

**CITY OF SOUTHGATE
CAMPBELL COUNTY, KENTUCKY
ORDINANCE NO. 12-01**

AN ORDINANCE ADOPTING A CIVIL NUISANCE CODE AND CREATING THE SOUTHGATE CIVIL CODE ENFORCEMENT BOARD FOR ENFORCEMENT THEREOF.

WHEREAS, cities are authorized pursuant to §§ 65.8801 to 65.8839 of the Kentucky Revised Code to create administrative bodies with the authority to issue remedial orders and impose civil fines in order to provide an equitable, expeditious, effective and inexpensive method of ensuring compliance with their ordinances; and

WHEREAS, the City of Southgate has already established a Code Enforcement Board to enforce violations of Chapter 152 of the Southgate Code of Ordinances; and

WHEREAS, the City wishes to expand the powers of the Code Enforcement Board to include enforcement of other existing City Ordinances that provide for civil fines; and

WHEREAS, cities are also authorized pursuant to §§ 82.700 to 82.725 of the Kentucky Revised Statutes, to enact nuisance codes and provisions for enforcing violations thereof by way of civil penalties; and

WHEREAS, the City of Southgate wishes to categorize certain activities as nuisances and to create an administrative body to address the abatement of such activities; and

WHEREAS, the City of Southgate believes it is most efficient to combine the enforcement activities of the newly-created administrative body with the enforcement activities of the existing Code Enforcement Board;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SOUTHGATE, CAMPBELL COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I

That §§ 32.50 to 32.54 of the City of Southgate Code of Ordinances, entitled "Civil Code Enforcement Board," are hereby created as follows:

§ 32.50 CREATION.

There is hereby created, pursuant to KRS 65.8801 through 65.8839 and KRS 82.700 to 82.725, the Civil Code Enforcement Board of the City of Southgate (hereinafter referred to as "the Board").

**§ 32.51 COMPOSITION OF BOARD; APPOINTMENT; REAPPOINTMENT;
REMOVAL; VACANCIES.**

(A) The Board shall be composed of three members appointed by the Mayor of the City, subject to approval by the City Council.

(B) The Mayor may appoint two alternate members to serve on the Board in the absence of regular Board members. The appointment of the alternates shall be subject to the approval of the City Council. Alternate Board members shall meet all of the qualifications and be subject to all of the requirements that apply to regular Board members.

(C) Each member of the Board shall have resided within the boundaries of the City for a period of at least one year prior to the date of the member's appointment and shall reside there throughout the term in office.

(D) The initial appointments to the Board shall be as follows:

- (1) One member shall be appointed for a term of one year.
- (2) One member shall be appointed for a term of two years.
- (3) One member shall be appointed for a term of three years.

(E) All subsequent appointments shall be for a term of three years.

(F) A Board member may be reappointed, subject to the approval of the Mayor and City Council.

(G) Any vacancy on the Board shall be filled within 60 days by the Mayor, subject to the approval of City Council.

If a vacancy persists for more than 60 days without an appointment having been made by the Mayor with the approval of City Council, then City Council may recommend to the Mayor a candidate to fill the vacancy. The Mayor shall then make an appointment, which shall consist of either the candidate recommended by City Council, or another candidate of the Mayor's choice, without the approval of City Council. All vacancies shall be filled for the remainder of the unexpired term.

(H) Any member of the Board may be removed by the Mayor for misconduct, inefficiency, or willful neglect of duty, or for any other reason.

(I) All members of the Board shall, before entering upon their duties, take the oath of office prescribed by § 228 of the Kentucky Constitution.

(J) No member of the Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the City.

§ 32.52 ORGANIZATION OF BOARD; MEETINGS AND QUORUM

(A) The Board shall, upon the initial appointment of its members, and annually thereafter, elect a chairperson from among its members who shall be the presiding officer and a full voting member of the Board. In the absence of the chairperson, the remaining members of the Board shall select one of their number to preside in place of the chairperson and exercise the powers of the chairperson.

(B) The Board shall, upon the initial appointment and annually thereafter, elect a secretary from among its members.

(C) Meetings of the Board shall convene at a time and place to be designated by the Board in the City Council Chambers located on the 2nd floor of the building located at 122 Electric Avenue, Southgate, Kentucky, or at any other time that the Board decides upon. Regardless of the actual meeting times set by the Board, it shall convene at least once per quarter.

(D) The presence of two or more members shall constitute a quorum on the Board. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of the Board who has a direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for purposes of establishing a quorum.

(E) The secretary shall keep minutes of all proceedings of the Board. The vote of each member on any issue decided by the Board shall be recorded in the minutes.

(F) All meetings and hearings of the Board shall be open to the public.

(G) The City shall provide clerical and administrative personnel reasonably needed by the Board for the proper conduct of its duties.

§ 32.53 POWERS OF THE CIVIL CODE ENFORCEMENT BOARD

The Board shall have the authority to enforce any ordinance, including but not limited to any nuisance, building, or zoning ordinance or regulation, adopted by the city so long as a violation of the ordinance is classified as a civil offense or the ordinance

establishes civil fines as the penalty to be imposed on any person who violates the ordinance.

