

**CITY OF HURSTBOURNE
ORDINANCE #22-1
AN ORDINANCE ADOPTING A POLICY FOR SUSTAINED CRIMINAL ACTIVITY
AT A PROPERTY TO BE DEEMED A PUBLIC NUISANCE**

WHEREAS, The City of Hurstbourne wishes to create a safe and comfortable environment for all residents of the city;

WHEREAS, according to police activity logs for the city, there are certain hotspots for criminal activity, that generate many calls and complaints and have become understood by law enforcement and the public as dangers to the public wellbeing; and

WHEREAS, the city requires an ordinance that will address the properties where sustained and frequent criminal activity occurs and give the local government the authority to intervene to create a safe environment for its citizens.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF HURSTBOURNE, KENTUCKY,

Section 1: There is hereby adopted the following ordinance of the City of Hurstbourne Ordinances relating to the abatement of chronic nuisances in the City.

1. Chronic nuisance property. 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 chapter and subject to its remedies.
2. Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY COMMISSION. The City Commission of the City of Hurstbourne.

CHRONIC NUISANCE PROPERTY. Property on which certain nuisance activities defined herein exist or have occurred with the frequency described herein during any 12-month period.

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. Property on which three or more nuisance activities exist or have occurred during any 60-day period or on which 12 or more nuisance activities exist or have occurred during any 12-month period, for 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 City of Hurstbourne Ordinances Chapter 111.
- U. Noise violations, as defined in Metro Louisville Ordinance § 99.02.
- V. Any attempt to commit and/or conspiracy to commit any of the activities, behaviors or conduct listed in this section.

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 Hurstbourne, Kentucky.

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.

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.

POLICE OFFICER. A Police Officer as defined in KRS 15.420

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.

3. Procedure - City enforcement.

a. When the Code Enforcement Officer receives information documenting the existence of activities which qualify as nuisance activities:

i. The Code Enforcement Officer shall independently review such report(s) to determine whether a chronic nuisance property as defined in this chapter is established by the information. To qualify, all nuisance activities must be based on either, (a) the personal observation of a Police Officer, or Code Enforcement Officer, or (2) a determination by a Police Officer, or Code Enforcement Officer, either after an investigation or following a sworn statement of a person who personally witnesses the alleged incident that the alleged nuisance activities did in fact occur.

ii. Upon a determination that a chronic nuisance property exists, the Code Enforcement Officer shall issue a notice of violation under the City of Hurstbourne Code of Ordinances 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

iii. The notice to the person in charge, shall contain the following information:

1. The street address or a legal description sufficient for identification of the property.
2. A statement that the 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.

3. A demand that the person in charge respond within ten days to the 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.
 4. That an agreed abatement plan must be reached with the Code Enforcement Officer within 30 days from the date of the notice of determination of chronic nuisance property.
 5. That if the nuisance activities are not abated and good cause for failure to abate is not shown, a citation under the Hurstbourne Code of Ordinances may be issued.
 6. That permitting the existence of a chronic nuisance property is a violation of this chapter.
 7. That the above remedies are in addition to those otherwise provided by law.
 8. The notice may be delivered in person or sent certified 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 Code Enforcement Officer.
 9. The failure of any person to receive notice shall not invalidate or otherwise affect the proceedings under this chapter.
- b. The Code Enforcement Officer may issue a citation where:
- i. The person in charge fails to respond within ten days from the date of the notice of determination of chronic nuisance property by the Code Enforcement Officer; or
 - ii. No agreeable written abatement plan is reached within 30 days from the notice of determination of chronic nuisance property by the Code Enforcement Officer and the person in charge fails to establish one of the affirmative defenses provided in this chapter; or
 - iii. The person in charge fails to abate the nuisance activities from the property as required by the agreed abatement plan; or
 - iv. 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 this chapter. Failure of both to agree to a proposed abatement plan shall result in a finding by the Code Enforcement Officer that the abatement plan is not agreeable.
- 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 Code Enforcement Officer as required in this chapter, 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 section 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:
 - i. 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;
 - ii. 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;
 - iii. That the residential landlord, upon written notice by the city that a nuisance activity has occurred on their property within the prior 30 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 of Hurstbourne fails to give the notice provided in this section.
 - g. Good cause affirmative defense. Any person charged under this section has an absolute defense to a charge under this section if they establish by a preponderance of the evidence that:
 - i. 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;
 - ii. 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
 - iii. The nuisance activity that forms the basis of the charge was not permitted by the person charged.
4. Procedure - resident enforcement. Hurstbourne residents, affected by an alleged chronic nuisance property, may elect to provide a sworn complaint to the Hurstbourne Code Enforcement Officer which may be used in the enforcement of this section.
5. 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 the City of Hurstbourne Code of Ordinances Chapter 40

relating to the Code Enforcement Board. The civil fine for non-compliance shall be as follows:

1. Fine in an amount no less than \$100.00 per day and no more than \$500.00 per day. Each day of non-compliance will constitute the imposition of per day fine for each day's violation, up to the following maximums. On first violation, the maximum total fine is \$1,000.00. On a second violation that occurs within 12 months of the first violation, the maximum total fine for each person cited is \$3,000.00. On a third violation that occurs within 12 months of the first violation, the maximum total fine shall be \$5,000.00.

 - b. In addition, whenever the Code Enforcement Officer or the Code Enforcement Board determines that a chronic nuisance exists, the Code Enforcement Officer or the Code Enforcement Board may forward such determination to the City Commission. Based on such determination, the City Commission may suspend or revoke the business license of any person conducting any business upon the property where the chronic nuisance exists.
6. Summary closure. The city, through its City Attorney, may also initiate condemnation procedures as allowed by Kentucky Revised Statutes. 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 condemnation shall be governed by the provisions of applicable Kentucky law.

Section 2: Effective date

This ordinance shall take effect upon its reading, adoption and publication according to law.

Adopted this 8th day of February 2022.

Introduction and First Reading: 01-11-22

Second Reading and Passage: 02-08-22



Mary Masick, Mayor

ATTEST:


Jim Leidgen, City Clerk

Aye votes: 5

Nay votes: 0