

**ORDINANCE NO. 2016- 07**

**AN ORDINANCE AMENDING SECTION 501.13 OF THE KENT CODIFIED ORDINANCES, ENTITLED "CIVIL OFFENSES", TO CORRECT AND CLARIFY SOME LANGUAGE REGARDING FINES AND PROCEDURES, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Kent previously passed Section 501.13 of the Codified Ordinances establishing procedures for civil offenses; and

**WHEREAS**, several subsections need to be corrected and clarified; and

**WHEREAS**, Kent City Council wishes to make those changes as soon as possible.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

**SECTION 1.** The Council does hereby accept the amendments to the Section 501.13 of the Codified Ordinances of the City of Kent as shown on the Exhibit "A", attached hereto and made a part hereof.

**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 1/20/2016  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016-07 was duly enacted this 20th day of January, 2016, by the Council of the City of Kent, Ohio

\_\_\_\_\_  
CLERK OF COUNCIL

## EXHIBIT "A"

### 501.13 CIVIL OFFENSES

- (a) **Civil Offenses:** A property owner who violates a standard of conduct set forth in a section or chapter of the Kent Codified Ordinances listed in Section 501.13(b) is liable for the civil offense fine specified in Section 501.13(n). Neither the City of Kent, the State of Ohio, the United States Government, nor any other political subdivision, is liable for a civil fine imposed pursuant to this Chapter.
- (b) **Qualifying Civil Offenses:** A property owner who violates a standard of conduct set forth in Sections 521.13; 521.15; 521.16; any part of Chapter 551; any Section of Chapter 11 of the City of Kent Zoning and Planning Code; any Section of Chapter 13 of the City of Kent Building Code; and/or any Section of Chapter 14 of the City of Kent Property Maintenance, Housing and Enforcement Code shall be deemed an offending property owner and is liable for the civil offenses specified in Section 501.13(n).
- (c) **Procedures for violations of Section 521.13; any Section of Chapter 11 of the City of Kent Zoning and Planning Code; any Section of Chapter 13 of the City of Kent Building Code; and/or any Section of Chapter 14 of the City of Kent Property Maintenance, Housing and Enforcement Code except Section 1414:**
- (1) Unless otherwise exempted by Section 501, prior to issuing a Notice of Civil Offense, the City officer or employee charged with enforcement of the Kent Codified Ordinances who observes a violation of Section 521.13; any Section of Chapter 11 of the City of Kent Zoning and Planning Code; any Section of Chapter 13 of the City of Kent Building Code; and/or any Section of Chapter 14 of the City of Kent Property Maintenance, Housing and Enforcement Code, except Section 1414, shall provide the offending property owner with a warning.
- (a) A City officer or employee charged with the enforcement of the Kent Codified Ordinances who observes a violation shall document the violation in writing and shall provide a warning to the offender, offending property owner, or offending property owner's agent with the following information:
1. The name of the violation or a description of the violation, and
  2. A deadline for abatement of the violation.
- (b) The warning described in Section 501.13(c)(1)(a) shall be served upon the offender, offending property owner, or offending property owner's agent by:
1. Issuing a verbal notification to in person or by telephone; or
  2. Issuing a written warning to and posting said written warning at a conspicuous location on the property; or
  3. Issuing by First Class U.S. Mail a written warning to the listed owner of the offending property at the tax address listed on the Portage County Auditor's website.
- (c) Once a warning has been issued:
1. The offending property owner shall have a reasonable amount of time after the warning has been delivered in accordance with Section 501.13(c)(1)(b) to comply with the applicable ordinances.
  2. If an offending property owner corrects a violation after a warning has been delivered, in accordance with Section 501.13(c)(1)(b) but

before receiving a Notice of Civil Offense in accordance with Section 501.13(c)(2), the City is relieved of its obligation to provide a warning as required by Section 501.13(c)(1)(a) for the same civil offense for the same offending property owner for one (1) calendar year.

- (d) A City officer or employee charged with the enforcement of the Kent City Ordinances shall conduct a final investigation after the date provided in the written warning. If the offending property owner remains in violation of the ordinances at the time of the final investigation, then an officer shall issue a Notice of Civil Offense in accordance with Section 501.13(c)(2).

(2) A Notice of Civil Offense and civil fine must:

- (a) State the date that the Notice of Civil Offense is issued;
- (b) Identify the offending property owner being charged if known to the issuing officer or employee;
- (c) Indicate the offense charged, the amount of the civil fine for the offense, the date of the offense, and the location of the offense; and that the expense incurred by the City in correcting the violation can and will be added to the fine.
- (d) Be signed and attested to by the issuing officer or employee;  
AND
- (e) Be served in accordance with this Section.
  1. If the offending property owner charged is present, the issuing officer or employee may personally serve the offending property owner charged with a copy of the notice;
  2. If the offending property owner charged is not present, the issuing officer or employee must serve the offending property owner or their designee by Certified U.S. Mail at the address provided to the City of Kent in accordance with Section 501.13(c)(3). If no such address has been provided, then the issuing officer or employee shall serve the offending property owner by Certified U.S. Mail at the tax address listed on the Portage County Auditor's website and by posting a copy of said notice at a conspicuous location on the offending property.

