

CITY OF ELSMERE, KENTUCKY

ORDINANCE 1808-2021

AN ORDINANCE OF THE CITY OF ELSMERE, KENTUCKY, IN KENTON COUNTY, KENTUCKY AMENDING CHAPTER 94A PROHIBITING PUBLIC NUISANCES AS DEFINED THEREIN; AND PROVIDING FOR THE ABATEMENT THEREOF; AND ESTABLISHING STANDARDS AND PROCEDURES FOR THE ENFORCEMENT THEREOF, ALONG WITH PROVISIONS FOR THE ESTABLISHMENT OF A HEARING BOARD AND HEARING OFFICERS, AND PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, KRS 65.8801 to KRS 65.8839 provides authority for a local government to protect, promote, and improve the health, safety, and welfare of the citizens residing within the local government of this state by authorizing the creation of administrative boards with the authority to issue remedial orders, secure search warrants, and impose civil fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the ordinances in force in local governments and

WHEREAS the City of Elsmere, Kentucky has determined that nuisances exist on property in the city for which the property maintenance code may not otherwise apply, and are substantially annoying, injuring, or endangering the public and interfering with the use and enjoyment of public and private property, and

WHEREAS, pursuant to KRS 65.8801 to KRS 65.8839 the creation of a Joint Code Enforcement Board and the adoption of a nuisance code will allow for the expeditious abatement of nuisances occurring within the city and unincorporated Kenton County, protecting the health, safety, and welfare of all citizens, and

WHEREAS, the provisions of the Ordinance shall be set forth and incorporated into the Elsmere, Kentucky Code of Ordinances as Section 94A.

NOW, THEREFORE, BE IT ORDAINED by the City of Elsmere, Kentucky, County of Kenton, Commonwealth of Kentucky, that:

94A.01 Purpose—The City of Elsmere, Kentucky Nuisance Code (hereinafter “Code”) is designed to protect the public health, safety, and welfare by establishing pursuant to KRS 65.8801 to KRS 65.8839 what constitutes a nuisance on residential and non-residential properties with and without structures, and prohibiting public nuisances that substantially annoy, injure, or endanger the public or unlawfully or substantially interfere with the use and enjoyment of private or public property, and fixing the responsibilities of owners, operators, and occupants of all residential and non-residential structures, and premises.

94A.02 Repeal - Ordinance 1625-2011 codified as Section 94 of the City of Elsmere, Kentucky Code of Ordinances is hereby repealed in its entirety.

94A.03 Intent – This Code shall be construed liberally and justly to insure public health, safety, and welfare insofar as the public is effected by the continued use and maintenance of structures and premises in violation of this ordinance. However, the provisions of this Code shall not be construed to prevent the enforcement of other applicable ordinances or regulations. The provisions of KRS 65.8801 to 65.8839 shall apply to the processes and procedures for enforcement of this Code.

94A.04 Application of Other Codes – Any repairs, alterations, or changes to a structure,

which are caused directly or indirectly by the enforcement of this Code, shall be done in accordance with the procedures and provisions of any other existing codes used and enforced by the City, including but not limited to the adopted Property Maintenance Code, the Kentucky Building Code, including all references codes therein, and the Kentucky Standards of Safety.

94A.05 Conflict with Other Ordinances or Regulations – In any case where a provision of this Code is found to be in conflict with any existing code, ordinance, or regulation of the City, the provision that establishes the highest standard shall apply, so long as the penalty for violation of that provision is civil in nature. If the penalty of the provision establishing the highest standard is not civil in nature, then this Code shall be the prevailing authority, with the exception of the Kentucky Building Code, and all Codes referenced therein including the Fire Prevention Code, Life Safety Code, the National Electrical Code, and the Kentucky Standards of Safety which shall control over conflicting City ordinances.

94A.06 Severability - The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

94A.07 Remedies – The provisions of this Code shall not be construed to abolish or impair existing or other remedies of the City or its officers or agencies relating to the removal or demolition of any buildings that are dangerous, unsafe, or unsanitary.

94A.08 Workmanship – All repairs, maintenance, alterations, or installations that are required for compliance with this Code shall be executed and installed in a workmanlike manner.

