

City of Florence, Kentucky Chronic Nuisance Property Policy Overview

What is it all about?

Property where nuisance activity occurs regularly is a blight on the entire neighborhood. The nuisances frighten away law-abiding residents, discourage reinvestment, and consume police and other city services. Responsible property owners can and usually do take steps to discourage nuisances from occurring on their property. Florence City Council adopted the Chronic Nuisance Property Policy by passing Ordinance O-1-14 into law on January 28, 2014.

What does the policy say?

When the city determines that three or more nuisance activities have occurred at a property within a 60-day period, or 12 or more nuisance activities have occurred at a property within a 12-month period, the Florence Police Department can notify the owner and request a plan to stop it from continuing. If the owner does not respond or fails to carry out the plan, enforcement action begins which may include a fine ranging from \$500 to \$5,000, revocation of an occupational license, and/or civil action foreclosure of the property.

What nuisances are included?

There are over 20 nuisance activities listed in the ordinance including but not limited to loud music, alcohol related offenses, illegal drug activity, harassment, disorderly conduct, prostitution, keeping animals that disturb the peace, and weapons related offenses. A complete list is attached.

What types of properties are covered by the policy?

Both residential and commercial property. This policy applies to **all** properties located in the City of Florence (hotels, business establishments, rental property, etc.), and it is applied citywide.

Does the nuisance activity have to result in a conviction or even the issuance of a citation before it counts toward the 3-in-60 day or 12-in-12 month limit?

No. The Florence Police Department only needs to have probable cause to believe that the nuisance activities occurred at the premises. Probable cause can be established by credible evidence such as a police officer's own observation of the nuisance activity, a police officer's determination that a nuisance activity occurred, credible documentation by neighbors in the form of a sworn statement, etc.

Will this policy make property owners or tenants afraid to call the police for fear of losing their housing or place of business?

The city believes that providing tenants and property owners with the abatement opportunities established in this policy will empower them to assert and protect their rights to live and/or conduct business in nuisance free environments.

What should neighbors do if they have reason to believe that nuisance activities are occurring at a property?

Depending on the severity of circumstances, keep a log of when the nuisance occurred (time, date, location, description of the nuisance) and contact the Florence Police Department at (859) 647-5420. Forwarding your observations to the Florence Police Department may assist if the property has reported calls. Be as specific as possible in describing the nuisance.

If there is believed to be current criminal activity occurring at the property, the police should be contacted immediately by calling 911.

Do chronic nuisance policies work?

Communities that have implemented similar policies report a high degree of success. When property owners are presented with credible evidence of illegal activities on their property, most cooperate to prevent its recurrence. Both the property owner and the neighborhood benefit. It is the City of Florence's goal that nuisance activities are resolved without having to levy fines or to take other enforcement actions.

ORDINANCE NO. O-1-14

AN ORDINANCE RELATING TO CHRONIC NUISANCE PROPERTY.

WHEREAS, the City of Florence, Kentucky, has the authority to enact ordinances for the public health, safety, and welfare of its citizens;

WHEREAS, the City is mindful that from time-to-time there exist certain chronic nuisances in the City which are of such a nature and frequency that they cannot be controlled, deterred, or abated under existing ordinances;

WHEREAS, chronic nuisance properties present grave health, safety, and welfare concerns, and have a tremendous negative impact upon the quality of life, safety, and health of the neighborhoods where they are located;

WHEREAS, the failure of owners or managers of certain real property to control the activity occurring on or from their property is a financial burden to the City caused by the repeated and substantial expenditures of public funds in order to enforce laws upon or near their property; and

WHEREAS, the City believes that the public health, safety, and welfare of the citizens of the City will be better served by classifying certain recurring nuisances as chronic nuisances to be enforced under the provisions set forth below:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:

SECTION I

CHRONIC NUISANCE UNLAWFUL.

A. Any Property within the City of Florence, Kentucky, that becomes a Chronic Nuisance Property, as defined herein, is in violation of this Ordinance and subject to its remedies.

