

ORDINANCE NO. 2561

**ORDINANCE AMENDING SECTION 104 OF THE ERLANGER
CODE OF ORDINANCES RELATED TO ENFORCEMENT
PROCEDURES**

WHEREAS, the City of Erlanger is moving in a new direction with code enforcement and will be relying on PDS staff and the Kenton County Joint Code Enforcement Board to handle enforcement of all Erlanger code violations; and

WHEREAS, the City of Erlanger needs to tweak its existing nuisance ordinance to be in line with the PDS fee schedule and available remedies; and

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

Underlined portions are to be added and portions stricken are to be removed.

SECTION I

**CHAPTER 104: PROHIBITION OF CERTAIN CONDITIONS OF REAL ESTATE AND
STRUCTURES**

Section

- 104.01 Definitions
- 104.02 Prohibitions
- 104.03 Violations
- 104.04 City staff procedure
- 104.99 Penalty

§ 104.01 DEFINITIONS.

As used herein, the following words and phrases have the meaning provided herein for them unless otherwise provided in this chapter.

ANYBODY. 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.

BANNER SIGN. Any commercial sign composed of any pliable plastic or cloth, without a rigid supporting frame.

BUILDING. Any relatively permanent enclosure consisting of no less than three connected walls covered by a roof.

CITATION OFFICER. Have the same meaning provided for them in KRS 65.8805.

CITY. The City of Erlanger.

COMMERCIAL SIGN. Any sign which includes any information, message or identification which is, in any way, related to the promotion of any business or commerce.

CONTROL. To exercise restraint or direction over.

EVERYBODY. 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.

EXCESSIVE GROWTH. A growth in excess of six inches above the surface of the ground.

FOWL. Any hen, rooster, chicken, duck, turkey, pheasant or any of several other, usually gallinaceous, birds.

GRAFFITI. Any display of words, letters, numbers, design or symbols scrawled, by hand or otherwise, in any ink, paint, chalk, dye or any other medium on any building or structure, without the consent or authority of the owner thereof, and which is within view from any public property or right-of-way.

INOPERABLE MOTOR VEHICLE. A motor vehicle that is either:

- (1) Wrecked or otherwise in a state of disrepair or disassembly;
- (2) Mechanically inoperable; or
- (3) Legally inoperable on public streets and highways.

LIVESTOCK. Animals of the bovine, ovine, porcine, caprine, equine, camelid and cervid species, including, without limitation, horses, cattle, sheep, swine and goats.

MUNICIPAL SOLID WASTE. Have the same meaning provided for them in KRS 224.1-010(31)(a)(4).

MUNICIPAL SOLID WASTE CONTAINER. A clean, covered, rigid metal or plastic container with a capacity of no less than 30 gallons and no more than 96 gallons.

NOBODY. No human being, or any organization or combination thereof, in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

OPEN BURNING. The burning of any material in an area which is not enclosed within a building, passes through a stack or flue, or is contained within an outdoor firepit no larger than 60 inches in circumference.

OUTSIDE. An area of a lot or parcel of real estate that is not enclosed within a building.

RECREATIONAL VEHICLE. Have the same meaning provided for them in KRS 227.550(12).

RUBBISH. Worthless, discarded material.

TEMPORARY STORAGE UNIT. Shall consist of any dumpster, device, containers (tents, canopy or temporary garage structures), or any other type of holder of objects, exceeding nine cubic yards, which is placed on the premises of any residence, apartment or other building, for the purpose of holding trash, garbage and/or storing any other equipment or items.

UNLEASHED ANIMAL. Any animal that is not secured and controlled by the owner or custodian of that animal by means of a leash.

§ 104.02 PROHIBITIONS.

The following actions, omissions, behavior, conditions and occurrences upon any lot or parcel of real estate within the city are hereby prohibited; and nobody shall, by either act or omission, conspire, cause, permit, encourage, aid, assist, allow or engage in any of them:

(A) Any condition or use of any lot or parcel of real estate in the city or any structure thereon that is detrimental to the value, use or enjoyment of the property of others in the vicinity of that lot or parcel of real estate, including, without limitation:

(1) Those that constitute a public nuisance within the definition thereof in section PM-302.1 of the International Property Maintenance Code adopted by Ordinance 2341 of the city.

(2) Those structures that are designed and intended for human habitation, occupancy or use; but have conditions in them that are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures or other residents of the city.

(3) Those in violation of the standards of safety promulgated pursuant to KRS 227.300, which are hereby adopted by the City pursuant to the requirements of KRS 227.320.

(4) Those in violation of the 2015 NFPA 1 Uniform Fire Code that was published by the National Fire Protection Association, a copy of which accompanies Ordinance No. 2443 and is hereby made a part of the permanent records of the city and incorporated herein by reference.

(5) The development of a public nuisance thereon through the accumulation of:

(a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment.

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

(c) Rubbish.

(d) The excessive growth of weeds or grass.

(B) The location of one or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or non-operative and which are not inhabited.