94A.09 Effective Date – This Ordinance shall take effect and be in full force when passed, published, and recorded according to law.

94A.10 - DEFINITIONS

For the purposes of this Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning of the word being defined:

ABANDON - To give up or relinquish one's interest or right in property.

ABATEMENT COSTS - means 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.

Anybody - The word "anybody" means any human being, or any organization or combination thereof, in the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

ALTER or ALTERATION - Any change or modification in the construction or occupancy of a building or structure.

AEROSOL PAINT CONTAINER - Any aerosol container, regardless of the material from which it is made, that is adopted or made for the purpose of spraying paint capable of defacing property.

APPROVED - Approved by the Chairman of the Kenton County Joint Code Enforcement Board, or any of his or her assistants, staff, employees, or assigns.

ALL TERRAIN VEHICLE - Shall have the same meaning provided therefore in KRS

189.010, which is a motor vehicle is used for recreational off-road use.

AUTOMOBILE COLLECTOR – A person who collects and restores motor vehicles.

BANNER SIGN-The words “banner sign” mean any commercial sign composed of any pliable plastic or cloth, without a rigid supporting frame.

BASEMENT - A portion of a building or structure located partly underground, but having less than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

BUILDING - Any structure, constructed on, below, or above ground, for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind. The term **BUILDING** shall be construed as if followed by the words, "or any part thereof."

BUILDING CODE - The Kentucky Building Code, as adopted by the county in §150.01 of the county Code of Ordinances.

CART - Any cart, wagon, or similar device, regardless of means of propulsion, made of wire, metal, wood or other material, such as is generally provided by merchants for carting or carrying merchandise or food stuffs from said merchants' store or buildings to automobiles or other places without said merchants' building or store.

CITY - The City of Elsmere, Kenton County, Kentucky, including any departments, divisions, boards, or agencies thereof.

CODE ENFORCEMENT BOARD - means the 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.

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.

CONTROL – The word “control” means to exercise restraint or direction over.

DELIVER – The word “deliver” means and includes any manner of delivery that conforms to the federal and state constitutional requirements for procedural due process.

DISORDERLY MANNER - Any manner that unreasonably causes inconvenience, annoyance or alarm to any member of the public or anybody using any other lot or parcel of real estate within or outside of the city, or wantonly creates a risk thereof.

DWELLING - Any building that is wholly or partly used or intended to be used for living, sleeping, cooking, and eating by human occupants, whether or not such building is occupied or vacant, provided that temporary housing as hereinafter defined shall not be regarded as a dwelling. The term dwelling shall be construed as if followed by the words, "or any part thereof."

DWELLING UNIT - Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking, and eating, whether or not such unit is occupied or vacant. The term **DWELLING UNIT** shall be construed as if followed by the words, "or any part thereof."

ELECTRICAL CODE - The Kentucky Building Code, as adopted by the county in §150.01 of the county Code of Ordinances.

EVERYBODY –The word “everybody” means every human being and every organization or combination thereof. In the form of a corporation, partnership, limited liability company, joint venture, unincorporated association or otherwise.

"Final Order" means any order:

1. Issued by the code enforcement board following a hearing in accordance with this ordinance;
2. Created because a violator neither paid nor contested the citation within seven (7) days as provided in this ordinance; or
3. Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in this ordinance.

FIRE CODE - The Kentucky Building Code, as adopted by the county in §150.01 of the county Code of Ordinances and all Codes and Standards as referenced therein along with the Kentucky Standards of Safety.

FOWL - The word “fowl” means any hen, rooster, chicken, duck, turkey, pheasant or any of several other, usually gallinaceous birds.

GARBAGE - The organic, animal, and vegetable waste resulting from the handling, preparation, cooking, and consumption of food or food products. Other general organic materials such as paper and cardboard are also garbage.

GRAFFITI - Any inscription, drawing or design that is scratched, painted, sprayed or placed on any surface of any structure without the consent or authority of the owner thereof, and which is within the view from any public property or right of way.

HEARING BOARD – The Kenton County Code Enforcement Board as established by ordinance and empowered to conduct hearings pursuant to KRS 65.8801 to KRS 65.8840, and KRS 82.710.

