

**CITY OF AUDUBON PARK
ORDINANCE NO. 5, SERIES 2007**

**AN ORDINANCE ESTABLISHING A CODE ENFORCEMENT BOARD
FOR THE CITY OF AUDUBON PARK**

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 ordinance in force within the City, and

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

NOW THEREFORE be it ordained by the City Council of the City of Audubon Park 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 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, safety officer, citation officer or other public law enforcement officer 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 local law and shall include any provision of a code of ordinances adopted by the city legislative body which embodies all or part of the ordinance.

SECTION 2. Creation and Membership. There is hereby created pursuant to KRS 65.8801 to KRS 65.8839 within the city, a code enforcement board which shall be composed of five 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 board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinance when a violation of the ordinance has been classified as a civil offense.

- b) The code enforcement board shall not have the authority to enforce any ordinance the violation of which constitutes an offense under any provision of the Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code an any moving motor vehicle offense.

SECTION 4. Appointment of members; term of office; removal from office; oath; and compensation; Alternate members

- a) Members of the code enforcement board shall be appointed by the executive authority of the city, subject to the approval of the legislative body.
- b) The initial appointment to a five (3) member code enforcement board shall be as follows:
 - 1. One (1) member appointed to a one (1) year term.
 - 2. Two (2) members appointed to a two (2) year term.

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) The executive authority may appoint, subject to the approval of the legislative body, two (2) alternate members to serve on the code enforcement board in the absence of regular members. Alternate members shall meet all qualifications and shall be subject to all of the requirements that apply in regular members of the code enforcement board.
- d) Any vacancy on the board shall be filled by the executive authority, subject to approval of the legislative body within sixty (60) days of vacancy. If the vacancy is not filled within that time period, the remaining code board members shall fill the vacancy.
- e) A code board member may be removed from office by the executive authority for misconduct, inefficiency, or willful neglect of duty. The executive authority must submit by a written statement to the member and the legislative body setting forth the reasons for removal.
- f) All members of the code enforcement board must, before entering upon the duties of their office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.
- g) Members of the code enforcement board shall reimbursed for actual expenses.
- h) No member of the code enforcement board may hold an elected or non elected office, paid or unpaid, or any position of employment with the city.

SECTION 5. Organization of Board; Meetings and Quorum.

- a) The board shall annually elect a chair from among its members. The chairman shall be presiding officer and a full voting member of the board.
- b) Regular meetings of the code enforcement board shall be held on the 3rd Tuesday of every month. Meeting other than those regularly scheduled shall be special meetings held in accordance with the requirements of the Kentucky Open Meetings Act.
- c) All meetings and hearings of the code enforcement 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 code enforcement 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 code enforcement 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 code enforcement board shall have jurisdiction to enforce and shall enforce those city ordinances and code provisions which specifically provide for code enforcement board or which contain provisions of the imposition of civil penalties.

SECTION 8. Powers of the Code Enforcement Board. The City of Audubon Park Code Enforcement 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 an ordinance over which it has jurisdiction.
- c) To subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas issued by the code enforcement 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 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 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 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 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 used;
 - 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 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 code enforcement board to contest the citation and that the determination that the violation was committed shall be final.
- e) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to any member of the board.
 - f) 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 code enforcement 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.
 - g) If the alleged violator does not contest the citation within the time prescribed, the code enforcement shall enter a final order determining that the violation was committed and impose the civil fine set forth in the citation. A copy of the final order shall be served on the person guilty of the violation.

SECTION 10. Hearing; Notice; and Final Order.

- a) When a hearing has been requested, the code enforcement board shall schedule a hearing. The hearing shall be conducted within fourteen (14) days of the request, unless the requester wants or agrees to a continuance not to exceed fourteen (14) days.
- b) Not less than seven (7) days before the date of the hearing, the code enforcement 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 residing therein who is eighteen years of age or older and who is informed of the contents of the notice.
- c) Any person requesting a hearing before the code 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. The code enforcement board shall enter a final order determining the violation was committed and shall impose the civil fine set forth in the citation or provide orders for compliance or prohibitions as may be authorized by law. 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 code enforcement 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 code enforcement 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 citation 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 11. Legal Counsel. Each case before the code enforcement board shall be presented by an attorney selected by the city or by a code enforcement officer for the city. The city attorney may either be counsel to the code enforcement board or may present cases before the code enforcement board, but in no case serve in both capacities.

SECTION 12. Appeal; Final Judgment.

- a) An appeal from any final order of the code enforcement board may be made to the Jefferson County District Court within thirty (30) days of the date the order was issued. The appeal shall be initiated by the filing of a complaint and a copy of the code enforcement 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 code enforcement board is filed within the time period set in subsection (a) above, the code enforcement 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>1st Offense</u> | <u>2nd Offense</u> | <u>All Others</u> |
|--|-------------------------------|-------------------------------|-------------------|
| Animals | \$25.00 | \$50.00 | \$100.00 |
| Deteriorated Structure/ Building & Construction Codes | \$100.00 | \$125.00 | \$150.00 |
| Solid Waste | \$10.00 | \$25.00 | \$50.00 |
| Occupational License | \$50.00 | \$75.00 | \$100.00 |

| | | | |
|-----------------------|---------|---------|----------|
| Weeds | \$10.00 | \$25.00 | \$50.00 |
| Fireworks | \$50.00 | \$75.00 | \$100.00 |
| Discontinued Business | \$25.00 | \$50.00 | \$75.00 |

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

| <u>Violation</u> | <u>1st Offense</u> | <u>2nd Offense</u> | <u>All Others</u> |
|--|-------------------------------|-------------------------------|-------------------|
| Animals | \$100.00 | \$200.00 | \$300.00 |
| Deteriorated Structure/ Building & Construction Codes | \$500.00 | \$750.00 | \$1,000.00 |
| Solid Waste | \$75.00 | \$150.00 | \$250.00 |
| Occupational License | \$500.00 | \$750.00 | \$1,000.00 |
| Weeds | \$50.00 | \$75.00 | \$100.00 |
| Fireworks | \$100.00 | \$200.00 | \$300.00 |
| Discontinued Business | \$100.00 | \$150.00 | \$250.00 |

SECTION 14. Lien; Fines; Charges and Fees.

- a) The city shall possess a lien on property owned by the persons found by a final, nonappealable order of the code enforcement 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.
- b) 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.
- c) 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.
- 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 civil action against the person and shall have the same remedies as provided for the recovery of a debt.

SECTION 15. Severability. The provisions of this ordinance shall be considered severable. If any provision of this ordinance is found to be invalid, that finding shall not necessarily invalidate the entire ordinance.

SECTION 16. Effective Date. This ordinance shall become effective after passage, approval and summary publication as required by law.

FIRST READING: _____

SECOND READING: _____

PASSED AND APPROVED THIS _____ day of _____, 2007

MAYOR

ASSEST: _____
CITY CLERK

| COUNCIL | YEA | NAY |
|-------------------|-----|-----|
| Anne Braun | | |
| Cindy Habeeb | | |
| Al Huber | | |
| Jonathan Leachman | | |
| Stephen Miller | | |
| Gary Vogel | | |