) The city may record a lien before the 45 day period established in division (A) of this section expires. If the lien is fully satisfied prior to the expiration of the 45 day period, the city shall release the lien in the County Clerk's Office where the lien is recorded within 35 days of satisfaction.~~

~~—(F) Failure of the city to comply with §§ 41.12 and 41.15, or failure of a lien to take precedence over previously tiled liens as provided in division (C) of this section, shall not limit or restrict any other remedies the city has against the property of the violator.~~

~~§ 41.17 IMMEDIATE ACTION.~~

~~—Nothing in this chapter shall prohibit the city from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.~~

SECTION II

That Chapter 92 of the City of Fort Mitchell Code of Ordinances be amended as follows:

CHAPTER 92: NUISANCES

Section

General Provisions

92.01 Definitions

92.02 Common law and statutory nuisances

92.03 ~~Certain conditions declared a nuisance~~ Public nuisances prohibited

92.04 ~~Abatement procedure~~ Code enforcement powers and duties

92.05 ~~Nuisance created by others~~ Kenton county joint code enforcement board

92.06 ~~Suspension~~ Appeal

92.08 Suspension of license

Chronic Nuisance

92.15 Chronic nuisance property; violations

92.16 Definitions

92.17 Abatement ~~P~~procedure; city enforcement

92.18 ~~Procedure; resident enforcement~~ Enforcement and penalties

~~92.19 Commencement of actions; remedies; burden of proof~~

92.2019 Summary closure

92.240 Fees for service

92.99 Penalty

~~Cross reference:~~

~~—BOCA Basic Property Maintenance Code, § 150.02~~

~~—Kentucky Building Code, Plumbing Code, Standards of Safety, see § 150.01~~

~~—Littering, see Ch. 130~~

~~—Rules of construction; definitions, see § 10.02~~

~~Statutory reference:~~

~~—Abatement of nuisances, see KRS 82.700 to 82.725~~

~~—Code Enforcement Boards, see KRS 65.8801 to 65.8838~~

## GENERAL PROVISIONS

### § 92.01 DEFINITIONS.

For the purpose of this chapter and the definitions in Chapter 10, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

**CODE ENFORCEMENT OFFICER.** As defined in KRS 65.8801 et seq., and any employee of Planning and Development Services of Kenton County charged with the enforcement of this code as a code enforcement/citation officer, exclusive of clerical and administrative staff, as well as police and fire safety officers. The Building Inspector, Code Administrator, Zoning Administrator, police officer, or any other officer designation by the City Council or the one responsible for code enforcement.

**CODE ENFORCEMENT BOARD; KENTON COUNTY JOINT CODE ENFORCEMENT BOARD; JOINT CODE ENFORCEMENT BOARD.** An administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839, created by an interlocal agreement between this city and other cities together with the County Fiscal Court.

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

INOPERATIVE CONDITION. Unable to operate on a public highway under its own power due to defective or missing parts, and existing in the condition for a period of not less than ten consecutive days, or a motor vehicle which may not be legally operated because it does not have a valid license plate as required by state law.

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

NUISANCE. Public nuisance per §§ 92.02 and 92.03.

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, on or off a public highway.

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

VEHICLE. Any style or type of vehicle used for the conveyance of persons or property, including motor vehicles.

#### § 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 shall be treated as such and be proceeded against as is provided in this chapter or in accordance with any other provision of law.

#### § 92.03 ~~CERTAIN CONDITIONS DECLARED A NUISANCE.~~ PUBLIC NUISANCES PROHIBITED

No person shall act, fail to act, behave, erect, contrive, cause, continue, maintain in any manner, or permit to exist any public nuisance within the city. Violation of the terms of the International Property Maintenance code, as amended, shall constitute a public nuisance. It shall be unlawful for the owner, occupant or person having control or management of any land within the city to permit a nuisance to develop thereon. The following conditions, in addition to those set out in the International Property Maintenance code, as amended, Basic Property Maintenance Code of the city under §§ 92.02 or 150.02 of this code of ordinances, are declared to be public nuisances and are prohibited:

(A) Dangerous trees, buildings, or objects adjoining street. Any tree, building, house or structure 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 adjoining the premises, by reason of the falling or collapse of the tree, building, house or structure or other objects or any parts thereof by the falling thereof or of parts thereof. 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 inadequate maintenance or neglect endangers the public health, safety, or materially interferes with the peaceful enjoyment by owners or occupants of property in the city.

(B) Accumulation of rubbish. An accumulation on any property of filth, refuse, trash, garbage or other waste material which endangers the public health, welfare or safety, makes the property unfit for human habitation, or materially interferes with the peaceful enjoyment by owners or occupants of other property in the city because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents or insects, or blow rubbish into any street, sidewalk or property of another.

(C) 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 city uncomfortable or impossible. Also included are emissions from any furnace, incinerator, or heating unit of smoke, soot, or ashes of a kind or degree which could damage property or constitute a health hazard to the people of the city.

(D) Loud and unnecessary noise.