IMMINENT DANGER - means a condition which is likely to cause serious or life-threatening injury or death at any time.

INOPERABLE MOTOR VEHICLE - The words “inoperable motor vehicle” mean a motor vehicle that is: unlicensed as required by KRS 186.020; is in a state of disrepair, caused by wreckage to the vehicle or disassembly; mechanically inoperable; or legally inoperable on public streets and highways.

LIVESTOCK- The word “livestock” means animals of the bovine, ovine, porcine, caprine, equine, camelide and cervid species, including, without limitation, horses, cattle, sheep, swine and goats.

LOCAL GOVERNMENT - The City of Elsmere, Kenton County, Kentucky.

MARKER PEN - Any indelible marker or similar implement with a writing tip exceeding four millimeters in width that contains solution that cannot be removed with water after it dries.

NUISANCE CODE–This ordinance adopted by the City pursuant to KRS 82.700 *et seq.*, and KRS 381.770 and incorporated herein by reference the provisions of the International Property

Maintenance Code, published by the International Code Council Inc. as amended from time to time and all amendments are hereby incorporated by reference into this Code as if fully set forth herein.

OCCUPANT - Any person living, sleeping, cooking, or eating in, or having actual possession of a dwelling unit, rooming unit, building, or portion of a building.

OPEN BURNING FOR THE PURPOSE OF LAND CLEARING - means the burning of downed trees and other forms of vegetation that have been cut or knocked down for the purpose of clearing an area of land in excess of 200 square feet that may be used for future development.

OPERATOR - Any person who has charge, care, or control of a building, or part thereof, in which dwelling units or rooming units are let.

ORDINANCE - means 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 and the Fiscal Court which embodies all or part of an ordinance.

ORDINARY PUBLIC VIEW – A sight line within normal visual range by a person on a public street or sidewalk adjacent to real property.

OVERGROWN GRASS - means any grass, weeds or vegetation in excess of eight (8) inches in length, except in agricultural zones

OWNER - The holder of the title in fee simple and any person, group of persons, company, association, or corporation in whose name tax bills on the property are submitted. **OWNER** also means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property. It shall also mean any person who, alone or jointly or severally with others:

(1) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(2) Shall have charge, care, or control of any dwelling unit, as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or vendee in possession, assignee of rents, lessee, or other person, firm, or corporation in control of a building, or their duly authorized agents. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he or she were the owner. It is his or her responsibility to notify the actual owner of the reported infractions of these regulations pertaining to the property.

PARTS CAR – An automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of automobiles.

PERSON - Any individual, firm, corporation, limited Liability Company, association, or partnership.

PLUMBING - The practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following: sanitary drainage or storm draining facilities, the venting system, and the public or private water supply systems, within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of storm water, liquid waste, or sewerage, and water-supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

PREMISES - A lot, plot, or parcel of land including the buildings or structures thereon.

PUBLIC AREA - Unoccupied open space that is not privately owned, including but not limited to publicly owned property, sidewalks, streets, and rights-of-way.

RECREATIONAL VEHICLE - The words "recreational vehicle" have the same meaning provided for them in KRS 227.550(12).

REQUIRED - Means required by some provision of this code or other law or regulation adopted by the County.

RUBBISH - Combustible and non-combustible waste materials, except garbage. The term shall include but not be limited to abandoned, discarded, or unused objects placed outside of a structure, such as furniture, stoves, refrigerators, freezers, washers, dryers, clothes, food, cans, containers, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, synthetic materials, tree branches, yard trimmings, tin cans, metal, mineral matter, glass crockery and dust. The term shall also include the residue from the burning of wood, coal, coke, synthetic material, or other combustible material.

STAGNANT WATER - A body of water without wind, waves, fish, or frogs, including but not limited to stagnant water in natural ponds, ornamental ponds, old tires, poorly maintained pools, rain barrels, clogged gutters, and other places where standing water may collect.

STAIRWAY - One or more flight of stairs and the necessary landings and platforms connecting them, to form a continuous and uninterrupted passage from one story to another in a building or structure.

STRUCTURE - An edifice, cellar, building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. The term structure shall be construed as if followed by the words, "or any part thereof."