The Board shall have the following specific powers:

(a) To adopt rules and regulations to govern its operations and the conduct of its hearings.

(b) To conduct hearings to determine whether there has been a violation of any ordinance of the City for which a violation thereof has been designated a civil offense.

(c) To subpoena alleged violators, witnesses, and evidence to hearings. Subpoenas issued by the Board may be served by the Civil Citation Officer.

(d) To take testimony under oath. The chairperson of the Board shall have the authority to administer oaths to witnesses prior to their testimony before the Board on any matter.

(e) To make findings of fact and issue orders necessary to remedy any violation of an ordinance of the city that the Board is authorized to enforce.

(f) To impose civil fines, as authorized by any City ordinance, against any person found to be in violation of any ordinance that the Board has the authority to enforce.

(g) To impose enforcement costs against any person who is fined pursuant to §§ 90.04 through 90.07, who does not pay the fine so imposed within a reasonable time established by the Board.

(h) To order liens to be filed for the collection of fines, charges, costs, penalties, and fees, including attorneys fees.

(i) To order the demolition of dangerous and structurally unsafe buildings at the cost of the property owner.

(j) To order tenants to vacate premises of unsafe buildings and structures.

§ 32.54 CIVIL CITATION OFFICERS

(A) Pursuant to KRS 83A.087, the position of Civil Citation Officer is hereby established.

(B) The Civil Citation Officer shall have the authority to investigate the alleged violation of any City ordinance that constitutes a civil offense, and may issue citations and notices of violation for any such violation he or she believes to exist

as the result of personal observation or reasonable investigation.

(C) The Civil Citation Officer shall be appointed by the Mayor and shall serve at the Mayor's pleasure.

(D) The Code Enforcement Officer may serve as the Civil Citation Officer.

SECTION II

That current §§ 90.01, 90.02, 90.03, 90.04, 90.05, 90.06, 90.07, 90.09, 90.10, 90.99, 91.99, 92.99, 94.99 and 152.99 of the City of Southgate Code of Ordinances are hereby repealed in their entirety, and replaced with the provisions set forth in Sections III, IV, V, VI and VII of this Ordinance.

~~§ 90.01 WEEDS.~~

~~It shall be a nuisance to permit weeds or other obnoxious plants to grow upon property within the city or to permit trash, rubbish, garbage, ashes, or other refuse or debris of any description to remain upon any property within the city.
(1993 Code, § 82.01) Penalty, see § 90.99~~

~~§ 90.02 BRANCHES.~~

~~It shall be unlawful for any owner, tenant, or other person having charge of property within the city to permit the branches of any tree on the sidewalk in front of his or her premises or the branches of any tree on his or her premises to extend over the sidewalk at a height of less than seven feet above the walk.
(1993 Code, § 82.02) Penalty, see § 90.99~~

~~§ 90.03 DUMPING.~~

~~It shall be unlawful for anyone to dump garbage, ashes, paper, or other refuse upon any public or private grounds within the city.
(1993 Code, § 82.03) Penalty, see § 90.99~~

~~§ 90.04 INSPECTIONS.~~

~~It shall be the duty of the Police Chief, or his or her designee, to frequently and periodically inspect the city to ascertain if there is any violation of this chapter. Upon finding any violation, the Police Chief shall notify the owner of the property of the violation observed, giving the owner ten days notice, in writing, to remedy the situation and eliminate the nuisance.
(1993 Code, § 82.04) (Ord. 08-07, passed 5-21-2008)~~

~~§ 90.05 FIRE PERMIT.~~

~~—— It shall be unlawful for any person to burn refuse, trash, lumber, leaves, grass, straw, or any other combustible material in any street, alley, lot, yard, or other place within the city without first securing permission as provided in this chapter. (1993 Code, § 82.06) Penalty, see § 90.99~~

~~§ 90.06 FIRE PERMIT ISSUANCE~~

~~—— Only the Fire Chief or the next in command is authorized to grant permission to any person to burn any combustible material prohibited in this chapter, as the Fire Chief may determine. Permission shall be secured, in writing, from the Fire Chief and shall be valid only for the period of time designated. (1993 Code, § 82.07)~~

~~§ 90.07 TREES OR BRUSHES INTERFERING WITH PUBLIC RIGHT-OF-WAY.~~

~~(A) —— It shall be unlawful for any owner, tenant, or other person having charge of property within the city to permit any tree or brush, dead or alive, to exist in such a condition that it endangers the life, limb, or property of anyone using the public ways of the city.~~

~~(B) —— It shall be the responsibility of any owner, tenant, or other person having charge of property within the city upon which any tree, brush, or other object is located to remove that tree, brush, or other object if it is dead. It shall further be those persons responsibility to properly trim those trees, brushes, or other objects in such a manner as to prevent them from causing damage or injury to persons or property upon the public streets of the city.~~

~~(C) —— This section shall become effective and be in force from after its passage and publication according to law. (Ord. 91-03, passed 3-6-1991) Penalty, see § 90.99~~

~~§ 90.09 PROHIBITING LOUD AND UNNECESSARY NOISES WITHIN THE CITY LIMITS.~~

~~(A) —— No person shall make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the limits of the city.~~