(1) Emission of noise which is noxious enough to destroy the enjoyment of dwellings or other uses of property in the city by interfering with the ordinary comforts of human existence, the operation or causing the operation of any whistle, rattle, bell, gong, clapper, drum, horn, piano, radio, ~~colliope~~, ~~phonograph~~ or other sound-producing or sound-amplifying instrument, or the calling, shouting, or in any other way or manner creating noise or sound in such a manner as to disturb the peace and quiet of a neighborhood or to interfere with the transaction of business or other ordinary pursuits. Nothing herein shall be construed to affect the usual and reasonable operation of railroads, electric railways, or motor buses, prohibit the reasonable use of automobiles and ordinary noises attendant thereto, athletic contests or lawful public meetings, parades or celebrations.

(2) Without limiting the prohibitions contained in § 92.03(D)(1), it shall be a prima facie public nuisance for any person to create a noise measured at street level in excess of the following:

(a) Seventy-five decibels at any time.

(b) Fifty decibels at any time from Sunday at 10:00 p.m. to the following Friday at 7:00 a.m. between the hours of 10:00 p.m. and the following 7:00 a.m.

(c) Fifty decibels at any time from Friday 7:00 a.m. to the following Sunday at 10:00 p.m. between the hours of 12:00 a.m. and the following 7:00 a.m.

(d) Fifty decibels for more than two hours during any 24-hour period.

(e) Forty decibels for more than six hours during any 24-hour period.

(3) The pPolice dDepartment shall be equipped with standard meters for measuring noise. The noise level readings may be used as evidence to provide a public nuisance and a violation, but are not required if there is sufficient other evidence to provide a public nuisance or violation of this section.

(E) Storage of explosives, hazardous or combustible material. The storage of explosives, hazardous or combustible material which creates a safety hazard to other property or persons in the city or the storage of such material in unmarked containers.

(F) Weeds and grass. The accumulation in piles, bundles or heaps, or the excessive growth of weeds, grass, plants or other vegetation other than trees or shrubs and cultivated flowers and gardens. Unless otherwise provided, "excessive" shall mean growth to a height of ten inches or more.

(G) 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.

(H) Trees and shrubbery obstructing streets and sidewalks.

(1) Street and sidewalk clearance. The growing and maintenance of trees with less than 14 feet clearance over public streets or right-of-ways less than eight feet clearance over public sidewalks.

(2) Sight distance at arterial highway/street intersections. The growing and maintenance of shrubbery in excess of three feet in height or trees with less than five feet clearance above street level, within a sight triangle consisting of the area between the intersection of the pavements of the arterial highway and the street; along the arterial highway a point 25 feet from the intersection of the pavement of the arterial highway and the street and along the street the greater of a point 25 feet from the intersection of the pavement of the arterial highway and the street or, if there is a sidewalk on the arterial highway, a point on the street measured 18 feet along the street from the front of the sidewalk on the arterial highway.

(3) Sight distance at street/street intersections. The growing and maintenance of shrubbery in excess of three feet in height or trees with less than five feet clearance above street level within a sight triangle consisting of the area between points measured 25 feet along both streets from the intersection of the pavement edges.

(4) Sight distance at street/driveway intersections. The growing and maintenance of shrubbery in excess of three feet in height or trees with less than five feet clearance over the street level within a sight triangle consisting of the area between points measured 25 feet along the street pavement edge and ten feet along the driveway pavement edge.

(I) Keeping of animals or birds. The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the city. The failure

to keep an animal's pen, yard, lot or other enclosure in a sanitary condition and free from preventable offensive odors.

(J) Junk; scrap metal. The open storage of automobile parts or scrap metal within the city limits except on premises authorized by the city for such purposes.

(K) Abandoned, wrecked, dismantled or inoperative vehicles. The parking, storage, leaving or permitting the parking, storage or leaving of any vehicle of any kind which is in an abandoned, wrecked, dismantled, rusted, junked, partially dismantled or inoperative condition, whether attended or not, within the city for a period of time in excess of seven days on the premises of any "service station" or in excess of 72 hours anywhere else in the city, except in a completely enclosed building.

(L) Certain trucks and other vehicles. The parking or keeping of any commercial vehicle (truck with a dump body, cargo or box body, service body, utility body or stake body) with or without commercial placards or any truck with a gross vehicle weight in excess of 12,000 pounds or any trailer, recreational vehicle, camper, boat or similar type of equipment with a length in excess of 18 feet at any place located within a residential district zone within the city, except in a completely enclosed garage. Provided that the Zoning Administrator, City Administrator, the City Clerk, or a police officer may issue a temporary parking permit to allow a trailer, recreational vehicle, camper, boat, or similar type of equipment with a length in excess of 18 feet to be parked on a paved surface in a residential district zone within the city for loading or unloading operations, maintenance, or cleaning in preparation for or incidental to a vacation or other legitimate recreational use. A maximum of eight permits may be issued under this division (L) and division (M) below per residence within the city per calendar year, for a period not to exceed 72 hours. Permits shall not be issued on consecutive days so as to extend the parking period beyond 72 hours and a minimum of seven days shall pass before the issuance of each permit. The permit(s) shall be prominently displayed on each trailer, recreational vehicle, camper, boat, or similar type of equipment indicating the periods and times for which the temporary parking is permitted. Each trailer, recreational vehicle, camper, boat, or similar type of equipment shall require a separate permit.

