

**OAK GROVE, KENTUCKY  
ORDINANCE NO. 2017-01**

A ORDINANCE BY THE CITY OF OAK GROVE, KENTUCKY  
AMENDING ORDINANCE NO. 2002-17 CONCERNING CODE  
ENFORCEMENT AND NUISANCE ENFORCEMENT BOARDS

**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 with 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 ordinances in force within the City; and

**WHEREAS**, it is the intent of KRS 82.705 to 82.725 to allow cities to elect, by ordinance, to enforce violations of a nuisance code with civil penalties pursuant to the procedures set forth in KRS 82.710, 82.720, and 82.725;

**WHEREAS**, it is the desire of the City Council of the City of Oak Grove, Kentucky to utilize the authority granted in KRS 65.8801 to 65.8839 and KRS 82.705 to 82.725 by creating a City of Oak Grove Code Enforcement and Nuisance Board.

**NOW, THEREFORE**, be it ordained by the City Council of the City of Oak Grove as follows:

**SECTION 1. Definitions.** The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Code Enforcement and Nuisance Board" shall mean an administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to KRS 65.8839 and the Local Government Nuisance Code Enforcement Act, KRS 82.700 to 82.725.

"Code Enforcement Officer" shall mean a city police officer, safety officer, citation officer, or other public law enforcement office with the authority to issue a citation.

"Ordinance" shall mean an official action of a local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinances adopted by the city legislative body which embodies all or part of an ordinance.

**SECTION 2. Creation and Membership.** There is hereby created pursuant to KRS 65.8801 to KRS 65.8839 and KRS 82.700 to 82.725 within the City, a Code Enforcement and Nuisance 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 creation of the board and shall reside there throughout the term in office.

**SECTION 3. Powers.**

- a) The Code Enforcement and Nuisance Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances when a violation of the ordinance has been classified as a civil defense.
- b) The Code Enforcement and Nuisance Board shall not have the authority to enforce any ordinance of which the violation constitutes a criminal offense under any provision of the Kentucky Revised Statutes, including specifically, and provision of the Kentucky Penal Code and any moving motor vehicle offense.

**SECTION 4. Appointment of Members; Terms of Office; Removal from Office; Oath; and Compensation.**

- a) Members of the Code Enforcement and Nuisance Board shall be appointed by the executive authority of the city, subject to the approval of the legislative body.

The Initial appointment to the board shall be as follows:

1. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of one (1) year.
2. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of two (2) years; and
3. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of three (3) years.

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.

The executive authority may appoint, subject to the approval of the legislative body, two (2) alternate members to serve on the board in the absence of regular members. Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply to regular members of the board.

Any vacancy on the board shall be filled by the executive authority, subject to approval of the legislative body within sixty (60) days of the vacancy. If the vacancy is not filled within that time period, the remaining board members shall fill the vacancy.

- b) A board member may be removed from office by the executive authority for misconduct, inefficiency, or willful neglect of duty. The executive authority must submit a written statement to the member and the legislative body setting forth the reasons for removal.
- c) 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.
- d) Members of the board shall be reimbursed for actual expenses and compensated in the amount of \$20.00 per month and \$25.00 per month for the Chair.

- e) No member of the board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the city.
- f) Member of the board shall obtain 2 (two) hours of training annually on topics pertinent to their duties as Code Enforcement and Nuisance Board members.
- g) All hearing officers, including members of the board who serve as hearing officers, must obtain 2 (two) hours of training related to the conduct of an administrative hearing in accordance with the procedures established in KRS 13B.080

**SECTION 5. Organization of Board; Meetings; and Alternate Board Members.**

- a) The board shall annually elect a chair from among its members. The chairman shall be the presiding officer and a full voting member of the board. If the chairman is not present, the board shall select one of its members to preside in place of and exercise the powers of the chairman.
- b) Regular meetings of the board shall be held on the 3<sup>rd</sup> (third) Thursday of every month. Meetings other than those regularly scheduled shall be a special meeting held in accordance with the requirements of the Kentucky Open Meetings Act.
- c) All meetings and hearings of the board shall be held in accordance with the requirements of KRS 65.8815(5) and 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 6. Conflict 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 disqualify himself from voting on the matter in which he has an interest and shall not be counted for purposes of establishing a quorum.