(3) The following shall apply to all property to be used as rental property in the City of Kent:

- (a) Rental property owners shall designate an individual to be contacted by the City in the event of an ordinance violation. This may be the property owner or a designated local agent; and,
- (b) Rental property owners who desire to designate an agent must record the agent's telephone number and email (if any) with the City. If no agent is designated the rental property owner shall be the designated contact person.

**(d) Procedures for violations of Section 521.15 and Section 521.16:**

- (1) The Notice of Civil Offense must be provided in accordance with Section 501.13(c)(2)(a)-(d).

- (2) A property owner may designate an agent to receive the Notice of Civil Offense in accordance with Section 501.13(c)(3).
  - (3) Service on the offending property owner must be completed in accordance with Section 501.13(c)(2)(e)(1)-(2).
- (e) **Procedures for violations of Section 551:**
- (1) The Notice of Civil Offense must be provided in accordance with Section 501.13(c)(2)(a)-(d).
  - (2) The property owner may designate an agent to receive the Notice of Civil Offense in accordance with Section 501.13(c)(3).
  - (3) Service on the offending property owner must be by posting at a conspicuous location on the property.
  - (4) If after five (5) days the violation has not been abated, the City shall have the right to abate the violation. In addition to a fine, any expenses incurred by the City shall be assessed against the offending property owner in accordance with 501.13(n).
- (f) **Procedures for violations of Section 1414:**
- (1) The Notice of Civil Offense must be provided in accordance with Section 501.13(c)(2)(a)-(d).
  - (2) Property owners may designate an agent to receive the Notice of Civil Offense in accordance with Section 501.13(c)(3).
  - (3) Service on the offending property owner must be by posting at a conspicuous location on the property.
  - (4) If after (twenty-four) 24 hours the violation has not been abated, the City shall have the right to abate the violation. In addition to a fine, any expenses incurred by the City shall be assessed against the offending property owner in accordance with 501.13(n).
- (g) **Answering a Notice of Civil Offense:**
- (1) An offending property owner served with a Notice of Civil Offense charging a civil offense may file a written answer admitting the civil offense. The answer may be delivered in person or mailed to the City of Kent Community Development Department and must be received by the City within ten (10) days from the date of the notice.
    - (a) Payment of the civil offense fine specified in the notice shall be deemed an admission of the violation by the offending property owner;
    - (b) An answer with a full payment admitting that the offending property owner violated an ordinance with proof of correction shall be evaluated by the Director of Community Development to determine whether the correction was made within the first forty-eight (48) hours of receiving the Notice of Civil Offense. If the correction was made within the first forty-eight (48) hours, the offending property owner will be eligible for a refund of fifty percent (50%) which will be issued within thirty (30) business days of the Director of Community Development's decision.
    - (c) An offending property owner who fails to respond within the ten (10) days shall be deemed in default and an admission to the offense by the offending property owner. An offending property owner subject to a civil fine entered after default may

request to have the default set aside. A hearing officer may set aside a default on a showing that the offending property owner had no actual knowledge of the Notice of Civil Offense and civil fine or that the default should be excused in the interest of justice.

- (2) An offending property owner served with a Notice of Civil Offense may file a written response to the notice which shall be delivered in person or mailed to the City of Kent Community Development Department and must be received by the City of Kent Community Development Department within ten (10) days from the date of the notice.
  - (a) If the written response filed by the offending property owner denies the violation(s) listed in the Notice of Civil Offense, the offending party must submit a request for a hearing or the civil offense remains in effect.
  - (b) If the offending property owner has taken an administrative appeal authorized by the Kent Codified Ordinances from an order on which the offense was based, the offending property owner may request that the time for answering the Notice of Civil Offense be continued until the appeal has been finally resolved.

**Hearings for Civil Offenses:**

- (3) An offending property owner who denies the commission of a civil offense may request a hearing before a hearing officer. The request shall be filed with the Community Development Office for the City of Kent which shall set a date for the hearing and notify the offending property owner, in writing, of the date, time and location of the hearing. The hearing may be informal, but all testimony shall be under oath. The hearing officer shall be appointed by the Director of Community Development.
- (4) All hearings shall be scheduled within ten (10) days and will be held within fifteen (15) days from the date the request for a hearing is filed. Any hearing date may be modified if such modification is agreed to by the offending property owner, by the City officer or employee who issued the charge and by the hearing officer, or if such modification is necessary in the interest of justice.
- (5) The hearing officer shall enter into the record of the proceedings the notice of the civil offense and civil fine, the filing of or failure to file an answer, the substance of the answer, a finding of liability, the civil fine due, payments, delinquency and collection charges, and other relevant information.
- (6) The hearing officer shall issue a decision and make findings of fact from the record and conclusions of law in support of the decision within ten (10) days from close of the hearing. The findings and conclusions shall demonstrate that the decision is consistent with applicable laws, ordinances, regulations and the interest of justice. Any unpaid civil fine is due and must be paid within ten (10) days after the date of the hearing officer's decision.
- (7) If the offending property owner has taken an administrative appeal authorized by the Kent Codified Ordinances from an order on which the

offense was based, the hearing officer must extend the time for answering the Notice of Civil Offense until the appeal has been finally resolved.