B. It shall be unlawful for any person to permit Property under his or her ownership or control to be a Chronic Nuisance Property, as defined herein, and such person shall be in violation of this Ordinance and subject to its remedies.

C. A violation of this Ordinance shall constitute “Unlawful Purpose” or “Unlawful Manner” as those terms are used in the Occupational Tax Ordinance (Ordinance No. O-14-83), Section C, dealing with revocation or suspension of licenses.

SECTION II

DEFINITIONS.

- A. City Council. The City Council of the City of Florence, Kentucky.
- B. Chronic Nuisance Property. Property on which three (3) or more Nuisance Activities exist or have occurred during any sixty (60) day period or on which twelve (12) or more Nuisance Activities exist or have occurred during any twelve (12) month period.
- C. Code Enforcement Officer. Shall mean a Code Enforcement Officer as defined in KRS 65.8805.
- D. Control. The authority to regulate, restrain, dominate, counteract or govern Property, or conduct what occurs on a Property.
- E. Domestic Violence. Shall mean physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple as defined in KRS 403.720.
- F. Multiple Unit Dwellings. If the Chronic Nuisance Property consists of multiple unit dwellings or mixed uses and the Nuisance Activities have occurred solely within a unit or units, the authority to issue an order to close and vacate is restricted to the unit or units in which the Nuisance Activities have occurred and does not extend to any other unit at the Chronic Nuisance Property. This definition does not apply to hotels, motels, or other places of lodging.
- G. Good Cause. Circumstances beyond the ability of a Person acting with reasonable care and diligence to control.
- H. Nuisance Activities:
1. Any of the following activities, behaviors or conduct when same are permitted to occur on Property:
 - (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) Rioting, inciting to riot, unlawfully assembling, or disorderly conduct as defined in KRS 525.010 through 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) Unsworn falsification to authorities or giving peace officer a false name or address, as defined in KRS 523.100 or 523.110.
- (h) Obstruction of public administration, as defined in KRS 519.010 through KRS 519.070.
- (i) Resisting arrest, fleeing or evading police, or hindering prosecution or apprehension, as defined in KRS 520.090 through KRS 520.130.
- (j) Promoting gambling, conspiracy to promote gambling, possession of gambling records, or any other illegal gambling activities, as defined in KRS Chapter 528.
- (k) Prostitution, promoting prostitution, permitting prostitution, or human trafficking, as defined in KRS 529.010 through 529.110.
- (l) Endangering the welfare of a minor or unlawful transaction with a minor as defined in KRS 530.060 through 530.080.
- (m) Distribution of obscene matter promoting sale of obscenity, or voyeurism, as defined in KRS 531.010 through 531.110.
- (n) Sexual exploitation of minors, as defined in KRS 531.300 through 531.370.
- (o) Drug possession or trafficking, as defined in KRS 218A.010 through 218A.1444.
- (p) Weapons related offenses, as defined in KRS 527.010 through 527.210.
- (q) Alcohol related offenses, as defined in KRS Chapters 241, 242, 243 and 244.
- (r) Animal control violations, as defined in Florence Code of Ordinances Chapter 91.
- (s) Fireworks violations, as defined in Florence Code of Ordinances 98.15 through 98.21.
- (t) Curfew violations, as defined in Florence Code of Ordinances Chapter 100.
- (u) Noise violations, as defined in Florence Code of Ordinances 92.03.
- (v) Sale of alcoholic beverages violations, as defined in Florence Code of Ordinances Chapter 111.
- (w) Discharging air rifle or discharging firearms violations, as defined in Florence Code of Ordinances 131.01-131.02.
- (x) Nude performance violations, as defined in Florence Code of Ordinances 133.01.
- (y) 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.
3. For purposes of this Ordinance, Nuisance Activity shall not include conduct where the Person in Charge is the victim of a crime and had no control over the criminal act.
4. For purposes of this Ordinance, Domestic Violence calls for service are not considered Nuisance Activities.