~~(B) —— The following acts, among others, are declared to be loud and disturbing noises in violation of the section, but this enumeration shall not be deemed to be exclusive:~~

~~—— (1) —— The playing of any radio, phonograph, or other musical instrument in any manner or with the volume, particularly during the hours between 11:00 p.m. and~~

7:00 a.m., as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling or in any of the yard thereof, hotel, or other type of residence; and

~~(2) The conducting, operating, or maintaining of any garage or service station in any residential area so as to cause loud or offensive noises to be emitted therefrom between the hours of 10:00 p.m. and 7:00 a.m. (1993 Code, § 82.12) (Ord. 93-05, passed 9-15-1993; Ord. 98-10, passed 11-18-1998) Penalty, see § 90.99~~

~~§ 90.10 CRIMINAL ACTIVITY NUISANCE.~~

~~(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning~~

~~**CRIMINAL ACTIVITY NUISANCE.** Any building or premises where law enforcement officers have, on more than one occasion in the preceding 12-month period, cited, arrested, or executed a court-issued search warrant, for crimes involving prostitution, controlled substances, or outdoor gambling.~~

~~**CRIMINAL NUISANCE VIOLATION.** A criminal citation, arrest, or court-issued search warrant for crimes involving prostitution, controlled substances, or outdoor gambling.~~

~~(B) *Unlawful use of property.* No owner of residential, commercial, or vacant property located within city limits shall allow his or her property to be used as a 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 the property is deemed to have knowledge of the 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.~~

~~(D) *Disobeying order.* 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 Director of the Code Enforcement.~~

~~(E) *Duty of Police Department.* The Police Department shall, as soon as possible but not less than every 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 in writing of the specific violation investigated, the address of the property on or in which the violations occurred, and the circumstances of the violation. After the police notify the Code Enforcement Department of a criminal nuisance violation at a property for the first time, the Code Enforcement Department shall notify the owner of the property of the violation by regular United States mail.~~

~~(F) — Notice~~

~~(1) — Whenever the Code Enforcement Department receives information that a criminal activity nuisance exists in or upon residential, commercial, or vacant property, i.e., when a second criminal nuisance violation has occurred at the property, it shall notify the owner that the property is a criminal activity nuisance and that the nuisance must be abated. If a property owner of his or her tenant reports an illegal activity that leads to a criminal citation nuisance violation for purposes of this section.~~

~~(2) — The notice required by this section shall be mailed by certified mail, return receipt requested. If certified mail is not accepted or received by the property owner, notice may be served by personal delivery upon the owner. If the whereabouts of the property owner are unknown and it cannot be ascertained by the code Enforcement Officer in the exercise of reasonable diligence, or if the whereabouts of the owner are known and he or she refuses to accept personal service or the certified letter mailed to him or her, then the Code Enforcement Officer shall make an affidavit to the effect and, thereafter, the officer may serve the notice by posting a copy of it in a conspicuous place on the premises, by sending a copy of the notice by regular United States mail to the property owner's last known mailing address, by newspaper publication pursuant to KRS Ch. 424, and by recording the notice in the Kneton County Clerk's office.~~

~~(G) — Abatement.~~

~~(1) — Should the criminal activity nuisance not be abated within 45 days after the issuance of the notice, or by any extension granted by the city or its agencies, the code Enforcement Department 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. The closing and vacating shall be for the period as the director of Code Enforcement 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 Director of Code Enforcement 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 14 days after the criminal activity nuisance is abated unless the 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 Department:~~

~~_____ (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 of 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) through (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 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 30 days of the second citation against the offending tenant or occupants of the offending premises, and the owner completes the eviction within 75 days of commencement or as soon thereafter as court procedures allow. In the event that the 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, r the occupants suspected of the activity described in the notice.~~

~~(I) *Relief from the order.* _____ The Director of Code Enforcement may vacate or suspend the provisions 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 or business who allows a criminal activity nuisance to exist on the landlord's property. (Ord. 07-06, passed 8-1-2007) Penalty, see § 90.99~~

§ 90.99 PENALTY

~~(A) *Generally.* Any person, firm, or corporation violating any provisions of this chapter may, in lieu of being summoned to the District Court for a hearing, pay a fine of \$20 for the violation. If city citation is not paid within five days of the violation, a citation to District Court shall be issued and any person, firm, or corporation violating this chapter shall be fined in the amount not to exceed \$500, imprisoned not less than ten days, not more than 30 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense. (1993 Code, § 82.99)~~

~~(B) *Section 90.08.* Any person violating any provision of § 90.08 shall be cited to County District Court. Upon conviction or plea of guilty, they shall be subjected to a fine not to exceed \$500.~~

~~(C) *Section 90.10*~~

~~(1) Any person, firm, business, or corporation violating any provisions of § 90.10 may, in lieu of being summoned to the District Court for hearing, pay a fine of \$500 for the violation. If the citation is not paid within five days of the violation, a citation to the District Court shall be issued and any person, firm, business, or corporation violating § 90.10 shall be fined in an amount at least \$100, not to exceed \$500, imprisoned not less than ten days, nor more than 30 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense.~~