YARD - An open unoccupied space on the same lot with building extending along the entire length of a street, or rear or interior lot line. This term also applies to an adjoining unoccupied parcel or lot that is used by a principal occupied lot as a yard.

94A.11 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. Repeated violation of the terms of the International Property Maintenance code, as amended, shall constitute a public nuisance.

94A.20 - NUISANCES DESCRIBED AND PROHIBITED

The following acts, action, inaction, omissions, behavior, or conditions shall constitute a public nuisance:

(1) Any act, thing, occupation, condition, use of property, non-use of property, misuse of property that continues for a length of time so as to:

- (a) Substantially annoy, injure, or endanger the comfort, health, repose or safety of the public;
- (b) In any way render the public insecure in life, peaceful uninterrupted existence, or in the use of their property;
- (c) Offend the public morals or decency;
- (d) Unlawfully and substantially interfere with, obstruct or tend to obstruct, or render dangerous for passage any street, alley, highway, navigable body of water, or other public way, including but not limited to sidewalks.

(2) To allow any physical condition, use, or occupancy of any premises or its appurtenances be an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, standing

pools of water or liquid, basements, excavations, retaining walls, and unsafe fences, accessible to children or other persons, on the premises. No person shall abandon or leave unattended in any place accessible to children any refrigerator, freezer ice chest, ice box, or similar airtight box or container, which has a locking device inoperable from within, without first unhinging and removing the door or lid thereof or detaching the locking device from the door or lid. Nothing in this section shall be construed to prohibit the normal use of any refrigerator, ice box, freezer, or similar appliance for the storage of food in any home or buildings appurtenant thereto.

(3) For any premises to have unsanitary, defective, or insufficient sewerage or plumbing facilities.

(4) To keep or maintain any premises designated by a code enforcement officer as unsafe or unfit for human habitation.

(5) For any premises to present an imminent fire hazard, be in imminent danger of collapse, or to be unsafe or unsecure so as to endanger life, limb, or property.

(6) (a) For any premises to lack electrical service, plumbing, heating, and/or other equipment required by this Code, the Property Maintenance Code, state statute or any other ordinance of the City.

(b) If the utility providing natural gas service to a furnace, water heater, or other equipment determines that the equipment is defective, the utility shall cite or "red tag" the defective equipment and notify the Code Enforcement Officer of such citation. Any equipment so cited by a utility company as defective will be deemed a public nuisance.

(7) For any structure or building to be in a state of dilapidation, deterioration, or decay, or be a product of faulty construction.

(8) For any structure or building to be vacant or abandoned and open or accessible to vagrants or passersby, or damaged by fire so as to not provide shelter.

(9) To allow on any premises or structure any stagnant water in which mosquitoes, flies, or other insects may breed or multiply. For stagnant water that cannot be easily eliminated, a property owner may use mosquito dunks or other environmentally safe larvacides to kill mosquitoes and other insects and evidence of the effective use of such products will constitute a defense to any citation issued under this section.

(10) To allow any rubbish to remain on any premises.

(11) To allow any premises or structure to pollute any public well or cistern, stream, lake, canal, or body of water by sewage, creamery, or industrial wastes or other polluting substances.

(12) To allow any premises or structure within the county, to emit or cause any foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches repulsive to the physical senses of ordinary persons, or that annoy, cause discomfort, or injure the health of any appreciable number of persons within the county.

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

(14) The keeping of cattle, horses, chickens and other barn type animals shall be prohibited in any non-agricultural zoned area with the City.

(15) Emission of noxious odors or smoke into the surrounding atmosphere of dust, smoke, or other matter which renders ordinary use or physical occupation of other property in the vicinity

uncomfortable or impossible.

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

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

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

(19) The operation of any ATV within the city on any day, before 8:00 a.m. or after 10:00 p.m., prevailing time without the muffler system provided by the manufacturer of the ATV, as provided by the manufacturer, without any modification thereof other than like kind parts replacement, and which prevents the emission of sound from the ATV in excess of the levels identified in 40 CFR 205.166 for motorcycles; or at any speed in excess of the minimum speed required to maintain the forward motion of the ATV while it is within 150 feet of any dwelling on a lot or parcel of real estate other than that upon which the ATV is being operated.