**SECTION 7. Jurisdiction.** The board shall have jurisdiction to enforce and shall enforce those city ordinances and code provisions which specifically provide for Code Enforcement and Nuisance Board enforcement.

**SECTION 8. Powers of the Code Enforcement and Nuisance Board.**

The City of Oak Grove Code Enforcement and Nuisance Board shall have the following powers and duties:

- a) To adopt rules and regulations to govern its operations and the conduct of the hearings.
- b) To conduct hearings, or assign a hearing officer to conduct a hearing, to determine if there has been a violation of an ordinance over which it has jurisdiction. Any board member, including the chairman, may also be assigned to conduct hearings on behalf of the board.

- 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, or an assigned hearing officer, 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 impose civil fines, as authorized, on any person found to have violated an ordinance over which the board has jurisdiction.

**SECTION 9. Enforcement Proceedings.**

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

- a) Enforcement proceedings before the Code Enforcement and Nuisance Board shall only be initiated by the issuance of a citation by a code enforcement officer.
- b) Except as provided in subsection (c) below, if a code enforcement officer reasonable believes, based on his personal observation or investigation, that a person has violated a city ordinance, he shall issue a Notice of Violation to the offender allowing the offender a specified period of time to remedy the violation without fine. 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 prohibit the city from taking immediate action to remedy a violation of its ordinances 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.
- d) The citation issued by the code enforcement officer 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 was committed;
  4. The facts constituting the offense;
  5. The section of the code or the number of the ordinance violated;
  6. The name of the code enforcement officer;
  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 consent.
  10. A statement that if the person fails to pay the civil fine set forth in the citation or consent the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the Code Enforcement and Nuisance Board to contest the citation and that the determination that the violation was committed shall be final.
- e) The code enforcement office may issue the citation by:
1. Personal service to the alleged violator;
  2. Leaving a copy of the citation with any person eighteen (18) years of age or older, who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or
  3. Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular, first class mail to the owner of the record of the property, if no one is on the premises at the time of the citation is issued
- f) After issuing a citation to an alleged violator, the code enforcement officer shall notify the board by delivering the citation to the Code Enforcement Secretary.
- g) The person to whom the citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the civil fine or requesting, in writing a hearing before the board to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final.
- h) If the alleged violator does not contest the citation within the time prescribed, the board shall enter a final order determining that the violation was committed and impose the civil fine set forth in the citation.

#### **SECTION 10. Hearing; Notice; and Final Order.**

- a) When a hearing has been requested, the Code Enforcement and Nuisance Board shall schedule a hearing at the next regular meeting. The board may conduct the hearing, or may assign a hearing officer to conduct the hearing. In addition, any board member, including the chairman, may be assigned to conduct the hearing on behalf of the board.
- b) Not less than seven (7) 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 person's usual place of residence with any individual regarding therein who is eighteen (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 shall enter a final order determining the violation was committed and shall impose the civil fine set forth in the citation. A copy of the final order shall be served upon the person guilty of the violation in accordance with subsection (f) below.
- d) All testimony shall be taken under oath and recorded. The board or assigned hearing officer shall take testimony 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) If a hearing officer is assigned to conduct the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the board. After the board conducts the hearing, or upon receipt of recommendations of a hearing officer assigned to conduct the hearing, the board shall, based on the evidence, determine whether a violation was committed. If the board determines that no violation was committed, an order dismissing the citation shall be entered. If the board determines that a violation was committed, the board shall issue an order upholding the citation and either imposing a fine up to the maximum authorized by this or another ordinance, or requiring the offender to remedy a continuing violation within a specified time, or both.
- f) Every final order of the board shall be reduced in writing, which shall include the finding and conclusions of the board and the date the order was issued. A copy shall be furnished to the person named on the citation. If the person named on the citation is not present when the 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 the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

**SECTION 11. Presentation of Cases.** Each case before the Code Enforcement and Nuisance Board shall be presented by an attorney selected by the city or by a code enforcement office for the city. The city attorney may either be counsel to the board or may present cases before the board, but in no case serve in both capacities.