~~(2) This penalty section applies solely to § 90.10 and is wholly distinct from the general penalty provisions for this chapter, located at division (A) above. (Ord. 90-16, passed 1-6-1993; Ord. 94-11, passed 8-3-1994; Ord. 07-06, passed 8-1-2007)~~

§ 91.99 PENALTY

~~(A) Any person, firm, corporation, or other entity violating §§ 91.002, 91.03, 91.05, 91.07, 91.08, or 91.09 shall be fined in the amount of not less than \$50, nor more than \$100. Each day the violation continues shall constitute a separate offense, subject to separate penalty. In addition, if it is determined that an animal running at large in violation of this chapter has not been spayed or neutered, an additional fine of \$50 shall be imposed. The additional fine shall be reimbursed to the animal owner if the owner submits written documentation, certified by a licensed veterinarian, to the city or its designated agent within 30 days of the date of the citation, confirming that the animal has been spayed, if female, or neutered, if male. The written documentation shall provide the identification and descriptive detail of the animal to allow the city or its designated agent to confirm the animal in question has been spayed or neutered.~~

~~(B) Any person, firm, or corporation violating §§ 91.10 or 91.11 shall be fined in an amount of not more than \$500, imprisoned not more than 60 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense.~~

~~(C) — Any person, firm, corporation, or other entity who violates any provisions of § 91.12 shall be fined in an amount not less than \$500 and/or imprisoned up to six months or both fined and imprisoned. — (1993 Code, § 50.99) (Ord. 08-01, passed 2-6-2088)~~

§ 92.99 PENALTY

~~— Any person, firm, or corporation violating any provisions of this chapter may, in lieu of being summoned to the District Court for a hearing, pay a fine of \$0 for the violation. If the city citation is not paid within five days of the violation, a citation to District Court shall be issued and any person, firm, or corporation violating this chapter shall be fined an amount not less than \$100 nor more than \$200, imprisoned not less than ten days, nor more than 30 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense. — (1993 Code, § 41.99) (Ord. 94-13, passed 8-3-1994; Ord. 08-05, passed 5-21-2008)~~

§ 94.99 PENALTY

~~(A) — Failure of any person, firm, or corporation to pay the fee imposed by §§ 94.01 through 94.07 and otherwise abide by the provisions herein shall constitute a violation of §§ 94.01 through 94.07 and person, firm, or corporation shall be fined \$50 for each violation. Each false alarm in excess of three in any 365-day period shall constitute a separate offense. — (1993 Code, § 52.99)~~

~~(B) — Any person, firm, or corporation violating any provision of §§ 94.20 through 94.23 shall be fined in an amount of not less than \$10, nor more than \$100, imprisoned not more than 90 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense. — (1993 Code, § 51.99) (Ord. 94-14, passed 8-17-1994)~~

§ 152.99 PENALTY

~~(A) — Any person, firm, or corporation violating any provision of this chapter shall be fined in an amount of not less than \$50, nor more than \$500, imprisoned not more than 120 days, or both fined and imprisoned. Each day of violation shall constitute a separate offense. The imposition of any penalty herein prescribed shall not preclude the city from instituting an appropriate action or proceeding to prevent any unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate a violation; to prevent the occupancy of a building, structure, or premises; or to prevent an illegal act, conduct, business, or use in or about any structure and/or premises. — (1993 Code, § 81.99)~~

~~(B) — Any violation of any of the provisions stated in § 152.35 shall be punishable by a fine in an amount of not less than \$250, nor more than \$500. Each day a violation shall constitute a separate offense. — (Ord. 96-03, passed 6-22-1996)~~

SECTION III

That §§ 90.01 through 90.07 of the City of Southgate Code of Ordinances, entitled "Nuisances," are hereby created as follows:

§ 90.01 DEFINITIONS

CITATION OFFICER or CIVIL CITATION OFFICER. An officer authorized by § 32.54 of this Code of Ordinances to investigate alleged violations of City ordinances that constitute civil offenses and to issue citations and notices of violation for such violations.

ENFORCEMENT BOARD or CIVIL CODE ENFORCEMENT BOARD. The administrative body created by §§ 32.50 through 32.53 of this Code of Ordinances.

PUBLIC NUISANCE. Any condition or use of public or private property or premises, or of building exteriors which substantially annoy, injure or endanger the comfort, health, repose or safety of the public which is detrimental to the property of others, or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located, or which creates a stench or odor noxious or offensive to those in the neighborhood or passers-by on the public streets or ways.

§ 90.02 PROHIBITIONS; CERTAIN ACTS DECLARED TO BE NUISANCES.

(A) It shall be unlawful for the owner, occupant or any person having control or management of any public or private land within the City to allow a public nuisance to exist or develop thereon.

(B) It shall be unlawful for any person to create, or to engage in conduct that constitutes, a public nuisance.

(C) Without limiting the generality of the definitions set forth in § 90.01, the following conditions are declared to be public nuisances under the provisions of this Chapter:

(1) The overgrowth of weeds or grass on a property. In the context of weeds, "overgrowth" shall mean a circumstance in which weeds are 10" in height. In the context of grass, "overgrowth" shall mean a circumstance in which grass has grown to 10" in height.

(2) Trees, bushes or other vegetation that interfere with public sidewalks. The growth of tree branches is deemed to interfere with access to a public sidewalk when the branches of a tree on private property protrude over a public sidewalk at a height less than seven feet from the sidewalk.