(20) Any outdoor fire except, for that of candles, torches, grills, and approved properly positioned and maintained fire pits, with a fuel load of paper, firewood, charcoal, propane or natural gas and no more than three (3) square feet in area. Open burning of trees and all forms of vegetation for the purpose of land clearing is prohibited. The burning of leaves and other all forms of trash is also prohibited. Burn permits from the Elsmere Fire District are not required for the approved type of fires defined in this Chapter.

(21) To allow any motor vehicle to be parked on an unpaved (concrete or blacktop) surface.

(22) The feeding of ducks, geese, pigeons, and similar such birds and wild animals, such as, raccoons and squirrels in a manner causing or contributing to unsanitary conditions and offensive odors within the city limits. This would include making mass quantities of food available to groups of waterfowl, pigeons, or wild animals, on repeated occasions, so as to encourage them to amass in one particular location. This does not include maintenance of birdhouses or backyard bird feeders designed to feed sparrows, cardinals, hummingbirds, or similar such birds.

(23) It shall be illegal to place any object or item in the public right-of-way without written permission by the City of Elsmere. The City of Elsmere holds the right to remove any and all items illegally placed in the public right-of-way.

94A.21 - BUILDINGS

It shall be a public nuisance and a violation of this Code, to keep, maintain, or own a dangerous building within the City. A dangerous building is defined as any of the following:

(1) (a) A building whose interior or exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of its base;

(b) A building, exclusive of the foundation, that shows 33% or more damage or deterioration to its supporting members, or 50% or more damage or deterioration to its non-supporting members, or

to the enclosing or outside walls or coverings;

(c) A building having improperly distributed loads on the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe to occupants or the public;

(d) A building damaged by fire, wind, or other causes so as to cause the building to become dangerous to life, limb, or property of the occupants or to the public;

(e) A building that has become or is so dilapidated, decayed, unsafe, unsanitary, or which so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease or injury to health, safety, or general welfare of those living therein;

(f) A building having light, air, and sanitation facilities that are inadequate to protect the health, safety, or general welfare of human beings who live or may live therein; or

(g) A building having inadequate facilities for egress in case of fire or panic or having insufficient stairways, elevators, fire escapes, or other means of travel;

(h) A building that has parts or elements that are attached or not attached in such a way that they may fall and cause injury to persons or property;

(i) A building that is missing or has nonfunctioning smoke detectors or similar detection devices in violation of the Fire Code; or

(j) A building with openings where a door, window or other architectural feature, or parts thereof, should be located.

(2) Every person owning or having control of a building shall not allow unsecure openings where a door, window or other architectural feature should be located.

(a) The City shall be authorized to abate the nuisance of an unsecured opening, and may effectuate securing the opening pursuant to the applicable code upon recommendation of a Code Enforcement Official.

(b) The nuisance of opening where a door, window or other architectural feature should be located may be securely boarded by using a minimum of 3/8 inch plywood or other similar material in a manner that will secure the building from intrusion.

(c) Any board placed on a building shall be painted a color that is consistent with the color of the structure or be painted black, and shall be cut to fit the opening.

(3) Every person violating the provisions of this section shall be subject to the procedures set forth in the code.

(4) Keeping, maintaining, or owning a dangerous building is a public nuisance and shall constitute a violation of this code, subject to the remedies set forth in KRS 381.770, as well as this code.

94A.22 - GRAFFITI

Graffiti is prohibited and deemed to be a public nuisance. It shall be unlawful to spray, draw, etch, carve or otherwise create graffiti on any building or structure in the City. If a private property owner fails to abate a graffiti nuisance violation after notice is given by the Code Enforcement Officer, the City may abate the graffiti and place a lien for the cost of abatement against the real property of the owner of said premises, building, or structure.

