


ORDINANCE NO. 742-2009

AN ORDINANCE OF THE CITY OF DRY RIDGE, GRANT COUNTY, KENTUCKY, PROVIDING FOR THE ABATEMENT OF NUISANCES WITHIN THE CITY OF DRY RIDGE, KENTUCKY.

BE IT HEREBY ORDAINED BY THE CITY OF DRY RIDGE, KENTUCKY, AS FOLLOWS:

Certificate for Summary Publication

Pursuant to **KRS 83A.060 (9)**, I, the undersigned, **Michael S. Mulvey, Esq.**, hereby state and certify that I am an attorney licensed to practice within the Commonwealth of Kentucky and the city attorney for the City of Dry Ridge, Kentucky, whose City Council has elected to have the herein nuisance abatement ordinance published in summary form; and that the hereinafter summary is a true and accurate narrative of the germane and main points of the ordinance sufficient to inform the public of the manner, meaning and contents of the subject ordinance.


Michael S. Mulvey, Esq.
Dry Ridge City Attorney

General Article

Pursuant to the laws and statutes of the Commonwealth of Kentucky, the City of Dry Ridge, Grant County, Kentucky, hereby adopts and ordains as set forth herein after within articles and sections separate, comprehensive provisions for the regulation, control, prohibition, and abatement of activities or matters of nuisance found or existing within the City of Dry Ridge, Kentucky, to be effective and in full force and effect when adopted, approved, ordained, ordered published, and published according to law, all set forth in form summary for purposes of publication, to-wit:

ARTICLE I: Definitions.

An enumeration of words and terms requiring specificity as to ordinance and use legal.

ARTICLE II: Common Law and Statutory Nuisance.

Provision allowing city actions additional for nuisances at common law or statute..

ARTICLE III: Certain Conditions Declared A Nuisance.

Details specific conditions, conduct, or matters deemed to be a nuisance.

ARTICLE IV: Nuisance Created By Others.

Provides the scope and extent of culpable persons, contributors, or participants.

ARTICLE V: (Reserved)

Allows for additions or amendments to the Ordinance/Chapter.

ARTICLE VI: Abatement Procedure.

Details and enumerates the abatement procedures, notices and hearings required.

ARTICLE VII: Abatement of Nuisance.

Authorizes and empowers the city to institute actions to abate a nuisance.

ARTICLE VIII: Penalty.

This section and article provides that: "whom or whoever violates any provision of this Ordinance or Chapter for which another penalty is not provided, shall be guilty of a misdemeanor and shall be fined not less than \$100.00, or imprisoned for not more than 30 days, or both find and confinement, for each offense. Each day's continued violation shall constitute a separate offense.

ARTICLE IX: Severability.

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ARTICLE I

DEFINITIONS:

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

ABANDONED VEHICLE. Any vehicle or parts thereof which are left on public or private property within the city under circumstances indicating a desertion, relinquishment, non-use, or divestment of the vehicle.

JUNKED VEHICLE. Any vehicle or parts thereof which do not have lawfully affixed hereto an unexpired license plate, which in the judgment of a reasonably prudent man observing community standards is in one or more of the following conditions: rusted, wrecked, partially dismantled, or otherwise nonfunctional. Junked vehicles may be deemed to include major parts thereof, including, but not limited to bodies, engines, transmissions, and rear ends.

VEHICLE. Every device in, on, or by which any person or property is or may be transported or drawn on a public highway, except vehicles moved by human power or used exclusively on stationary rails or tracks.

VEHICLE OWNER. Any individual, firm, corporation, or unincorporated association with a claim, either individual or joint, or ownership, or any legal or equitable interest in a vehicle.