(M) Certain trailers, recreational vehicles, campers, boats or similar type equipment. The parking or keeping of any trailer, recreational vehicle, camper, boat or similar type of equipment with a length of not more than 18 feet, on other than a paved surface in other than the rear yard any place located in a residential zone in the city, except in a completely enclosed building, unless otherwise approved by the Board of Adjustment in conformity with the Zoning Regulations. In no case shall more than one of the aforementioned vehicles or similar type equipment be permitted outside of an enclosed building on any lot or parcel of land. Provided that the Zoning Administrator, City Administrator, the City Clerk, or a police officer may issue a temporary parking permit to allow a trailer, recreational vehicle, camper, boat, or similar type of equipment with a length of not more than 18 feet to be parked on a paved surface in a residential district zone within the City for loading or unloading operations, maintenance, or cleaning in preparation for or incidental to a vacation or other legitimate recreational use. A maximum of eight permits may be issued under this division (M) and division (L) above per residence within the city per calendar year, for a period not to exceed 72 hours. Permits shall not be issued on consecutive days so as to

extend the parking period beyond 72 hours and a minimum of seven days shall pass before the issuance of each permit. The permit shall be prominently displayed on the trailer, recreational vehicle, camper, boat, or similar type of equipment indicating the periods and times for which the temporary parking is permitted. Each such trailer, recreational vehicle, camper, boat, or similar type of equipment shall require a separate permit.

(N) Barking dogs. Harboring or keeping any animal of the canine kind which by loud and frequent or habitual barking, howling or yelping, shall cause serious annoyance or disturbance of adjacent residents in the neighborhood.

(O) Electrified fence. The use, maintenance, or installation of electrified fences, regardless of the source of power, wattage, voltage or amperage.

§ 92.04 ABATEMENT PROCEDURE, CODE ENFORCEMENT POWERS AND DUTIES

The powers and duties of the Kenton County Code Enforcement Board or any person that they may be designated by the city to enforce the provisions of this chapter shall include but not be limited to the following all pursuant to KRS 65.8801 thru 65.8839.

(A) To conduct surveys and make inspections in any area of the city to determine compliance with this chapter or other ordinances he or she is empowered to enforce.

(B) To investigate all complaints made about buildings, structures, vacant lots, or other premises within the city, whether they be verbal, written, or in the form of a petition, alleging or charging that a violation of this chapter exists or that a dwelling, structure, or building is unfit or unsafe for human habitation or other occupancy.

(C) In support of police or fire authority to inspect, survey, or investigate any building, structure, dwelling, or premises between the hours of 8:00 a.m. and 5:00 p.m.. or at any time if an emergency exists or if requested by the owner or occupant. A Code Enforcement Officer may enter a building, structure, dwelling, or premises to inspect survey, or investigate with the consent of the owner or occupant, in emergency situations, or when an inspection, survey, or investigation is required before a permit is issued or funding is provided by the county or is part of a licensing scheme adopted by the county. If an owner or occupant refuses to consent to entry or inspection of a building, structure, dwelling, or premises, a Code Enforcement Officer may obtain a search warrant for this purpose from a court of appropriate jurisdiction. In addition, a Code Enforcement Officer may obtain a search warrant to inspect several buildings or structures in a particular area as part of an area inspection policy promulgated by the city. Probable cause to issue a search warrant may be based upon the passage of time, the nature of the building (e.g.. a multi-family apartment house), the condition of the entire area, or other reasonable legislative or administrative standards adopted by the county. Probable cause does not need to depend upon specific knowledge of a condition existing in a particular dwelling. A Code Enforcement Officer conducting an inspection pursuant to this chapter shall provide identification and statement of purpose before entering any building, structure, dwelling, or premises and the person in possession or in charge of the building, structure, dwelling, or premises shall give the Joint Code Enforcement Board and

his or her assistants, staff, or employees free access to such property for the purposes set forth herein.

(D) To administer oaths and affirmations, to examine witnesses, and receive evidence.

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

(F) To delegate any of his or her functions and powers under this code and other ordinances to such officers, agents, and employees as he or she designates.

(G) To seek through the appropriate judicial officer or office, such warrants that are necessary to enforce the provisions of this code and in pursuit of said warrants, make such oath or affirmation necessary in support thereof.

(H) To keep records of all complaints received, inspection reports, orders, and of other actions taken. The records shall be made available for public inspection upon request within a reasonable amount of time. The Joint Code Enforcement Board shall prepare an annual report including statistics based on the records kept.