94A.23 - VEHICLES

It shall be unlawful to allow junked or wrecked vehicles, machines, scrap, salvage materials,

mobile or manufactured homes to exist on real property in the City not within a duly licensed salvage yard pursuant to KRS 177.910 to KRS 177.950. Furthermore:

(1) No inoperative or unlicensed motor vehicle shall be parked, kept or stored on any occupied or unoccupied premises and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. Except as provided in division (D), 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 thereon through the accumulation of:

(a) One or more junked or wrecked automobiles, vehicles, machines or other similar scrap or salvage materials, excluding non-operative farm equipment; or

(b) One or more mobile or manufactured homes, as defined in KRS 227.550, that are junked, wrecked, or non-operative and are not inhabited.

(2) The provisions of section (1) shall not apply to:

(a) Junked, wrecked, or non-operative automobiles, vehicles, machines or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);

(b) Junked, wrecked or non-operative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery or other means; and

(c) Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed or leased by a motor carrier.

(d) A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

(3) The City may take action to abate the nuisances referenced in this section by giving notice to the property owner of the nuisance pursuant to the procedures set forth in the code. The City itself may abate or remove a nuisance referenced under this section if the property owner fails to do so after notice is given regarding the nuisance. The City shall have a lien against the property for the reasonable value of labor and material used in remedying the nuisance including but not limited to the cost of towing, holding, storage and disposal. An affidavit of a Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this section and it 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 thereafter until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board, and the city taxes, and may be enforced by judicial proceeding.

(4) In addition to the remedies prescribed above 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 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 owned.

94A.24 - RUBBISH It shall be unlawful for any owner, occupant, person or corporation controlling or managing land in the City to permit a nuisance thereon through the accumulation of rubbish or excessive growth of weeds, grass and similar items. Any officer designated by the City

legislative body may give five (5) days written notice to remedy such situation and said notice shall be hand-delivered and/or mailed by regular mail to the last known address of the owner of said property to comply, the City Clerk is authorized to send employees of the City upon the property to remedy the situation.

The city shall have a lien against said property for the reasonable value of labor and materials used in remedying such situation, such labor shall be calculated at an hourly rate of \$75 per hour. The affidavit of the City Clerk shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to said statute and shall be recorded in the office of the County Clerk in the county where such City is located. Said lien shall be notice to all persons from the time of its recording and shall bear interest at the rate of 6% per annum.

94A.25 – CRIMINAL ACTIVITY AS A PUBLIC NUISANCE

(A) Definitions. For the purpose of this section, the definitions are as set forth herein, or if not established herein, then as defined in section 94A.10 of this code.

- (1) Criminal activity nuisance. Any building or premises where law enforcement officers have, on more than one occasion in the preceding 12-month period, have issued (i) an official incident report, or (ii) criminally or administratively cited, or (iii) arrested a person for any of the following violations:
 - a. Prostitution and/or human trafficking offenses under KRS Chapter 529;
 - b. Sexual offenses under KRS Chapter 510 with the exception of KRS 510.150;
 - c. Gambling offenses under KRS Chapter 528;
 - d. The sale or use of alcoholic beverages on or from either licensed or unlicensed premises;
 - e. Misdemeanor or felony possession, trafficking, or manufacturing drug offenses under KRS Chapter 218A;
 - f. Murder under KRS 507.020 and manslaughter under KRS 507.030 and KRS 507.040;
 - g. Assault, strangulation, terroristic threatening, menacing or related offenses under KRS Chapter 508;
 - h. Kidnapping and other related offenses under KRS Chapter 509;
 - i. Burglary and other related offenses under KRS Chapter 511;
 - j. Criminal Mischief and other related offenses under KRS Chapter 512;
 - k. Theft offenses under KRS Chapter 514;
 - l. Drug paraphernalia offenses as defined by KRS 218A.500 and KRS 218A.510; or
 - m. Unlicensed massage therapy under KRS 309.353;
 - n. Disorderly conduct in the first degree, disorderly conduct in the second degree and other related offenses under KRS 525;
 - o. Alcohol intoxication under KRS 222.202;
 - p. Resisting arrest under KRS 520.090.
- (2) Or executed court-issued search warrants for crimes involving any items in section 1.
- (2) ~~[cited or arrested persons for crimes involving prostitution, controlled substances, disorderly conduct, alcohol intoxication, menacing, assault, terroristic threatening, resisting arrest, or gambling, or have executed court-issued search warrants for crimes involving prostitution, controlled substances, disorderly conduct or~~