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

J. 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.

K. 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.

L. 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.

M. Police Chief. The Chief of Police of the City of Florence, Kentucky, or his or her designee.

N. 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.

O. 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.

SECTION III

CITY ENFORCEMENT.

A. When the Police Chief or Code Enforcement Officer receives information documenting the existence of activities that qualify as Nuisance Activities:

1. The Police Chief or Code Enforcement Officer shall independently review such report(s) to determine whether a Chronic Nuisance Property as defined herein 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 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 10 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, enforcement action may be initiated

including civil penalties and/or fines assessed of not less than \$500.00 nor more than \$5,000.00, revocation or suspension of the occupational license, a civil action foreclosure of the Property, and/or any other legal remedy available under the laws of the City or Commonwealth of Kentucky.

- (f) That permitting the existence of a Chronic Nuisance Property is a violation of this Ordinance.
- (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 Ordinance.

B. Enforcement Action under this Ordinance shall consist of:

- 1. Issuance of a citation to the Code Enforcement Board of the City following the procedure outlined in Ordinance No. O-7-02.

Violations of this Ordinance are hereby designated as civil offenses. The Code Enforcement Board may impose a civil penalty for each violation of this Ordinance of not less than \$500.00, nor more than \$5,000.00.
and/or

- 2. If applicable, revocation or suspension of the occupational license after hearing before City Council as provided in the Occupational License Tax Ordinance; and/or
- 3. A civil action foreclosure of the Property; and/or
- 4. Any other legal remedy available under the laws of the City or Commonwealth of Kentucky.

C. The Police Chief or Code Enforcement Officer may initiate enforcement action where:

- 1. The Person in Charge fails to respond within 10 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 herein; 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.

D. 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 (C)(2) of this section.

E. 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.

F. When a Person in Charge makes a response to the Police Chief or Code Enforcement Officer, 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.

G. 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 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 fails to give the notice provided in this section.

H. Good cause affirmative defense. Any person charged under this Ordinance has an absolute defense to a charge under this Ordinance 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.

SECTION IV

UTILITY SERVICE PROHIBITION.

Upon the failure of the Person in Charge 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 use the streets and public ways of the City.

SECTION V

PROCEDURE - RESIDENT ENFORCEMENT.

City residents, affected by an alleged Chronic Nuisance Property, may elect to provide a sworn complaint to the Police Chief or Code Enforcement Officer which may be used by the Police Chief or Code Enforcement Officer in their enforcement of this Ordinance.

SECTION VI

SUMMARY CLOSURE.

The City, through its City Attorney, may also initiate a summary closure proceeding in the 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. 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.

SECTION VII

SEVERABILITY.

The provisions of this Ordinance are intended to be consistent with any applicable provisions of state law. If any provisions of this Ordinance, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of the Ordinance, or the application of its provisions to other persons or circumstances shall not in any way be affected. Any Court passing judgment upon this Ordinance shall hold it effective to the maximum extent possible.

SECTION VIII

PENALTY.

Whoever violates any provision of this Ordinance shall be guilty of a misdemeanor and a criminal fine not to exceed the amount set forth in KRS 534.040(2)(a), or a term of imprisonment not to exceed the periods set forth in KRS 532.090(1), or both, may be imposed for the offense. Each day's continued violation shall constitute a separate offense.

SECTION IX

This Ordinance shall be published in full.

PASSED AND APPROVED ON FIRST READING THIS 14TH DAY OF JANUARY, 2014.
PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED
THIS 28TH DAY OF JANUARY, 2014.

APPROVED:

/s/ Diane E. Whalen
MAYOR

ATTEST:

/s/ Joseph A. Christofield
CITY CLERK

[The official ordinance can be inspected at the Office of the City Clerk, City of Florence, 8100 Ewing Boulevard, Florence, Kentucky 41042 during normal business hours.]