~~(A) 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, health hazard or source of filth to develop or exist thereon.~~

~~(B) Whenever a nuisance situation is discovered, it shall be the duty of the Code Enforcement Officer to serve or cause to be served a notice on the owner or occupant thereof 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 in within five days of the service of the notice 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.~~

~~(1) Notice shall be served upon persons by hand delivery or the notice shall be sent by certified mail to the last known address of the owner of the property as it appears on the current assessment roll. If the whereabouts of the persons is unknown and cannot be ascertained, the city 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.~~

~~(2) A copy of the notice shall be posted on a conspicuous place on the premises and shall be recorded in the office of the Kenton County Clerk.~~

~~(C) Upon the failure of the owner or occupant of the property to comply with the notice, the Code Enforcement Officer is authorized to send employees, or other persons or firms onto the property to remedy the nuisance, keeping an account of the expense of the abatement, and the expense shall be charged to and paid by the owner or occupant.~~

~~(D) The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the nuisance situation. The affidavit of the Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings~~

~~pursuant to state law and this section, and shall be recorded in the office of the Kenton County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the rate established by the city thereafter until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board and city taxes, and may be enforced by judicial proceeding. In addition to this remedy or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties and other charges and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. The City Attorney is authorized and directed to institute such proceedings, in the name of the city, in any court having jurisdiction in the matter, against any property for which the bill has remained unpaid 60 days after it has been rendered.~~

~~—(E) In addition to the abatement procedures set forth in division (A) above, any police officer may serve a notice of the existence of a nuisance on the owner, occupant or person having control or management of any land within the city upon which the nuisance exists or upon the person creating the nuisance as set forth in §§ 92.02 and 92.03. If the person receiving the notice does not abate the nuisance within the time and as provided under division (A), a citation for violation of this section may be issued citing the person so served to appear in the Kenton County District Court.~~

#### § 92.05 NUISANCE CREATED BY OTHERS. KENTON COUNTY JOINT CODE ENFORCEMENT BOARD

The Kenton County Joint Code Enforcement Board shall act as the hearing board for the enforcement of this chapter. Authorized personnel of Planning and Development Services of Kenton County and city police and fire officials shall act as the enforcement authority for the provisions of this chapter. A Code Enforcement Officer, in order to facilitate inspection of premises reasonably suspected of being in violation of this chapter, may obtain an administrative search warrant upon presentation of an appropriate affidavit to a Kenton County District or Circuit Judge.

~~—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.~~

#### § 92.06 SUSPENSION OF LICENSE. APPEAL

An appeal from any final order issued by the hearing board may be made to the Kenton District Court within thirty (30) days after the date when the order is issued by the board. The appeal shall be initiated by the filing of a complaint and a copy of the board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure. The appeal shall be de novo as determined by case law precedent. If no appeal from a final order of the board is filed within the time period set forth in this section, the board's order shall be deemed final for all purposes.

~~—(A) Whenever it is shown that a nuisance is associated with or caused by the conduct of a business or activity licensed by the city and that the existence of the nuisance presents an immediate threat to the public health, safety or welfare, the City Council may suspend the license of any person, business, or corporation conducting the business upon the premises where the nuisance exists.~~

~~—(B) The License Inspector 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 City Council may remove the suspension upon such terms as it may direct.~~

#### § 92.07 LIENS.

The city shall possess a lien on real property owned by the person found by a final order of the hearing board, or by final judgment of a court, to have committed a violation of this chapter in the amount of all fines assessed for the violation, for all charges, fees, and abatement costs incurred by the city in connection with the enforcement of the ordinance, and bear interest until paid. The lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes. A person found to have committed a violation of this chapter shall be personally liable for the amount of all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of this chapter.

#### § 92.08 SUSPENSION OF LICENSE.

(A) Whenever it is shown that a nuisance is associated with or caused by the conduct of a business or activity licensed by the city and that the existence of the nuisance presents an immediate threat to the public health, safety, or welfare, the city legislative body may suspend the license of the person or persons conducting the business or activity.

(B) The Code Enforcement Officer or city designee shall cause a notice of the suspension to be served personally upon the licensee, or upon any responsible agent of the licensee, at the premises where the licensed business or activity is being conducted. The notice shall clearly inform the licensee of the reason for the suspension, and the conditions that must be met for the suspension to be removed.

(C) Upon application of the licensee, and upon a showing that the nuisance has been satisfactorily abated and that any other reasonable conditions set forth in the notice have been met, the City Council may remove the suspension.

### CHRONIC NUISANCE

#### § 92.15 CHRONIC NUISANCE PROPERTY; VIOLATIONS.

(A) Any property within the city, that becomes a chronic nuisance property, as defined herein, is in violation of this chapter and subject to its remedies.

(B) Any person who permits property under his or her ownership or control to be a chronic nuisance property, as defined herein, shall be in violation of this subchapter and subject to its remedies.

(C) No person, property, or business shall violate any term or condition of an agreed abatement plan entered into under this chapter.