~~gambling.]~~

~~(3) [Criminal nuisance violation. A criminal citation, arrest, or court-issued search warrant for crimes involving prostitution, controlled substances, alcohol intoxication, menacing, assault, terroristic threatening, resisting arrest, or gambling.]~~

- (B) Unlawful use of property. No owner of residential, commercial, or vacant property located in the city shall allow his or her property to be used as the site for any criminal activity nuisance after having received notice pursuant to this Code that the property has been used for the commission of a criminal activity nuisance. A legal or equitable owner of such property is deemed to have knowledge of such activity upon receipt of the notice as set forth in this Code.
- (C) Destroying orders or notices. No person or owner shall destroy, remove, or deface any order or notice posted by the Code Enforcement Department or Officer.
- (D) Disobeying orders. No person or owner shall disobey any order issued by the Code Enforcement Department, or use or occupy or permit any other person to use or occupy any premises ordered closed by the Code Enforcement Officer.
- (E) Duty of Police Department. The Elsmere Police shall, as soon as possible but not less than every thirty (30) days after criminally citing or arresting persons or executing court-issued search warrants for crimes involving prostitution, controlled substances, or outdoor gambling, notify the Code Enforcement Department or Officer in writing of the specific violation investigated, the address of the property on or in which the violation occurred, and the circumstances of the violation. After the police notify the Code Enforcement Department or Officer of a criminal nuisance violation at a property for the first time, the Code Enforcement Department or Officer shall notify the owner of the property of such violation by regular U.S. mail.
- (F) Duty of Police Department. The Elsmere Police shall, as soon as possible but not less than every thirty (30) days after criminally citing or arresting persons or executing court-issued search warrants for crimes involving prostitution, controlled substances, or outdoor gambling, notify the Code Enforcement Department or Officer in writing of the specific violation investigated, the address of the property on or in which the violation occurred, and the circumstances of the violation. After the police notify the Code Enforcement Department or Officer of a criminal nuisance violation at a property for the first time, the Code Enforcement Department or Officer shall notify the owner of the property of such violation by regular U.S. mail.
- (G) Abatement.
- (1) Should the criminal activity nuisance not be abated at the time stated in the notice, or by any extension granted by the city or its agencies, the Code Enforcement Department or Officer shall be authorized at any time thereafter to issue an order closing and vacating the premises, or portions thereof, to the extent necessary to abate the criminal activity nuisance. Such closing and vacating shall be for such period as the Code Enforcement Officer reasonably may direct, but in no event shall the closing and vacating be for a period of more

than one year from the date of the closing. A close and vacate order issued by the Code Enforcement Officer pursuant to this section is not an act of possession, ownership, or control by the city. A close and vacate order will be rescinded within fourteen (14) days after the criminal activity nuisance is abated unless such premises is the site of repeated close and vacate orders.

(2) If the premises consist of multi-unit dwellings or mixed uses and the criminal activity nuisance has occurred solely within a unit or units, the authority to close and vacate is restricted to the unit or units in which the criminal activity nuisance has occurred, and does not extend to any other unit in the premises.

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

(4) If any person or owner fails to comply with an order to close and vacate issued pursuant to this section, the Code Enforcement Officer may:

- (a) Prohibit the furnishing of utility service, including but not limited to gas, electric, water, and heating oil, to the premises by any public utility holding a franchise to use the streets and public ways of the city;
- (b) Revoke the certificate or occupancy of the premises or the occupational license of a business; or
- (c) Use any other legal remedy available under the laws of the state.

(5) Pursuant to the provisions of KRS 381.770(6) - (8), the city shall possess a lien against the property for all fines, penalties, charges, and fees imposed and for the reasonable value of labor and materials used to abate the public nuisance. This lien shall accrue interest and be superior to and have priority over all other liens on the property except taxes and may be enforced by judicial proceeding.

(H) Eviction as a defense.

(1) It shall be a defense to a violation of this section if the owner has instituted an eviction proceeding within thirty (30) days against the offending tenant or occupants of the offending premises, and the owner completes the eviction within seventy-five (75) days of commencement or as soon thereafter as the court procedures allow. In the event that judicial or quasi-judicial proceedings prohibit an owner from proceeding with an eviction, abatement of the public nuisance by eviction will be stayed until the judicial or quasi-judicial proceeding is resolved.