ENVIRONMENTAL NUISANCE. Every unlawful unwarrantable, dangerous, or unreasonable use of property in such a way as to render the ground, air, water, or food, a material annoyance, hazard, or injury to human health, or which is detrimental to the property of others, or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which the property is located. The term shall include, but is not limited to the following:

1. the keeping of waste, rubbish, or abandoned appliances in such a manner as can be seen from any public or private way or properties;

2. the keeping, placing, or storage outside of any building or dwelling or any property owned or occupied by such person, or the keeping, placing, or storage in any place accessible to children or any abandoned, discarded icebox, ice chest, or refrigerator;

3. any weeds, grass or unlawful plant growth other than growing crops, trees, bushes, flowers, or other ornamental plants at a height of six (6) inches or more on mowable lots, and at a height on unmowable lots which, in the reasonable exercise of the City Council's discretion, constitutes a hazard, nuisance, unsightly condition, or any condition adverse to the public's health, safety, or welfare;

4. the disposal or accumulation of any foul, decaying, or putrescent substances or other offensive materials dangerous to public health in or on any lot, tract of land, street, highway, or any sidewalk or alley abutting any of these which shall by reason of offensive odors become injurious to the health of an person;

5. any tree which is in danger of collapse or which poses a danger of contamination because of disease, decay, injury, infestation, or damage;

6. all outbuildings that are or hereafter may become unsafe, unsanitary, dilapidated, unkept, or which constitute a fire hazard, or are otherwise dangerous to the public welfare;

7. an abandoned or dangerous sign. An on-premises or off-premises sign is deemed abandoned when a sign advertises any activity, business or service no longer conducted or available on the premises referred to in the off-premises business sign; and a temporary sign is deemed to be abandoned when the sign has not been removed within ten (10) days after the event advertised has taken place. A sign is deemed dangerous when it becomes insecure, unsafe, dilapidated, or in danger of falling or collapsing, or when it constitutes a fire hazard or otherwise endangers human life or the public welfare; or when it constitutes a fire hazard or otherwise endangers human life or the public welfare; or when it is deemed unsafe by reason of illegal or improper use or maintenance.

As used within subparagraphs 1 through 7 under Environmental Nuisance above, the following words or terms shall have the following meanings, to-wit:

"WASTE" ... (SP#1): "WASTE" shall mean ashes, discarded wood, abandoned, discarded or unused objects or equipment such as furniture, appliances, cans or containers, garbage or refuse of any kind, whether liquid or solid, or any accumulation of any foul, decaying, or putrescent substances.

"RUBBISH" ... (SP#1): "Rubbish" shall mean any combustible or noncombustible waste material, except garbage, including but not restricted to paper, rags, boxes, cartons, wood excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metal, mineral matter, glass, crockery, and the residue from the burning of combustible materials.

"WEEDS" ... (SP#3): "Weeds" shall mean any noxious or unhealthy plant growth such as, but not limited to, jipsom, burdock, ragweed, thistle, cocklebur, or any other similar growth.

"TREE/TREES" ... (SP#5): "Tree/Trees" shall mean a woody perennial plant having a single, usually, elongated main stem generally with few or no branches on its lower part.

"SIGN" ... (SP#7): "Sign" shall mean any fabricated sign or outdoor display structure, including its structure, consisting of any letter, figure, character, mark, trademark, reading matter, or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that it is used for the attraction of the public to any place, subject, person, firm, corporation, public performance article, machine, or merchandise whatsoever, and displayed in any manner out-of-doors for recognized advertising purposes.

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

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

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

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

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

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

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

NUISANCE.

Public nuisance.

PARKING LOTS.

Any off-street parking facility for public use, and the approaches to same, whether publicly or privately owned, and shall include but not limited to parks, shopping centers, restaurants, entertainment centers, car washes, banking or financial institutions, whether publicly or privately owned, operated or controlled.

PERSON.

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

PLAINLY AUDIBLE.

Capable of being distinctly heard by a person with normal hearing.

PUBLIC NUISANCE.