#### § 92.16 DEFINITIONS.

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

**CHRONIC NUISANCE PROPERTY.** Property on which three or more nuisance activities exist or have occurred during any 690 day period or on which 12 or more nuisance activities exist or have occurred during any 12 month period.

**CITY COUNCIL.** The City Council of Fort Mitchell.

**CODE ENFORCEMENT OFFICER.** A Code Enforcement Officer as defined in KRS 65.8805.

**CONTROL.** The authority to regulate, restrain, dominate, counteract or govern property, or conduct what occurs on a property.

**GOOD CAUSE.** Circumstances beyond the ability of a person acting with reasonable care and diligence to control.

#### **NUISANCE ACTIVITIES.**

(1) Any of the following activities, behaviors or conduct:

- (a) Harassment, as defined in KRS 525.070 through 525.080.
- (b) Public intoxication or alcohol intoxication, as defined in KRS 525.100 or KRS 222.202.
- (c) Disorderly conduct as defined in KRS 525.055 or KRS 525.060.
- (d) Murder, manslaughter, or reckless homicide as defined in KRS 507.020, 507.030, 507.040, or 507.050.
- (e) Rape, sodomy, sexual abuse, sexual misconduct, indecent exposure, or unlawful use of an electronic device to induce a minor to engage in sexual activities, as defined in KRS 510.010 through 510.155.
- (f) Assault, menacing, wanton endangerment, terroristic threatening, criminal abuse, stalking, or disarming a police officer, as defined in KRS 508.010 through 508.160.
- (g) Burglary or criminal trespass, as defined in KRS 511.010 through 511.090.
- (h) Criminal mischief, as defined in KRS 512.010 through 512.060.
- (i) Arson, as defined in KRS 513.010 through 513.040.

- (j) Theft, as defined in KRS 514.010 through 514.090.
- (k) Receiving stolen property, as defined in KRS 514.110.
- (l) Robbery, as defined in KRS 515.010 through 515.030.
- (m) Prostitution, promoting prostitution, permitting prostitution, or human trafficking, as defined in KRS 529.010 through 529.110.
- (n) Endangering the welfare of a minor or unlawful transaction with a minor as defined in KRS 530.060 through 530.080.
- (o) Distribution of obscene matter promoting sale of obscenity, or voyeurism, as defined in KRS 531.010 through 531.110.
- (p) Sexual exploitation of minors, as defined in KRS 531.300 through 531.370.
- (q) Drug possession or trafficking, as defined in KRS 218A.010 through 218A.1444.
- (r) Weapons related offenses, as defined in KRS 527.010 through 527.210.
- (s) Violations of protection orders, as defined in KRS 403.763.
- (t) Alcohol related offenses, as defined in Chapter 111.
- (u) Noise violations, as defined in § 92.03.
- (v) Any violation of any ordinance of the city, or a violation of any state or federal law, statute or regulation.
- (w) Any attempt to commit and/or conspiracy to commit any of the activities, behaviors or conduct listed in this section.

(2) To qualify, all nuisance activities must be based on either:

- (a) Personal observation of a police officer, or code enforcement officer; or
- (b) A determination by a police officer, or code enforcement officer, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident that the alleged nuisance activities did, in fact, occur.

PERMIT. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

PERSON. Any natural person, agent, association, firm, partnership, corporation, limited liability company or other entity capable of owning, occupying or using property in the city.

PERSON ASSOCIATED WITH THE PROPERTY. Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or any person present on a property. PERSON ASSOCIATED WITH THE PROPERTY includes, without limitation, any officer,

director, customer, agent, employee, or any independent contractor of a property, the person in charge, or an owner of a property.

PERSON IN CHARGE. Any person with actual or constructive possession of a property, including but not limited to an owner or occupant of property under his or her ownership or control. When an owner of the property and the occupant of a property under his or her ownership or control are not the same person, the person in charge shall include both such persons.

~~POLICE CHIEF. The Chief of Police for the City of Fort Mitchell.~~

~~POLICE OFFICER. Shall mean a police officer as defined in KRS 15.420.~~

PROPERTY. Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.

RESIDENTIAL LANDLORD. A real property owner of property upon which is located one or more dwelling units leased or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semi permanent site at which lots are leased or otherwise rented to tenants for the parking of a manufactured home, mobile home, or recreational vehicle that is used solely for residential purposes. RESIDENTIAL LANDLORD does not include the owner of a hotel, motel, or a college or university dormitory.

§ 92.17 ABATEMENT PROCEDURE; CITY ENFORCEMENT.

(A) When the Code Enforcement Officer, or his designee(s), receives documentation or information confirming the occurrence of three (3) or more nuisance activities within a ninety (90)-day period on or at any premise 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 by this subchapter. 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.

(B) The warning shall be sent by mail with delivery confirmation and contain:

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

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

(3) A demand that the person responsible for such property respond to the notice within ten (10) days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;

(4) Offer the person responsible an opportunity to abate the nuisance activities given rise to the violation; and

(5) A statement describing that the property could be subject to closure and civil penalties and/or costs if the property is declared a chronic nuisance property.