(2) In the case of multi-unit dwellings, the only parties necessary to name in an eviction proceeding are the occupants of the actual unit involved with the activity suspected, or the occupants suspected of the activity described in the notice.

(I) Relief from order.

The Code Enforcement Officer may vacate or suspend the provision of an order to close and vacate upon a showing by clear and convincing evidence that the criminal activity nuisance has been abated and will not be maintained or permitted in any unit of the premises.

(J) Abatement actions not in violation of law. Actions taken by an owner to abate a criminal activity nuisance shall not be deemed to be violations of Fair Housing or Landlord-Tenant laws.

(K) Other remedies available. Enforcement of this section does not impair or restrict the

ability of the city to bring a separate action to revoke the occupational license of a landlord of business who allows a criminal activity nuisance to exist on the landlord's property or to bring an action before the Code Enforcement Board for the imposition of civil fines, as set forth in § 94A.99 of this code. No civil fines will be assessed by the Code Enforcement Board until after notice is sent pursuant to division (F) of this section or if an eviction proceeding has been instituted pursuant to division (H) of this section.

94A.30 - JOINT CODE ENFORCEMENT BOARD

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 ordinance shall include but not be limited to the following all pursuant to KRS 65.8801 thru KRS 65.8839(1) To conduct surveys and make inspections in any area of the City to determine compliance with this ordinance or other ordinances he or she is empowered to enforce.

(2) 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 ordinance exists or that a dwelling, structure, or building is unfit or unsafe for human habitation or other occupancy.

(3) 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 ordinance 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.

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

(5) 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.

(6) 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.

(7) 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.

(8) 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.

94A.40 - HEARING BOARD

The Kenton County Joint Code Enforcement Board shall act as the hearing board for the enforcement of this ordinance. Authorized personnel of Planning and Development Services of Kenton County and city police, fire officials, and code enforcement officer shall act as the enforcement authority for the provisions of this ordinance. A Code Enforcement Officer, in order to facilitate inspection of premises reasonably suspected of being in violation of this ordinance, may obtain an administrative search warrant upon presentation of an appropriate affidavit to a Kenton County District or Circuit Judge. The Affidavit and Search Warrant shall be in substantial conformity to the formats attached hereto as Exhibits A and B.

94A.50 - APPEALS

An appeal from any final order issued by the hearing board may be made to the Kenton District Court within 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.

94A.60 - 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 ordinance 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 ordinance 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 ordinance.

94A.99 - PENALTIES

The following penalties shall apply to violations of the ordinance:

(1) Any person, firm, or corporation who violates any provision of this ordinance shall be subject to a civil fine of not less than \$50 per day per violation but not more than \$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 ordinance 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 \$10,000 per citation.

(2) As an additional alternative remedy to the above penalty, any violator who violates any provision of the ordinance and has been previously issued two or more citations for violation of this nuisance ordinance relating to the same property within a 12-month period may be assessed additional civil penalties of \$500 per day per violation to a maximum of \$20,000 per citation.

(3) The Specific civil fine that shall be imposed for each separate violation specific to the growth of weeds or grass in excess of eight (8) inches above the surface of the ground on any lot or parcel of real estate that is less than four (4) acres in area and developed with the public utilities of

water, electricity, and sewers is hereby established at \$20.00 for a first violation, \$50.00 for a second occurrence of same violation and \$100.00 for third and each subsequent occurrence of the same violation plus the cost of collection including without limitation, court costs, attorney fees, and any abatement costs.

This Ordinance shall be effective when read, passed and published according to law.

This Ordinance may be published in summary pursuant to KRS 183A.060(9).

Adopted this 14th day of December 2021.

CITY OF ELSMERE, KENTUCKY
A Municipal Corporation of the Home Rule Class



D. MARTY LENHOF, MAYOR

1st Reading: November 9, 2021

2nd Reading: December 14, 2021

Ayes: 4 Nays: 0

Published: _____

ATTEST:



Misty Ezell, City Clerk