Any act, thing, occupation, condition or use of property which shall continue for such a length of time as to:

1. Substantially annoy, injure, or endanger the comfort, health, repose, or safety of the public;
2. Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any street, alley, highway, sidewalk, stream, ditch or drainage;
3. Substantially interfere with the comfortable enjoyment of life, and property, or tend to depreciate the value of property of others;
4. Offend decency;
5. Be offensive to the senses;
6. Unlawfully interfere with, obstruct or tend to obstruct or render dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
7. In any way render other persons insecure in life or the use of property.

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

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

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

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

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

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

1. A danger warning with a horn or other audible signaling device; or

2. The preservation or protection of property or the life, safety or welfare of a person or persons by use of an audible signaling device.

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

ARTICLE II

COMMON LAW AND STATUTORY NUISANCES.

In addition to what is declared in this Ordinance or Chapter to be a public nuisance, those offenses 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 Ordinance or Chapter or in accordance with any other provision of law.

ARTICLE III

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 prohibited and public nuisances:

(1) Accumulation of Rubbish. An accumulation on any premises of filth, refuse, trash, garbage or other waste material which endangers the public welfare or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property 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 is prohibited and constitutes a public nuisance.

(2) Dwellings Unfit for Human Habitation. The erection, use, or maintenance of a dwelling which is unfit for human habitation is prohibited and constitutes a public nuisance.

(3) Unsafe Buildings. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of the people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located is prohibited and constitutes a public nuisance.

(4) Dangerous Building 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 on the streets or public ways of the city adjoining the premises, by reason of, or the threat or likelihood of a collapse of the building, house, or structure, or by actual or threat of falling of parts thereof or objects therefrom is prohibited and constitutes a public nuisance.

(5) Dilapidated Buildings. Any building, house, or structure which is so out of repair and dilapidated that it constitutes a fire hazard liable to catch fire or communicate fire, or which is 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 is prohibited and constitutes a public nuisance.

(6) Weeds and Grass. The existence of thistles, burdock, jimson weeds, ragweeds, milkweeds, poison ivy, poison oak, poison sumac, and all other noxious weeds of any height, and grasses growing in excess of twelve (12) inches in height are prohibited and constitutes a public nuisance.

(7) Junk; Scrap Metal; Motor Vehicles. The storage of unlicensed motor vehicles in an inoperable condition, or motor vehicles, whether licensed or unlicensed, which are unfit for further use, automobile parts, or scrap metal within the city limits except on premises authorized by the city for such purposes is prohibited and constitutes a public nuisance.

(8) Signs. It shall be unlawful for any person, firm or corporation who owns, uses, or advertises on or upon an abandoned or dangerous sign to allow the sign to remain on property owned, occupied, under the control of the person, or under the putative claim of use or right of said person, or on any public or private property, or located within a public or private right-of-way or easement, all being prohibited and constituting a public nuisance.

(9) Illegal Activity. Any building, structure or other place or location, or activity where any such premises or activity is prohibited or is in violation of local, state, or federal law is conducted, performed or maintained is prohibited and constitutes a public nuisance.

ARTICLE IV

NUISANCE CREATED BY OTHERS.

For purposes of this Ordinance or 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.

ARTICLE V

(RESERVED)

ARTICLE VI

ABATEMENT PROCEDURE.

(A) It shall be the duty of the City of Dry Ridge Codes Enforcement Officer or other responsible officer designated by the Mayor to serve or cause to be served a notice upon the owner or occupant of any premises on which there is kept or maintained any nuisance in violation of the provisions of this Ordinance or Chapter and to demand the abatement of the nuisance within five (5) 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 twenty-four (24) hours of notice. Notice shall be served upon persons by Certified Mail together with Regular Mail to the last known address of the owner of the property as it appears on the current tax assessment roll, but if the whereabouts of the person is unknown and cannot be ascertained by the Codes Enforcement Officer in the exercise of reasonable diligence, the Codes Enforcement Officer shall make an affidavit to that effect, and the serving of notice may be made by publication in a newspapers of general circulation for two consecutive publication 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 Grant County Clerk.