(C) The parking of any recreational vehicle, boat or trailer on any occupied residential parcel of a residential zone except for:

(1) In the rear yard, less than two vehicles, boats or trailers, of any lot or parcel of real estate; or

(2) Only one of any vehicles, boats, or trailers in any area of a side yard that is continuously paved with blacktop or concrete, provided that no part of such vehicle, boat, or trailer is within one foot of any point in the nearest boundary line; or

(3) Only one of any vehicles, boats, or trailers in any driveway, provided that:

(a) The area thereof occupied by any such vehicle, boat, or trailer is in addition to all off street parking areas required by this chapter; and

(b) There is no more than one of any such vehicles, boats, or trailers parked, stored or otherwise located in any portion of any driveway on any one lot or parcel of real estate at any one time; and

(c) No part of any such vehicle, boat, or trailer is within one foot of any point in the nearest boundary line.

(D) The accumulation of any municipal solid waste anywhere unless it is enclosed within a covered municipal solid waste container or other container approved by the city's trash provider.

(E) No person, firm or corporation shall cause or permit municipal solid waste containers or any similar type containers of any kind to be placed at the curb line in front of any premises for collection before the hour of 4:00 p.m., prevailing time of the evening before the collection dates on the street or alley on which the premises are located, and the containers shall be placed at the curb line in front of the premises. It shall be unlawful for garbage or trash containers to be placed for collection prior to the time contained herein on the streets or alleys or for the garbage or trash containers to remain on the streets or alleys except on the collection dates. After the containers have been emptied, the person owning the containers shall remove the containers from the front of the premises and place them within two feet of their premises or garage with the goal of hiding them from view as much as practical. No garbage or trash containers shall be placed on the streets or alleys in violation of the provisions of this section by any person for any reason.

(F) The collection and removal of any municipal solid waste by mechanical means during the period of time after 12:00 a.m. and before 6:00 a.m., from any real estate that is not used for residential purposes but which abuts, is adjacent to or across a street from any real estate that is used for residential purposes.

(G) The occurrence of any unleashed animal anywhere in the city other than on lot or parcel of real estate enclosed by a fence:

(1) In which the owner or custodian of the unleashed animal has an ownership or possessory interest; or

(2) Upon which the unleashed animal has been authorized by someone who has an ownership or possessory interest in that lot or parcel of real estate.

(H) The occurrence of any sound, odors or anything else from any animal or animals on any lot or parcel of real estate in the city that unreasonably interferes in any way with the occupation, use or enjoyment of any other lot or parcel of real estate in the city by any owner, tenant, occupant, resident or user thereof.

(I) Any open burning without the permit required by City Ordinance 2086.

(J) The location of any rubbish on any public sidewalk and the failure of those with any ownership or possessory interest in any lot or parcel of real estate abutting thereon to remove it within a reasonable period of time after such rubbish has been deposited thereon.

(K) Any more than one banner sign on the premises of any business.

(L) Any sign that isn't in a condition of good repair, and in a clean, neat and safe and functional condition in compliance with all applicable laws, including, without limitation, all building and property maintenance codes.

(M) The occurrence, existence or continuation of any graffiti.

(N) The outside storage or other location of any equipment in any front or side yard where it may be seen from a public street, while that equipment is in a position or condition in which the design and purpose of that equipment may not be accomplished.

(O) Any outdoor swimming pool in which:

(1) The water in the pool is contaminated with dangerous disease causing pathogens, including bacteria; or

(2) Water may be retained and impounded in the pool to a depth of 24 inches or more at any one point; and the pool area isn't always completely surrounded by a fence that is at least four feet in height, which precludes access to the water in the pool without opening a gate or climbing over the fence, with all of the gates in the fence having an automatic self closing mechanism.

(P) The location of any fowl or livestock within 500 feet of any residence other than that of the owner of such fowl or livestock.

(Q) The distribution or accumulation of any unsolicited written material on any portion of any lot or parcel of real estate in the city outside of a building other than:

(1) On a porch, if one exists, nearest to the front door; or

(2) Securely attached to a door; or

(3) Between an exterior door and an interior door: or

(4) Personally with any occupant of the lot or parcel of real estate.

(R) The use of any area of ground outside of a building that is either unpaved or paved with something other than concrete or blacktop for the purpose of parking or any other location of a

motor vehicle thereon, except that any such area of ground that has been continually used for such purpose since 1992 may continue to be used for such purpose provided that such area is continually covered with at least two inches of gravel.

(S) The use of any portion of any residential lot or parcel of real estate outside of a building for the storage or other location of any inoperable motor vehicles or any motor vehicle parts.

(T) The use of any lot or parcel of real estate, or any portion thereof, including, without limitation, any building or any portion thereof located on that lot or parcel of real estate, for any criminal activity involving disorderly conduct, alcoholic beverages, firearms, menacing, physical injury to person or property, deadly weapons, gambling, prostitution, or controlled substances, or any other felony or misdemeanor to such an extent that there have been documented responses to any of them by peace officers or other personnel of the city on five or more separate occasions within any one period of 12 consecutive calendar months; provided that an owner of that lot or parcel of real estate has been notified at least once during that period of 12 consecutive calendar months of the occurrence of any such criminal activity; and provided further that the eviction of any tenants of that lot or parcel of real estate who were involved in such criminal activity shall be a defense to any civil or criminal prosecution for a violation of this section.

(U) The use of any paved area other than sidewalks within the right-of-way of any street within the city for any athletic or other recreational activity.

(V) The location of any apparatus for the athletic or other recreational use of any area within the right-of-way of any street within the city, whether that apparatus is located within or outside of that right-of-way.

(W) The growth of any tree, shrub, or bush in or into the area within the right-of-way of any street in the city in any manner that is hazardous to the public use of that right-of-way.

(X) The location of any motor vehicle in any manner that any portion of it is on or above any portion of any sidewalk in the city, potentially blocking the pedestrian use thereof.

(Y) The location of any inoperable motor vehicle anywhere within the right-of-way of any street in the city.

(Z) Temporary storage units. The placement of a temporary storage unit without the prior written approval of the city. Unless the City Planning and Zoning Office issues a permit granting temporary use. But in no event shall the placement of a temporary storage unit exceed 30 days without the request and granting of a new permit.

§ 104.03 VIOLATIONS.

A violation of this chapter occurs whenever anybody, by either act or omission, conspires, causes, permits, encourages, aids, assists, allows or engages in any of the acts, actions, behavior, conditions and occurrences prohibited by this chapter; and each and every separate non-continuing occurrence thereof, and each and every day of each continuing occurrence thereof is a separate violation of this chapter.

§ 104.04 CITY STAFF PROCEDURE.

(A) Complaints of violations of this chapter are generally received from the public, city staff, or observed by city citation officers. When a complaint is received, a citation officer is assigned the complaint. The Citation Officer shall document the complaint and determine if it is valid or unfounded. If found to be valid, the resident is notified of the violation through a warning or citation. A hearing disputing the warning/citation may be requested at this time. If a hearing is not requested, the Citation Officer will reinspect the violation in seven days. If the violation has been corrected and the property owner was given a warning, the case is closed and no further action is required. If the property owner was provided a citation, it becomes final and the property owner must pay their fine. All fines will be paid through the Clerk's Office and the City Clerk shall manage the collection of delinquent fines. Once delinquent fines/liens have exceeded \$3,000 in total, the Clerk's Office will notify the City Administrator, who will conduct a financial analysis to determine if foreclosure proceedings should be pursued.

(B) City Council shall be notified of each foreclosure analysis on a case-by-case basis.

(1) In the case the city proceeds to foreclosure proceedings, the city shall be represented at the Master Commissioner Sale by the City Administrator or staff designee.

(2) If foreclosure is initiated by others (bank, county, etc.), the City Clerks' office shall provide all necessary information to get the city paid by the Kenton Circuit Court, including involving the City Attorney in the filing of an answer/counterclaim.

(C) The City Clerk's Office shall collect all fines and negotiate payments, if applicable, with permission of the City Administrator and the Mayor.

(D) The City Clerk's Office shall initiate the filing of liens when appropriate. The City Clerk's Office shall complete the lien paperwork and work in conjunction with the City Attorney, and submit it to the City Administrator for final approval.

§ 104.99 PENALTY.

(A) Civil offense. Each separate violation of this chapter constitutes a civil offense; and, pursuant to the requirements of KRS 65.8808, the penalties to be imposed upon persons determined to have violated this chapter are hereby established as follows:

(1) The specific civil fine that shall be imposed for each separate violation of this chapter in the event that a citation for that violation is not contested is hereby established at \$100 for a first violation, ~~\$250~~ \$200 for a second occurrence of the same violation, and ~~\$500~~ 400 for the third and each subsequent occurrence of the same violation, plus the costs of collection, including, without limitation, court costs and attorney fees approved by the City Council and City Administrator on a case-by-case basis.

(2) The maximum civil fine that may be imposed for each separate violation of this chapter is hereby established at ~~\$500~~ \$200 for a first violation, ~~\$750~~ \$400 for a second occurrence of the same violation, and ~~\$1,000~~ \$800 for the third and each subsequent occurrence of the same violation plus the costs of collection, including, without limitation, court costs and attorney fees.

~~(B) Criminal offense. Each violation of this chapter shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500 as set forth in KRS 534.050(2)(a) or a term of imprisonment not to exceed the maximum period of 12 months as set forth in KRS 532.090(1), or both.~~

SECTION II

That if any section, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

SECTION III

This Ordinance shall be in effect when read, passed, and published according to law. This Ordinance may be published in abbreviated form.

ADOPTED THIS 6th DAY OF June, 2023.

1st Reading: May 2, 2023.

2nd Reading: June 6, 2023. Vote: 8 Yes, 0 No.

APPROVED:

By: Jessica Fette, Mayor
City of Erlanger

ATTEST:

Sherry Hoffman, City Clerk