(C) The Code Enforcement Officer, or his designee(s), shall cause to be served the warning and notice to abate upon the person responsible in accordance with the methods of service listed in § 32.06(C) of this code.

(D) 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 civil citation pursuant to § 32.06 of this code.

(E) 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 is reached, the Code Enforcement Officer, or his or 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 civil citation pursuant to § \_\_\_\_\_ of this code. 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 subchapter, notwithstanding the continuance of the nuisance activity.

(F) 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 chronic nuisance property.

~~—(A) When the Police Chief, a code enforcement officer or the designee of the Police Chief or Code Enforcement Board receives information documenting the existence of activities which qualify as nuisance activities:~~

~~— (1) The Police Chief, a code enforcement officer shall independently review such report(s) to determine whether a chronic nuisance property as defined in § 92.16 is established by the information.~~

~~— (2) Upon a determination that a chronic nuisance property exists, the Police Chief, or code enforcement officer shall issue a notice of violation under § 41.05(B) to the person in charge that the property has been determined to be a chronic nuisance property and request an abatement plan from the person in charge.~~

~~— (3) The notice to the person in charge, shall contain the following information:~~

~~— (a) The street address or a legal description sufficient for identification of the property.~~

~~—(b) A statement that the Police Chief, or code enforcement officer has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to this determination.~~

~~—(c) A demand that the person in charge respond within ten days to the Police Chief, or code enforcement officer by either describing the actions the person in charge intends to take to abate the nuisance activities, (abatement plan), or indicating good cause as to why the person in charge cannot abate the nuisance activities.~~

~~—(d) That an agreed abatement plan must be reached with the Police Chief, or code enforcement officer within 30 days from the date of the notice of determination of chronic nuisance property.~~

~~—(e) That if the nuisance activities are not abated and good cause for failure to abate is not shown, a citation under § 41.05(B) may be issued.~~

~~—(f) That permitting the existence of a chronic nuisance property is a violation of this chapter.~~

~~—(g) That the above remedies are in addition to those otherwise provided by law.~~

~~—(4) The notice may be delivered in person, or sent registered mail with return receipt requested. The notice may be delivered to the property itself, or to the mailing address of the owner of the property as listed on the city tax roll, or to any other address that is likely to give the person in charge notice of the determination of the Police Chief, or code enforcement officer.~~

~~—(5) The failure of any person to receive notice shall not invalidate or otherwise affect the proceedings under this chapter.~~

~~—(B) The Police Chief, or code enforcement officer may issue a citation where:~~

~~—(1) The person in charge fails to respond within ten days from the date of the notice of determination of chronic nuisance property by the Police Chief, or code enforcement officer; or~~

~~—(2) No agreeable written abatement plan is reached within 30 days from the notice of determination of chronic nuisance property by the Police Chief, or code enforcement officer and the person in charge fails to establish one of the affirmative defenses provided in § 92.17(F) or (G); or~~

~~—(3) The person in charge fails to abate the nuisance activities from the property as required by the agreed abatement plan; or~~

~~—(4) The person in charge fails to comply continuously with all conditions of the written abatement plan for a period of one year.~~

~~—(C) When the person in charge includes both a person with actual or constructive possession of the property and a legal owner of the property, both people must agree to any proposed abatement plan within the time allotted under subsection (A)(3)(d) of this section. Failure of both to agree to a proposed abatement plan shall result in a finding by the Police Chief, or code enforcement officer that the abatement plan is not agreeable under subsection (B)(2) of this section.~~

~~—(D) Failure to respond, failure to abate the nuisance activities, or failure to propose an abatement plan shall be prima facie evidence of lack of cooperativeness of the person in charge. Failure to execute or comply with any abatement plan shall be prima facie evidence of lack of good faith in mitigating or correcting the situation.~~

~~—(E) When a person in charge makes a response to the Police Chief or code enforcement officer as required in § 92.17, conduct or statements made in connection with the response do not constitute an admission that any nuisance activities have occurred or are occurring. This subsection does not require exclusion of any evidence that is otherwise admissible or offered for any other purpose.~~

~~—(F) Residential landlord affirmative defense. A residential landlord has an absolute defense to a charge under this ordinance if they establish by a preponderance of the evidence that the basis for the charge is the actions or omissions of their tenant(s) and the residential landlord establishes all of the following:~~

~~—(1) That the residential landlord undertakes a reasonably appropriate screening process for prospective tenants including diligence into the criminal background of prospective tenants, which shall include, at a minimum, an online search and inquiry with the tenant into their criminal background;~~

~~—(2) That the residential landlord include language in their leases with tenants that provides that violations of federal, state, or local laws by tenants or their guests is grounds for eviction with 30 days or less notice;~~

