

CITY OF HIGHLAND HEIGHTS, KENTUCKY

SUMMARY PUBLICATION OF ORDINANCE NO. 16-2013

I hereby certify that the following is the title and a summary of Ordinance No. 16-2013 of the City of Highland Heights, Kentucky, as adopted on 11/19/13.

ORDINANCE NO. 16-2013

AN ORDINANCE AMENDING #02-2010,
THE CITY CODE ENFORCEMENT
BOARD ORDINANCE, BY
ESTABLISHING THAT EACH DAY A
VIOLATION EXISTS IT IS CONSIDERED
A SEPARATE VIOLATION AND
DIRECTING WHEN THE CLERK MUST
SET A HEARING OF THE CODE
ENFORCEMENT BOARD.

I, Steven J. Franzen, an attorney licensed to practice law in the Commonwealth of Kentucky, acting as an attorney for the City of Highland Heights, Kentucky, do hereby certify that this summary was prepared by me at the direction of the Highland Heights City Council and is a true and accurate summary of the contents of Ordinance No. 16-2013.


STEVEN J. FRANZEN
ATTORNEY FOR CITY OF
HIGHLAND HEIGHTS, KENTUCKY

PUBLISH : CCR

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ENFORCEMENT BOARD.

WHEREAS, it is the intent of KRS 65.8801 to 65.8839 to protect, promote, and improve the health, safety and welfare of the citizens residing within the City by authorizing the creation of an administrative board with the authority to issue remedial orders and impose fines in order to provide an equitable, expeditious, effective and inexpensive method of ensuring compliance with the Ordinance in force within the city; and

WHEREAS, it is the desire of the City Council of the City of Highland Heights, Kentucky to utilize the authority granted to KRS 65.8801 to 65.8839, by creating a City of Highland Heights Code Enforcement Board.

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

Section I

Definitions:

The following words, terms and phrases, when used in this Ordinance, shall have the meanings described to them in this Section, except where the context clearly indicates a different meaning:

Code Enforcement Board: shall mean an administrative body created and acting under the authority of the Local Government Code Enforcement Board Act.

Code Enforcement Officer shall mean a City Police officer, Public Works Director, Occupational License Enforcement Officer, City Zoning Administrator or other public law enforcement officer with the authority to issue a citation.

Ordinance shall mean an official action of the City Council of the City of Highland Heights, Kentucky which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of the Code of Ordinances adopted by the City Council which embodies all or part of an Ordinance.

Section II

Creation and Membership:

There is hereby created pursuant to KRS 65.8801 to 65.8839 within the City, a Code Enforcement Board (the "Board") which shall be composed of five (5) members, all of whom shall be residents of the City for a period of at least one (1) year prior to the date of the members appointment and shall reside there throughout the term in office.

Section III

Jurisdiction

- a.) The Board shall have jurisdiction to enforce and shall enforce those city ordinances and code provisions which specifically provide for civil enforcement.
- b.) The Board shall not have the authority to enforce any ordinance the violation of which constitutes a criminal offense under the provisions of the Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

Section IV

Appointment of Members: Term of Office: Removal from Office; Oath and Compensation:

- a.) Members of the Board shall be appointed by the Mayor of the City, subject to the approval of City Council.
- b.) The initial appointment to the Board shall be as follows:
 - 1.) One (1) member appointed to a term of one (1) year.
 - 2.) Two (2) members appointed to a term of two (2) years each
 - 3.) Two (2) members appointed to a term of three (3) years each.

All subsequent appointments shall be for a term of three (3) years. A member may be reappointed, subject to the approval of the legislative body.

- c.) Any vacancy on the Board shall be filled by the Mayor, subject to approval of Council within sixty (60) days of the vacancy. If the vacancy is not filled within that time period, the remaining members shall fill the vacancy.
- d.) A Board member may be removed from office by the Mayor for misconduct, inefficiency or willful neglect of duty. The Mayor shall submit a written statement to the member and the City council setting forth the reasons for removal.
- e.) All members of the Board must before entering upon the duties of their office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

f.) members of the Board shall be reimbursed for actual expenses and compensated in the amount of \$25 per person per meeting.

g.) No member of the Board may hold any elected or non-elected office, paid or unpaid, or any position of employment with the City.