(3) Trees, bushes, or other vegetation that interfere with public rights-of-way. A tree, bush, other vegetation is deemed to interfere with public rights-of-way when it, or any part of it, blocks all or any part of a public right-of-way, or otherwise endangers the life, limb or property of anyone using the public ways of the City. It shall be the responsibility of any owner, tenant, or other person having charge of property within the city upon which any tree, brush, or other object is located, to remove that tree, brush, or other object if it is dead, and it interferes with, blocks the public right of way, or otherwise endangers the life, limb, or property of anyone using the public ways of the City, or interferes with the peaceful, quiet, enjoyment of neighboring properties.

(4) Accumulation of rubbish. An accumulation on any premises of filth, refuse, trash, garbage or other waste material which endangers the public health, welfare or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents or insects, or blow rubbish into any street, sidewalk or property of another.

(6) Dumping. It shall be unlawful for anyone to dump garbage, ashes, paper, or other refuse upon any public or private grounds within the city.

(7) Criminal activity, as defined in § 90.03.

(8) Open burning without a permit. No person shall burn refuse, trash, lumber, leaves, grass, straw, or any other combustible material in any street, alley, lot, yard or other place within the City unless he has first secured a written permit to do so, for a limited period of time, from the Fire Chief. This provision shall not apply to the use of a fire pit on private property, so long as the fire pit is not larger than forty-eight cubic feet.

(9) Loud and unnecessary noise. No person shall make, continue or cause to be made or continued any loud, unnecessary, or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City. Without limiting the generality hereof, the following are specifically deemed to be in violation of this subsection:

(a) The playing of any radio, phonograph, or other musical instrument in any manner or with the volume, particularly during hours between 11 p.m. and 7 a.m., as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling or in any of the yard thereof, hotel or other type of residence.

(b) The conducting, operating or maintaining of any garage or service station in any residential area so as to cause loud or offensive

noises to be emitted there from between the hours of 10 p.m. and
7 a.m.

(D) In addition to what is declared in this Chapter to be a public nuisance, those
offenses which are known to the common law and in the statutes of Kentucky as
public nuisances may be treated as such and be proceeded against as is
provided
in this Chapter or in accordance with any other provisions of law.

§ 90.03 CRIMINAL ACTIVITY AS A NUISANCE

(A) *Definitions.* For the purpose of this section, the following definitions shall apply
unless the context clearly indicates or requires a different meaning:

1. CRIMINAL ACTIVITY NUISANCE. Any building or premises where law enforcement officers have, on more than three occasions in the preceding 12 month period, cited, arrested, or executed a court issued search warrant, or a criminal citation, or an arrest warrant for nuisance crimes.
2. PERSONS ASSOCIATED WITH THE PROPERTY. Any person, who on the occasion of a nuisance activity has entered, patronized, visited, or resides as a tenant on the property.
3. PERSON IN CHARGE. Any person with actual or constructive possession of a property, including, the owner of the property and/or landlord. When the owner of the property is a non-resident landlord, then he/she shall be the PERSON IN CHARGE.
4. CRIMINAL NUISANCE CRIMES. Any of the following behaviors or crimes or activities:
 - Harassment, as defined in KRS 525.070 through 525.080
 - Public intoxication, as defined in KRS 525.100 or KRS 222.202.
 - Disorderly Conduct as defined in KRS 525.055 or KRS 525.060
 - Murder, manslaughter, or reckless homicide as defined in KRS 507.020, 507.030, 507.049 or 507.050
 - 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.
 - Assault, menacing, wanton endangerment, terroristic threatening, criminal abuse, stalking, or disarming a police officer, as defined in KRS 508.010 through 508.160.
 - Burglary or criminal trespass, as defined in KRS 511.010 through 511.090.
 - Criminal mischief, as defined in KRS 512.010 through 512.060
 - Arson, as defined in KRS 513.010 through 513.040
 - Theft, as defined in KRS 514.010 through 514.090
 - Receiving Stolen Property as defined in KRS 514.110
 - Robbery as defined in KRS 515.010 through 515.030
 - Prostitution, promoting prostitution, or permitting prostitution as defined in KRS 529.010 through 529.110

- Distribution of obscene matter promoting sale of obscenity or voyeurism, as defined in KRS 531.010 through 531.110
- Sexual exploitation of minors, as defined in KRS 531.300 through 531.370
- Drug possession or trafficking, as defined in KRS 218A.010 through 218A.1444
- Noise violations as defined elsewhere in the City Code of Ordinances and/or the Zoning Code

5. To Qualify, all nuisance activities must be based on either:

- (a) Personal observation of a police officer, or civil citation officer; or
- (b) A determination by a police officer, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident that the alleged nuisance activity(s) did, in fact, occur.
- (c) Personal observation and sworn statement of a resident.

(B) It shall be unlawful for the person in charge, including, but not limited to the owner of residential, commercial, or vacant property located within city limits to allow his/her property to be used as a site for any criminal nuisance crimes after having received notice pursuant to this code that the property has been used for the commission of a criminal activity by persons associated with the property.