- (h) **Administrative Review:** An offending property owner found to have committed a civil offense and to owe a civil offense fine may request the City Manager to review the record of the proceedings before the hearing officer. The director of the City department that issued the Notice of Civil Offense and civil offense fine dismissed by the hearing officer may also request the City Manager to review the record of the proceedings before the hearing officer. The City Manager may delegate the responsibility for review to a member of the administrative service or to a board comprised of several members of the administrative service. The request for review must be in writing, specify with particularity the claimed errors in the decision by the hearing officer, and sent to office of administrative hearings by certified mail within ten (10) days of the date of the mailing of the decision by the hearing officer. The city officer or employee who issued the notice of violation which gave rise to the request for review or a supervisor to the issuing officer may file a written response to the request for review. The response must be filed within fifteen (15) days of the receipt of the request for review by the officer of administrative hearings. The City Manager may set aside the decision of the hearing on finding from review of the proceedings before the hearing officer that the findings of fact and conclusions of law are not supported by the record. The City Manager may reduce a civil fine on a showing that the civil fine would cause an undue hardship and that the underlying offense has been cured or is unlikely to reoccur. The city manager may investigate a claim that an offense has been cured, make findings with respect to the claim of cure, and include those findings within the record. Notwithstanding State of Ohio law, the decision of the City Manager shall be final.
- (i) **Civil Proceedings:** Nothing in Section 501 limits the City of Kent's ability to pursue additional remedies in law or in equity to abate a violation. The City of Kent may, in addition to the civil offense, pursue to any available remedies including injunctions, restraining orders, damages or (if applicable) criminal charges.
- (j) **Administrative Regulations:** The City Manager may adopt administrative regulations for the conduct of hearings and for the enforcement of the Kent Codified Ordinances through the issuance of notices of civil offenses.
- (k) **Freedom from Improper Influence:**
  - (1) No member of Council, member of the City administration, party to any proceedings before a hearing officer, or any other person shall interfere with, attempt to interfere with, or improperly influence or attempt to improperly influence a hearing officer in the performance of the duties of office.
  - (2) A hearing officer may not conduct or participate in any hearing or decision in which the officer or any of the following persons has a direct or substantial financial interest: a spouse, brother, sister, child, parent, or in-law of the officer, or business firm or organization in which the officer has a substantial interest. The officer shall promptly report to the City Manager any attempt at interference or improper influence or any actual or potential conflict prior to such hearing.
  - (3) Wherever it may be shown to the satisfaction of the City Manager that a hearing officer was subjected to improper influence, interference or interest, such improper influence, interference or interest shall be grounds for vacating any decision made by the hearing officer in such proceedings.

(l) **Ex Parte Communications Prohibited:** A person may not communicate with a hearing officer to influence a decision in a matter pending before an officer other than at a public hearing or in a writing that is made part of the record of the proceeding. This provision shall not prohibit communication between an officer and any member of the administration assigned to assist or give legal counsel to the hearing officer in the pending proceeding.

(m) **Fines:**

- (1) The initial civil offense fine is \$100. This amount is due within ten (10) days of the offending property owner being personally or constructively served with a Notice of Civil Offense.
- (2) A second civil offense, for the same offense with the same offending property owner within two (2) years, fine is \$200.
- (3) A third or greater civil offense for the same offense with the same offending property owner within two (2) years is \$300.
- (4) Unless within ten (10) days of the offending property owner being personally or constructively served with a Notice of Civil Offense the fine is paid or an answer is filed, the civil offense fine shall automatically double on the eleventh day.
- (5) In accordance with Section 501.13(g)(2)(a), if an individual requests a hearing and fails to attend, the civil offense fine shall automatically double.
- (6) The applicable civil offense fine shall be reduced by fifty percent (50%) if the person documents that the violation has been corrected within forty-eight (48) hours of the notice being posted.
- (7) If the fine is sent for collection, the applicable civil offense fine shall be doubled again plus any additional costs incurred by the City.
- (8) If after twenty (20) days the violation has still not been corrected, the City may hire someone to remove the nuisance and the actual costs incurred by the City shall be added to the fine.
- (9) Any costs incurred by the City of Kent to abate a violation shall be assessed against the offending property owner. This amount shall not be subject to doubling.
- (10) Each day a property is in violation constitutes a separate offense and may be subject to a separate civil offense fine.
- (11) The Community Development Director shall have the right to reduce a civil offense fine if justice so requires based upon seriousness of the offense, the level of cooperation from the offending property owner, and/or the offending property owner's previous history of compliance.