Section V

Organization of Board; Meetings; Quorum and Alternate Board Members

a. The Board shall annually elect a Chairman from among its members. The Chairman shall be the presiding officer and a full voting member of the Board.

b. Regular meetings of the Board shall be held as directed by the Chairman and shall be held in accordance with the requirements of KRS 65.8815(5) and the Kentucky Open Meetings Act.

c. Meetings other than those regularly scheduled shall be special meetings and shall be held in accordance with the requirements of the Kentucky Open Meetings Act.

d. The affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken.

e. Minutes shall be kept for all proceedings of the Board and the vote of each member on any issue decided by the Board shall be recorded in the minutes.

Section VI

Conflicts of Interest:

Any member of the Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall be disqualified from voting on the matter, and shall not be counted for purposes of establishing a quorum.

Section VII

Powers of the Board

The Board shall have the following powers and duties:

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

b.) To conduct hearings to determine if there has been a violation of any Ordinance over which it has jurisdiction.

c.) To subpoena alleged violators, witnesses and evidence to its hearings subpoenas issued by the Board may be served by any Code Enforcement Officer.

d.) To take testimony under oath. The Chairman shall have the authority to administer oaths for the purpose of taking testimony.

e.) To make findings of fact and issue orders necessary to remedy any violation of a

City Ordinance or Code provision which the Board is authorized to enforce.

f.) To issue remedial orders and impose fines, as authorized, against any person who is found to have violated an Ordinance over which the Board has jurisdiction.

g.) To make any recommendations to City Council deemed necessary by the Board.

Section VIII

Enforcement proceedings:

The following requirements shall govern all enforcement proceedings before the Board:

a.) Enforcement proceedings before the Board shall only be initiated by the issuance of a citation by a code enforcement officer.

b.) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of any ordinance, the officer is authorized to issue a citation to the offender. A code enforcement officer may, in lieu of issuing a citation, give a Notice of Violation, which shall serve to notify the violator to remedy the violation within the time specified. If the offender fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

c.) Nothing in this ordinance shall prevent the Highland Heights code enforcement officer, as defined in Section I herein, from taking immediate action to remedy a violation of it's ordinances or codes when there is reason to believe that the violation constitutes a public nuisance or a threat to the public health, safety, welfare or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible. A citation may also be issued for the violation.

d.) The citation issued by the code enforcement officer shall contain the following information:

- 1.) The date and time of the issuance;
- 2.) The name and address of the person to whom the citation is issued.
- 3.) The date and time the offense was committed or discovered
- 4.) Brief facts constituting the offense;
- 5.) The section of the code or the ordinance number violated;
- 6.) The name of the code enforcement officer;
- 7.) The civil fine that may 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 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 the violation was committed shall be final.
- 11.) Each day of violation shall constitute a separate offense.

e. After issuing a citation to an alleged violator, the code enforcement officer shall notify the Board by delivering a copy of the citation to the city clerk.

f. The person to whom the citation is issued shall respond to the citation within seven days of the date of issuance by either paying the civil fine and remedying the violation or requesting in writing a hearing before the Board to contest a citation. The request for a hearing shall be delivered to the City Clerk. The request shall include the name and address of the person requesting the hearing. If the person fails to respond to the citation within seven (7) calendar days by payment and remedial action if necessary, the person shall be deemed to have waived the right to a hearing and any determination that a violation was committed shall be considered final. In the event a violator is issued a citation and neither pays the civil fine or remedies the violation, the Board may enter a judgment by default. Each day of violation shall constitute a separate offense. After seven (7) days have passed without an appeal and the citation has not been paid, a meeting of the Board shall be scheduled to make a judgment and establish the appropriate civil fine. A copy of any final order shall be served on the person found in violation of the city code or ordinance.

g. If the alleged violator pays the fine but does not correct the violation within the seven (7) days provided, the Code Enforcement Officer can issue additional citations every 7 days until the violation is corrected. When the third (3rd) citation is issued for the same violation, there is no prescribed penalty and the amount of the fine must be established at a hearing before the Board. The Clerk shall schedule a hearing when any 3rd citation is issued for the same violation.

SECTION IX

Hearing, Notice and Final Order

a.) When a hearing has been requested, the Board shall schedule a hearing

b.) Not less than seven (7) calendar days before the date of the hearing, the Board shall notify the requester of the date, time and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the persons usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

c.) Any person requesting a hearing before the 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. The Board may enter a final order determining the violation was committed and impose the civil fines authorized. A copy of the final order shall be served upon the person guilty of the violation.

d.) All testimony shall be taken under oath and recorded. Testimony shall be taken from the Code Enforcement Officer, the alleged violator, and any witnesses to the violation offered by the Code Enforcement Officer or alleged violator. Formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings.

e.) The Board shall, based on the evidence, determine whether a violation was committed. If it determines that no violation was committed, an order dismissing the citation shall be entered. If it determines that a violation was committed, an order shall be issued upholding the citation and either imposing a fine up to the maximum authorized by this or other

Ordinance or requiring the offender to remedy a continuing violation, or both.

f.) Every final order of the Board shall be reduced to writing which shall include the date the order was issued. A copy shall be furnished to the person named in the citation. If the person named in the citations is not present when the final order is issued, the order shall be delivered in accordance with the procedures set forth in Subsection b above.