(B) If the person so served does not abate the nuisance within 5 days of notice where abatement hearing procedures are not required or invoked, then the city may proceed to abate the nuisance, keeping an account of the expense of the abatement, and the expense shall be a charge and paid by the owner or occupant.

(C) Pursuant to KRS 381.770, the property owner shall be afforded a public hearing prior to the abatement of any nuisance and/or demolition of any unfit or unsafe structure. Provided, however, that such hearing must be requested in writing by the property owner themselves, a copy of which shall be served upon the City Clerk not later than seven (7) working days following receipt of notice as set forth above. The City Clerk shall thereafter fix the time and place for a hearing which shall be held not later than two (2) weeks thereafter, with notice of said hearing to be immediately provided to property owner. The City Clerk shall notify the Mayor and all members of City Council to the time and place of the hearing not less than twenty-four (24) hours in advance thereof. The majority of the City Council members shall constitute a quorum to hear the appeal. The property owner shall be present and shall be heard following presentation to the Council of facts which necessitate enforcement through this section by the Codes Enforcement Officer. The public shall also be entitled to be heard on any matter which may tend to impact the decision of the City Council. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the property owner, such abatement shall not occur, and the Council shall make recommendations to the property to abate the nuisance or make any building fit for human habitation, occupancy or use. Should the majority of the members present at the meeting decide that such abatement is necessary, demolition and/or other abatement shall immediately occur.

(D) The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to statute, and shall be recorded in the office of the Grant County Clerk. The lien shall be notice to all persons from the time of its recording and bear interest thereafter until paid. The lien created shall take precedence over all other subsequent liens, save for state, county, school board, and city taxes, and may be enforced by judicial proceeding.

(E) Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for 60 days after it has been rendered the City Clerk may file with the county clerk's office, a statement of lien claims. This statement shall contain a legal description of the premises, the expanses 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 shall be mailed to the owner of the premises if his address is known. However, failure to record the lien claim or mail the notice, or the failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges. The lien shall be notice to all persons from the time of its recording and shall bear interest legal at the rate of twelve (12%) percent per annum until paid.

(F) In addition to other claims or remedies set forth herein, the owner of a property upon which a lien has been attached for nuisance abatement 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.

(G) 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 in the case in the foreclosure of statutory liens. This foreclosure shall be in equity in the name of the city.

(H) The City Attorney is authorized and empowered to institute proceedings in the name of the city in any court having jurisdiction over the matter and against any property for which the bill has remained unpaid after it has been rendered.

ARTICLE VII

ABATEMENT OF NUISANCE.

At the direction of the Mayor, the City Attorney is authorized and empowered 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 a nuisance exists and the methods by which the city may abate such nuisance.

ARTICLE VIII

PENALTY.

Whom or whoever violates any provision of this Ordinance or Chapter for which another penalty is not provided, shall be guilty of a misdemeanor and shall be fined not less than \$ 100.00, or imprisoned for not more than 30 days, or both fine and confinement, for each offense. Each day's continued violation shall constitute a separate offense.

ARTICLE IX

SEVERABILITY.

Should any article, section, subsection, sentence, clause, or phrase of this Ordinance or Chapter, for any reason, be held unconstitutional or invalid, such decision or holding shall not affect the validity of the remaining portions hereof. It is the intent of this Ordinance or Chapter and portions thereof, individually, and each such section shall stand alone, if necessary, and be in full force regardless of the determined invalidity of any other section or provision.

~~This Ordinance or Chapter shall be operable and be in full force and effect when passed, adopted, approved, ordained, ordered published, and published according to law.~~

First Reading: May 4, 2009

Second Reading: May 18, 2009

PASSED, ADOPTED, ORDAINED, APPROVED, AND ORDERED
PUBLISHED ON THIS THE 18th DAY OF May,
2009.

Clay Crupper Mayor
CLAY CRUPPER, MAYOR

ATTEST:

Cindy L. Harris
CINDY L. HARRIS, CITY CLERK