~~—(3) That the residential landlord, upon written notice by the city that a nuisance activity has occurred on their property within the prior thirty days, commences an eviction action against the tenant whose action or omission forms the basis of the charge, and diligently prosecutes that action to completion, irrespective of any ultimate ruling by a court on the merits of that action. A residential landlord shall not be responsible for prosecuting a forcible entry and detainer action against the tenant or their guests whose action or omission forms the basis of the charge if the city fails to give the notice provided in this section.~~

~~—(G) Good cause affirmative defense. Any person charged under this subchapter has an absolute defense to a charge under this subchapter if they establish by a preponderance of the evidence that:~~

~~—(1) The person charged has taken all appropriate actions to deter and prevent the nuisance activity that forms the basis of the charge on their property;~~

~~—(2) The nuisance activity that forms the basis of the charge was not the result of the actions or omissions of person charged, their authorized guests or any other person residing in their household; and~~

~~—(3) The nuisance activity that forms the basis of the charge was not permitted by the person charged.~~

~~§ 92.18 PROCEDURE; RESIDENT ENFORCEMENT, ENFORCEMENT AND PENALTIES~~

(A) A violation of this subchapter constitutes a civil offense and shall be subject to the penalties established by § 92.13 of this code.

(B) In addition to other remedies set out in this subchapter 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 (1) year from the date of closing and rescind within fourteen (14) days of 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.

(C) 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 accordance with the methods of service listed in § 32.06(C) of this code.

(D) Nothing in this subchapter 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.

~~—City residents, affected by an alleged chronic nuisance property, may elect to provide a sworn complaint to the city Chief of Police, or code enforcement officer which may be used by the Chief of Police or Code Enforcement Officer in their enforcement of this section.~~

#### § 92.19 COMMENCEMENT OF ACTIONS; REMEDIES; BURDEN OF PROOF.

~~—(A) In the event a citation is issued for a chronic nuisance property, the person in charge shall have those rights and shall otherwise be subject to the procedures and provisions set forth in Chapter 41 this code. If the Code Enforcement Board determines that the property is a chronic nuisance property, then it shall issue such fine and/or take such other action consistent with the provisions of Chapter 41 of this code.~~

~~—(B) In addition, whenever the Code Enforcement Board determines that a chronic nuisance exists, the Board shall forward such determination to the Mayor of the city.~~

~~—(1) The Mayor shall send or deliver notice of this determination to the current owner listed with the Property Valuation Administrator or to the address where the offense(s) occurred. The notice shall notify the owner or person in charge that the Mayor intends to take action concerning the possible suspension or revocation of the occupational license. The notice shall likewise indicate that the owner or person in charge may request a show cause hearing before the Mayor. The request shall be in writing and shall be delivered to the City Clerk within seven days of the receipt of the notice and the hearing shall be scheduled not sooner than seven days after the receipt of the request.~~

~~—(2) At the show cause hearing, the owner or person in charge may present evidence, under oath, as to why the occupational license should not be suspended or revoked. The hearing shall not be governed by the Rules of Evidence or the Rules of Civil Procedure. The Mayor shall receive~~

~~only relevant and material evidence. All evidence received shall be given such weight as the Mayor deems it is entitled after consideration of any objections that may be made. The Mayor shall receive the evidence that a reasonable mind might accept as adequate to support a conclusion.~~

~~— (3) The hearing shall be recorded. A request for a copy of the recording of the hearing must be made in writing. The requesting party must pay a reasonable fee for the recording as determined by the City Clerk's office. The Mayor has no obligation to preserve recordings beyond 30 days of the hearing date.~~

~~— (4) The burden shall be upon the owner or person in charge to prove, beyond a preponderance of the evidence, that the occupational license should not be suspended or revoked. The city or its representative may also be represented and may present evidence, under oath, as to why the occupational license should be suspended or revoked. The existence of nuisance activities shall be conclusively determined as a consequence of the finding of the Code Enforcement Board and shall not be in dispute.~~

~~— (5) Factors the Mayor may consider in a determination as to whether to suspend or revoke an occupational license include the following: the frequency of nuisance activities, the duration the nuisance activities have occurred, the impact on the surrounding community and residents from the nuisance activities, good faith efforts by the owner and person in charge to end any nuisance activities, past and present compliance with any agreed abatement plan(s), cooperation with the city and its officials regarding the existence and attempted abatement of any nuisance activities, and any other factors deemed appropriate in aggravation or mitigation by the Mayor.~~

~~— (6) The Mayor shall enter findings of fact, conclusions of law and an order determining that no action should occur with respect to the occupational license, that the occupational license should be suspended, or that the occupational license should be revoked. Any action taken by the Mayor may be appealed within 30 days to the Kenton County Circuit Court, and the appeal shall be based on the record before the Mayor and subject to an abuse of discretion standard.~~

#### ~~§ 92.20~~ SUMMARY CLOSURE.

The city, through its City Attorney, may also initiate a summary closure proceeding in the Kenton County District and/or Circuit Court. Such an action shall be based on evidence showing that nuisance activities exist or have occurred on the property and that action is necessary to avoid a threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by the provisions of applicable Kentucky law for obtaining temporary restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures set forth in § 92.17(A)(3). As part of any summary closure order, the district/circuit court may also revoke or suspend the occupational license of any person conducting any business upon the property where the chronic nuisance exists.