**SECTION 12. Appeals; Final Judgment.**

- a) An appeal from any final order of the Code Enforcement and Nuisance Board may be made to the Christian county district court within thirty (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. The appeal shall be tried de novo. A Judgment of the district court may be appealed to the County circuit court in accordance with the Kentucky Rules of Civil Procedure.
- b) If no appeal from a final order of the board is filed within the time period set in subsection (a) above, the board's order shall be deemed final for all purposes.

**SECTION 13. Ordinance Fine Schedule.** Violations of ordinances that are enforced by the city code enforcement board shall be subject to the following schedule of civil fines:

- a) If a 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.

| <u>Violation</u>     | <u>1<sup>st</sup> Offense</u> | <u>2<sup>nd</sup> Offense</u> | <u>All Others</u> |
|----------------------|-------------------------------|-------------------------------|-------------------|
| Animals              | \$25.00                       | \$50.00                       | \$100.00          |
| Unsafe & Unfit       |                               |                               |                   |
| Structure Code       | \$200.00                      | \$350.00                      | \$500.00          |
| Garbage/Rubbish      | \$200.00                      | \$350.00                      | \$500.00          |
| Occupational License | \$200.00                      | \$350.00                      | \$500.00          |
| Weeds/Grass          | \$200.00                      | \$350.00                      | \$500.00          |

- b) If the citation is contested and a hearing before the board is required, the following maximum penalties may be imposed:

| <u>Violation</u>     | <u>1<sup>st</sup> Offense</u> | <u>2<sup>nd</sup> Offense</u> | <u>All Others</u> |
|----------------------|-------------------------------|-------------------------------|-------------------|
| Animals              | \$100.00                      | \$200.00                      | \$300.00          |
| Unsafe & Unfit       |                               |                               |                   |
| Structure Code       | \$500.00                      | \$500.00                      | \$500.00          |
| Garbage/Rubbish      | \$500.00                      | \$500.00                      | \$500.00          |
| Occupational License | \$500.00                      | \$500.00                      | \$500.00          |
| Weeds/Grass          | \$500.00                      | \$500.00                      | \$500.00          |

**SECTION 14. Lien; Fines, Charges and Fees.**

**a) Nuisance Violations.**

- i. The city shall possess a lien on property owned by the person found by a final, nonappealable order of the board, or by a final judgement of the court, to have committed a violation of a city ordinance for all fines assessed for the violation and for all charges, fees, and abatement costs incurred by the city in connection with the enforcement of the ordinance at one hundred dollars (\$100.00) per hour, plus administrative fees and interest.
- ii. The lien shall 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 until paid.
- iii. The lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings.
- iv. 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, fees, and abatement costs incurred by the city in connection with the enforcement of the ordinance. The city may bring a civil

suit action against the person and shall have the same remedies as provided for the recovery of a debt.

**b) Other Code Violations**

- v. The city shall possess a lien on property owned by the person found by a final, nonappealable order of the board, or by a final judgment of the court, to have committed a violation of a city ordinance for all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance, at one hundred dollars (\$100.00) per hour, plus administrative fees and interest.
- i. The lien shall 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 until paid.
- ii. The lien shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings.
- iii. 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.

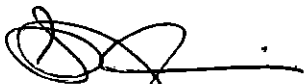
**SECTION 15. UNCONSTITUTIONALITY.** Any and all existing ordinances inconsistent with this ordinance are hereby repealed. Should any part of this ordinance be void or unconstitutional, the remaining ordinance shall remain in full force and effect.

**EFFECTIVE DATE**

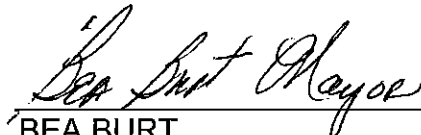
This Ordinance shall become effective as of its first reading and publication.

APPROVED ON FIRST READING THIS 18<sup>th</sup> DAY OF July, 2017.  
APPROVED ON SECOND READING THIS 1<sup>st</sup> DAY OF August, 2017.

ATTEST:



\_\_\_\_\_  
THERESA JARVIS  
Oak Grove City Clerk



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BEA BURT  
Mayor, City of Oak Grove

published in Ky New Era Aug 11, 2017. <sup>8</sup> Tof