(C) A public nuisance exists when law enforcement officers have issued a criminal citation, made an arrest, or executed a court-issued search warrant against a person associated with the property for activities or behavior on the premises involving criminal nuisance crimes on the same premises, on three or more occasions in any twelve-month period.

(B) Within 30 days after criminally citing or arresting persons for activities that involve criminal nuisance crimes the Police Department shall notify the Civil Citation Officer in writing of the specific violation, the address of the property on or in which the violations or search warrants occurred, and the circumstances of the violation or warrants. The Civil Citation Officer shall then notify the person in charge of the property, i.e., the owner, by certified mail return receipt requested, of the criminal activity which occurred and the date on which it occurred.

(D) If the Civil Citation Officer receives information that criminal citations or arrests involving criminal activity nuisance crimes were issued or that court-issued search warrants were executed for the same offenses at the same location at least three times within twelve (12) months of a previous incident, he shall send a notice of violation to the property owner describing the nuisance and requesting that the nuisance be abated in accordance with the provisions of § 90.04(C).

(D) If a property owner or tenant reports the issuance of a citation, an arrest, or the execution of a court-issued search warrant at his property before the Civil Citation Officer otherwise discovers that the incident has occurred, such citation, arrest, or

execution of a search warrant will not be considered a nuisance for purposes of this Ordinance.

- (E) Should the criminal activity not be abated in accordance with the terms of the notice of violation, a civil citation shall be issued to the owner and / or occupants of the premises pursuant to the provisions of § 90.04(D).
- (F) In addition to other remedies set out in this Chapter, upon failure of the property owner to request a hearing before the Civil Code Enforcement Board and to abate the nuisance, or the failure of the property owner to abate the nuisance pursuant to orders of the Enforcement Board, the Civil Citation Officer is authorized to order the closing and vacating of the premises or portions thereof to abate the criminal activity nuisance. Such closing and vacating shall be for a period of time as the Civil Code Enforcement Board reasonably may direct, but in no event may the closing and vacating be for a period of more than one year from the date of closing. If the premises consist of multi-unit dwellings or mixed uses and the criminal activity nuisance has occurred solely within a certain 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, unless the activity has occurred in or about the common areas of the unit, in which case, the entire unit may be subject to closure. Upon the failure of the property owner to comply with an order to close and vacate, the Civil Code Enforcement Board may prohibit the furnishing of utility service to the premises and may use any other legal remedy available.
- (G) It shall be a defense to a violation of this Section that the owner has instituted an eviction proceeding against the offending tenant or occupants of the offending premises within thirty (30) days of the date of the notice of violation and the owner completes the eviction within sixty (60) days of the date of commencement of the action or as soon thereafter as court procedures allow.

§ 90.04 ENFORCEMENT PROCEEDINGS; INITIATION

- (A) Enforcement proceedings before the Board shall be initiated by the Civil Citation Officer. City residents affected by property with chronic criminal activity nuisance(s) may elect to provide a sworn complaint to the city Chief of Police, or the Civil Citation Officer, which may be used in enforcement proceedings before the Board, or in the issuance of a notice of violation.
- (B) When the Civil Citation Officer, or his or her designee, has reasonable cause to believe, based upon personal observation or investigation, or based upon the report of a city police officer, or a sworn statement of a city resident that a person has committed a violation of a City ordinance that the Board has the authority to enforce, the Civil Citation Officer shall issue either a Notice of Violation or a Citation.
- (C) *Notice of Violation.* If the Civil Citation Officer elects to issue a Notice of

Violation:

(1) The Notice must be in a form prescribed by the City and be served on the alleged violator personally or by regular first-class mail at his or her last known address.

(2) The Notice shall be written in plain language and shall include a description of the real estate sufficient for its identification; a statement of the reason or reasons why the notice of violation is being issued; a correction order allowing a reasonable amount of time for the correction of any and all violations; and a statement that if the violation is not corrected, the City will issue a citation.

(3) If the alleged violator does not comply with the correction order, then the Civil Citation Officer shall issue a citation pursuant to (D).

(D) Citation. A citation shall be in a form prescribed by the City and shall contain the following information:

(1) The date and time of issuance;

(2) The name and address of the person to whom the citation is issued;

(3) The date and time the offense or violation was committed;

(4) The facts constituting the offense or violation;

(5) The section of the code or number of the ordinance violated;

(6) The name of the Civil Citation Officer issuing the citation;

(7) The civil fine that will be imposed for the violation if the person does not contest the citation;

(8) The maximum civil fine that may be imposed if the person elects to contest the citation;

(9) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(10) A statement that if the person fails to either pay the civil fine set forth in the citation or contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the Board to contest the citation and that the determination that a violation was committed shall be final.

(E) The Civil Citation Officer shall deliver a copy of the citation to the Chairperson of the Civil Code Enforcement Board or his designee.

(F) A person who has received a citation must respond to it within seven days of its issuance by either paying the civil fine set forth in the citation or submitting a

written request for a hearing before the Enforcement Board to contest the citation.

(1) If a hearing is requested, the cited person shall pay an administrative hearing fee in the amount of \$50 when he submits his written request for the hearing.

(2) If the person fails to respond to the citation within seven days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

§ 90.05 ENFORCEMENT PROCEEDINGS; HEARING.