#### ~~§ 92.21~~20 FEES FOR SERVICE.

In addition and cumulative to the other remedies of this chapter, any person in charge, as that term is defined in § 92.16, who has violated and been issued three or more citations under this chapter, one of which must be within one calendar year of the call for service, may be charged by

the city a fee of \$100 for each call for service for either the Police or Fire Departments, or both, to their property, as that term is defined in § 92.16, unless such call for service was made by the person in charge and that person identified him or herself as such. Failure to pay such fees within 30 days of being invoiced for them shall result in interest accruing on such fees at a rate of 10% per annum, shall further constitute a lien on the property, shall constitute separate and distinct nuisance activity as that term is defined in § 92.16, and shall be a further violation of this chapter.

§ 92.99 PENALTY.

The following penalties shall apply to violations of this chapter:

(A) Any person, firm, or corporation who violates any provision of this chapter or any provision of Chapter 32 or Chapter 50 shall be subject to a civil fine of not less than fifty dollars (\$50) per day per violation but not more than five hundred dollars (\$500) per day per violation, or the cost to the city to abate the public nuisance, or both. Each day that a violation of this chapter continues after due notice has been served in accordance with the terms of this ordinance may be deemed a separate offense to a maximum of ten thousand dollars (\$10,000) per citation.

(B) As an additional alternative remedy to the above penalty, any violator who violates any provision of §§ 92.01 through 92.12 of this code or any provision of Chapter 32 or Chapter 50 and has been previously issued two (2) or more citations for violation of this nuisance ordinance relating to the same property within a twelve (12)-month period may be assessed additional civil penalties of five hundred dollars (\$500) per day per violation to a maximum of twenty thousand dollars (\$20,000) per citation.

Upon the failure of the property owner to comply with an order to close and vacate, the city 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 the streets and public ways of the City of Fort Mitchell; revoke the certificate of occupancy of the premises; or use any other legal remedy available under the laws of the state.

~~—(A) Whoever violates any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$500 for each offense. Each day's continued violation shall constitute a separate offense. ('88 Code, § 92.99)~~

~~—(B) Any violation of this chapter is hereby classified as a civil offense, pursuant to Chapter 41 and KRS 65.8808, and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with the applicable code sections, and nothing contained herein or in Chapter 41 shall prohibit the enforcement of this chapter by any other means authorized by law.~~

~~—(C) If a citation for a violation of this chapter is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be \$50 for the first offense, \$90 for the second offense, and \$210 for the third, and thereafter, offense.~~

~~—(D) If a citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be~~

from \$20 to \$200 for the first offense, from \$60 to \$600 for the second offense, and from \$180 to \$1,800 for the third, and thereafter, offense.

~~—(E) Each section of the ordinance violated shall be considered a separate fineable offense. If two or more sections of the ordinance are violated, the fines shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.~~

~~—(F) Notwithstanding the civil penalties or the general criminal penalties set forth in this § 92.99, whoever violates any provision of the Fort Mitchell Chronic Nuisance Ordinance, as set forth in §§ 92.15 through 92.20, shall be guilty of a Class A misdemeanor and shall be fined not more than \$500 and/or imprisoned up to 12 months for each offense. Each day's continued violation shall constitute a separate offense.~~

~~—(G) If a citation for a violation of any provision of the Fort Mitchell Chronic Nuisance Ordinance, as set forth in §§ 92.15 through 92.20 is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be \$250 for the first offense, \$500 for the second offense, \$1,000 for the third offense, \$2,500 for the fourth offense, and \$7,500 for the fifth offense and any offense thereafter. Each day's continued violation shall constitute a separate offense.~~

~~—(H) If a citation is contested and a hearing before the Code Enforcement Board is requested, the maximum civil fine which may be imposed at the discretion of the Board shall be from \$100 to \$500 for the first offense, from \$250 to \$1,500 for the second offense, from \$500 to \$2,500 for the third offense, from \$1,000 to \$5,000 for the fourth offense, and from \$5,000 to \$10,000 for the fifth offense and any offense thereafter. Each day's continued violation shall constitute a separate offense.~~

### SECTION III

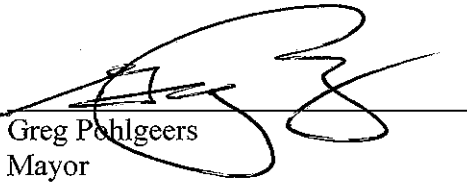
All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, if any, hereby repealed.

### SECTION IV

The Provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

### SECTION V

This Ordinance shall be in full force and effect from and after its passage and publication according to law, and said publication may be in summary form.



Greg Pohlgeers  
Mayor

ATTEST:

Amy K. Guenther  
Amy Guenther  
City Clerk

FIRST READING: 3/23/2020

SECOND READING: 4/14/2020

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