Section X
Legal Counsel:

Each case before the Board shall be presented by a City Code Enforcement Officer or by an attorney selected by the Mayor. The City Attorney will be counsel to the Board and may not present cases before the Board.

Section XI
Appeals: Final Judgment

a.) An appeal from any final order of the Board may be made to the Campbell County District Court within 30 days of the date the order is issued. 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.

b.) If no appeal from a final order of the Board is filed within the time period set forth in subsection "a" above, the Board's order shall be final.

Section XII

Ordinance Civil Fine: Schedule: Violation of Ordinances that are enforced by the City Board shall be subject to the following schedule of civil fines:

A.) If the 1st and 2nd citation for a violation of an Ordinance is not contested by the person charged with the violation, the penalties set forth in this Subsection shall apply; however, the Board may waive all or any portion of a penalty for an uncontested violation, if in its discretion the Board determines that such waiver will promote compliance with the Ordinance in issue. For any 3rd or subsequent Citation issued for the same violation, the penalty must be established at a hearing of the Board.

| Violation | Penalty (1 st and 2 nd citation) |
|-----------------------------|--|
| Zoning | \$25.00 |
| Nuisance | \$25.00 |
| Property Maintenance Code | \$25.00 |
| Parking | \$30.00 |
| Occupational License | \$50.00 |
| Life Safety Code Violations | \$50.00 |
| Fire Prevention Code Viol | \$50.00 |

Other \$25.00

b.) If a citation is contested or a hearing before the Board is required, the following penalties may be imposed at the discretion of the Board; however, the Board may waive all or any portion of a penalty if it determines such waiver will promote compliance with the Ordinance in issue.

| Violation | 1 st offense | 2 nd offense | All others |
|----------------------|-------------------------|-------------------------|--------------|
| Zoning | \$25-\$500 | \$50-\$1000 | \$75-\$2000 |
| Nuisance | \$25-500 | \$50-1000 | \$75-2000 |
| Property Maintenance | | | |
| Code Violations | \$25-\$500 | \$50-\$1000 | \$75-\$2,000 |
| Parking | \$30-\$100 | \$50-\$200 | \$75-\$500 |
| Occupational License | \$50-\$1000 | \$100-\$1000 | \$200-\$2000 |
| Life Safety Code | | | |
| Violations | \$50-\$1000 | \$100-\$1500 | \$200-\$2000 |
| Fire Prevention | | | |
| Code Violations | \$50-\$1000 | \$100-\$1500 | \$200-\$2000 |
| Other | \$25-\$500 | \$50-\$1000 | \$75-\$2000 |

Section XIII

Liens; Fines; Charges and Fees

a.) The City of Highland Heights shall, in accordance with KRS 65.8835 possess a lien on property owned by any person found by a final, nonappealable order of the Board or by a final judgment of a court of law if the Board's decision has been appealed, to have committed a violation, or all fines assessed for the violation, for all charges and fees incurred by the City of Highland Heights in connection with the enforcement thereof.

b.) The lien may be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the legal rate until paid.

c.) The lien shall take precedence over all other subsequent liens, except state, court, school board and city taxes, and may be enforced by judicial proceedings.

d.) In addition to the remedy prescribed in Subsection a.) the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of the Ordinance. The City may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

Section XIV

State Statutes Adopted by Reference

All of the terms and conditions and procedures of KRS 65.8801 to 65.8839 relating to the

organization and powers of the Board, enforcement procedure, appeals and other matters are hereby adopted by the City of Highland Heights and incorporated herein by reference as if fully rewritten.

Section XV

Severability:

If any provision of this ordinance or related ordinance or statute or the application thereof is held invalid, such invalidity shall not affect other provisions of the ordinance

Section XVI

That this Ordinance shall be signed by the Mayor, attested by the City Clerk/Treasurer, recorded and published. Same shall be in effect at the earliest time provided by law.

First reading of this 1st day of November, 2013.

Second reading of this 19th day of November, 2013.



MAYOR GREGORY V. MEYERS

ATTEST:



JEAN RAUF
CITY CLERK/TREASURER

Ord13.16