(A) When a hearing before the Civil Code Enforcement Board has been requested, the Enforcement Board, through its clerical and administrative staff, shall schedule a hearing. The hearing shall be conducted within 30 days of the date on which the person submitted his or her written request for a hearing, unless the requester seeks or agrees to a continuance not to exceed 14 days.

(B) Not less than seven days before the date set for the hearing, the Enforcement Board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice of hearing may be given by certified mail, return receipt requested; or personal delivery; or by leaving the notice at the person's usual place of residence with any person residing therein who is 18 years of age or older and who is informed of the contents of the notice.

(B) Each case before the Enforcement Board may be prosecuted by an attorney selected by the City, by the Civil Citation Officer, or by some other person designated by the Mayor. The City Attorney may serve as counsel to the Enforcement Board or may present cases before the Enforcement Board, but may not serve in both capacities.

(C) Testimony at Enforcement Board hearings shall be under oath, and shall be recorded. The Enforcement Board shall take testimony from the Civil Citation Officer, the alleged offender, and such witnesses as may be offered by either the prosecutor or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(D) At the hearing, the Enforcement Board shall determine, based on the evidence presented, whether a violation was committed.

(1) If the Enforcement Board determines that no violation was committed, an order dismissing the citation shall be entered.

(2) If the Enforcement Board determines that a violation has been committed, it shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount authorized by ordinance, or may order the

offender to remedy a continuing violation within a specified period of time to avoid the imposition of the fine; or it may order any combination of these remedies.

(E) Every final order of the Enforcement Board shall be reduced to writing, shall set forth the findings of fact upon which the order is based, and shall include the date the order was issued. A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any person residing therein who is 18 years of age or older and who is informed of the contents of the order.

(F) Any person requesting a hearing before the Enforcement Board who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the Enforcement Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation. The Enforcement Board shall cause a copy of the final order to be delivered to the person in the manner prescribed in division (E) of this section.

§ 90.06 APPEALS OF BOARD DECISION; FINAL JUDGMENT.

(A) An appeal from any final order issued by the Enforcement Board may be made to the Campbell District Court within 30 days after the date when the order is issued by the Enforcement 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 limited to a review of the record created before the Enforcement Board.

(B) A judgment of the Campbell District Court may be appealed to the Campbell Circuit Court in accordance with the Rules of Civil Procedure.

(C) If no appeal from a final order of the Civil Code Enforcement Board is filed within the time period set forth in this section, the Board's order shall be deemed final for all purposes.

(E) The Civil Citation Officer shall report the final order of the Civil Code Enforcement Board to the Mayor, and shall provide the date of finality. The Mayor may upon receipt of the final order of the Code Enforcement Board, direct that the property owner's occupational license for the property be suspended or revoked until such time as the nuisance is abated.

§ 90.07 IMMEDIATE ACTION AND SUMMARY CLOSURE

Nothing in this Subchapter shall prohibit the City from taking immediate action to abate a nuisance when there is reason to believe that the violation presents a serious threat to the

public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

The City through the City Attorney, may also initiate a summary closure proceeding in the Campbell Circuit Court. Such an action shall be based on evidence showing that the criminal nuisance activities exist, or have occurred on the property and that such action is necessary to avoid a threat to the public health, welfare, or safety. Proceedings to obtain an order of summary closure shall be governed by the provisions of applicable Kentucky law for obtaining temporary restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures set forth in Section 90.04 and 90.05 of this Ordinance. As part of any summary closure order, the Circuit Court may revoke or suspend the occupational license of any person conducting any business on or about the property where the criminal activity nuisance exists.

§ 90.99 PENALTY

(A) The violation of any provision of this Chapter is a civil offense and shall be enforced in the same manner as Sections 90.04 through 90.07 of this Code.

(B) Any person, firm or corporation who violates any provision of this Chapter shall be subject to a civil fine of not less than \$50 violation, but not more than \$500. Each date that a violation of this Chapter continues after a Notice of Violation or Citation has been served in accordance with the terms of this Chapter shall be deemed to constitute a separate offense subject to a separate fine, up to a maximum of \$10,000 per citation.

(C) In addition to the civil fines set forth in (B), any violator who violates any provision of the City Nuisance Code 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.

(D) The City shall possess a lien on property for all fines, penalties, charges, attorneys' fees, abatement costs if the City has incurred them, and all other reasonable costs associated with enforcing this Chapter, including the costs of placing a lien on a parcel of real property pursuant to this provision. The lien shall take precedence over all other subsequent liens, except state, county, school, and city taxes, and may be enforced by judicial proceedings.

SECTION IV

That §§ 91.99 of the City of Southgate Code of Ordinances is hereby established as follows:

§ 91.99 Penalty.

(A) The violation of any Section contained in this Chapter is a civil offense and shall be subject to enforcement in the same manner as in Sections 90.04 through 90.07 of this Code.

(B) Any person, firm or corporation who violates any provision of this Chapter shall be subject to a civil fine of not less than \$50, but not more than \$100 per day per violation. Each date that a violation of this Chapter continues after a Notice of Violation or Citation has been served in accordance with the terms of this Chapter shall be deemed to constitute a separate offense subject to a separate fine, up to a maximum of \$5,000 per citation.

(C) In addition to the civil fines set forth in (B), any violator who violates any provision of this Chapter more than once within a 12-month period may be assessed additional civil penalties of \$200 per day per violation to a maximum of \$5,000 per citation.

(D) The City shall possess a lien on property for all fines, penalties, charges, attorneys' fees, abatement costs if the City has incurred them, and all other reasonable costs associated with enforcing this Chapter, including the costs of placing a lien on a parcel of real property pursuant to this provision. The lien shall take precedence over all other subsequent liens, except state, county, school, and city taxes, and may be enforced by judicial proceedings.

SECTION V

That §§ 92.99 of the City of Southgate Code of Ordinances is hereby established as follows:

§ 92.99 Penalty.

(A) The violation of any Section contained in this Chapter is a civil offense and shall be enforced in the same manner as Sections 90.04 through 90.07 of this Code.

(B) Any person, firm or corporation who violates any provision of this Chapter shall be subject to a civil fine of not less than \$50, but not more than \$100. Each date that a violation of this Chapter continues after a Notice of Violation or Citation has been served in accordance with the terms of this Chapter shall be deemed to constitute a separate offense subject to a separate fine, up to a maximum of \$5,000 per citation.

(C) In addition to the civil fines set forth in (B), any violator who violates any provision of this Chapter more than once within a 12-month period may be assessed additional civil penalties of \$200 per day per violation to a maximum of \$5,000 per citation.

(D) The City shall possess a lien on property for all fines, penalties, charges, attorneys' fees, abatement costs if the City has incurred them, and all other reasonable costs associated with enforcing this Chapter, including the costs of placing a lien on a parcel of real property pursuant to this provision. The lien

_____ shall take precedence over all other subsequent liens, except state, county,
school,
_____ and city taxes, and may be enforced by judicial proceedings.

SECTION VI

_____ That §§ 94.99 of the City of Southgate Code of Ordinances is hereby established as
follows:

§ 94.99 Penalty.

(A) The violation of any section in this Chapter is a civil offense and shall be
enforced in the same manner as Sections 90.04 through 90.07 of this Code.

(B) Any person, firm or corporation who violates §§ 94.01, 94.02, 94.03 or 94.04
shall be subject to a civil fine of not less than \$50, but not more than \$100. Each
false alarm in excess of three in any 365-day period shall constitute a separate
offense.

(C) The City shall possess a lien on property for all fines, penalties, charges,
attorneys' fees, abatement costs if the City has incurred them, and all other
reasonable costs associated with enforcing violations of §§ 90.01, 90.02, 90.03
or
90.04, including the costs of placing a lien on a parcel of real property pursuant
to
this provision. The lien shall take precedence over all other subsequent liens,
except state, county, school, and city taxes, and may be enforced by judicial
proceedings.

(D) The violation of §§ 94.20 through 94.23 shall be fined in an amount of not less
than \$10, nor more than \$100, imprisoned not more than 90 days, or both fined
and imprisoned. Each day of violation shall constitute a separate offense.

SECTION VII

_____ That §§ 152.99 of the City of Southgate Code of Ordinances is hereby established as
follows:

§ 152.99 PENALTY.

(A) The violation of any Section contained in this Chapter is a civil offense and shall
be enforced in the same manner set forth in §§ 90.04 through 90.07 of this Code.

(B) Any person, firm or corporation who violates any provision of this Chapter other
than § 152.35 shall be subject to a civil fine of not less than \$50, but not more
than \$500. Each date that a violation of this Chapter continues after a Notice of

Violation or Citation has been served in accordance with the terms of this Chapter shall be deemed to constitute a separate offense subject to a separate fine, up to a maximum of \$5,000 per citation.

(C) Any person, firm or corporation who violates § 152.35 shall be subject to a civil fine of not less than \$250, but not more than \$500. Each date that a violation of this Chapter continues after a Notice of Violation or Citation has been served in accordance with the terms of this Chapter shall be deemed to constitute a separate offense subject to a separate fine, up to a maximum of \$5,000 per citation.

(D) In addition to the civil fines set forth in (B), any violator who violates any provision of this Chapter more than once within a 12-month period may be assessed additional civil penalties of \$200 per day per violation to a maximum of \$5,000 per citation.

(E) The City shall possess a lien on property for all fines, penalties, charges, attorneys' fees, abatement costs if the City has incurred them, and all other reasonable costs associated with enforcing this Chapter, including the costs of placing a lien on a parcel of real property pursuant to this provision. The lien shall take precedence over all other subsequent liens, except state, county, school, and city taxes, and may be enforced by judicial proceedings.

SECTION VIII

All ordinances or parts of ordinances that are in conflict with this Ordinance are hereby repealed to the extent of the conflict.

SECTION IX

This Ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published and shall be in effect at the earliest time provided by law.

PASSED by the City Council of the City of Southgate, Campbell County, Kentucky, assembled in regular session.

CITY OF SOUTHGATE, KENTUCKY

By: _____
Jim Hamberg, Mayor

ATTEST:

Jody Anderson, City Clerk

First Reading: 01/04/2012
Second Reading 01/18/2012
Published: