

**CITY OF SHIVELY
ORDINANCE NO. 11, SERIES 2021**

AN ORDINANCE CREATING A NEW SECTION OF CHAPTER 94 OF THE CITY OF SHIVELY CODE OF ORDINANCES DEFINING REPEATED VIOLATION OF ORDINANCES AND LAWS ON BUSINESS PREMISES AS A CHRONIC NUISANCE, AUTHORIZING REMEDIES INCLUDING REVOCATION OF BUSINESS LICENSES OF BUSINESSES IN VIOLATION, AUTHORIZING ENFORCEMENT OF VIOLATIONS THROUGH THE SHIVELY CODE ENFORCEMENT BOARD, AND DEFINING CERTAIN CONDUCT AS PRIMA FACIE EVIDENCE OF A NUISANCE

WHEREAS the City of Shively, Kentucky desires to promote public health, welfare and safety, and

WHEREAS the City desires to address those circumstances where business operators and property owners place the public at risk through repeated violations of ordinances and regulations occurring on their premises, and

WHEREAS the City desires to address circumstances where business operators and property owners chronically disregard property maintenance which causes a hardship to their neighbors and the public, and

WHEREAS addressing these repeated violations of law will promote the public good for the citizens, residents and businesses and will be in the best interest of the City of Shively, now therefore:

BE IT ORDAINED BY THE CITY OF SHIVELY:

SECTION 1. A new section of Chapter 94 of the Shively, Kentucky, Code of Ordinances is hereby created as Section 94.80, Business Chronic Nuisances:

(A) Definitions

1. Chronic Violations. Chronic violations shall be defined as:
 - (a) A single occurrence resulting in a charge of violating any provision of Chapter 506 of the Kentucky Revised Statutes;
 - (b) A single occurrence resulting in a charge of violating KRS 507.020 or 507.030;
 - (c) A single occurrence resulting in a charge of violating KRS 508.010, 508.020, 508.025, 508.075, 508.078 or 508.060;
 - (d) Two or more occurrences within a twelve (12) month period resulting in charges of violating KRS 508.030, 508.040, 508.070 or 508.080;
 - (e) A single occurrence resulting in a charge of violating any provision of Chapter 510 of the Kentucky Revised Statutes;
 - (f) Three or more occurrences within a twelve (12) month period resulting in charges of violating KRS 511.060, 511.070 or 511.080;
 - (g) Three or more occurrences within a twelve (12) month period resulting in charges of violating any provision of Chapter 512 of the Kentucky Revised

Statutes, except that a single occurrence involving the sale or manufacture of methamphetamine shall constitute a Chronic Violation;

- (h) Three or more occurrences within a twelve (12) month period resulting in charges of violating any provision of Chapter 514 of the Kentucky Revised Statutes;
- (i) A single occurrence resulting in a charge of violating any provision of Chapter 515 of the Kentucky Revised Statutes;
- (j) Three or more occurrences within a twelve (12) month period resulting in charges of violation one or more provisions of Chapters 525, 528 or 529 of the Kentucky Revised Statutes;
- (k) A single occurrence resulting in a charge of violating any provision of Chapter 527 of the Kentucky Revised Statutes;
- (l) The issuance of three or more Shively Code Enforcement Notice of Code Violation letters to a single property owner within a twelve (12) month period;
- (m) The issuance of two or more citations for violation of any provisions of Chapter 94 of the Shively Code of Ordinances within a twelve (12) month period;
- (n) Two or more occurrences within a twelve (12) month period resulting in charges of violating any provision of Chapter 218A of the Kentucky Revised Statutes; or
- (o) Any combination of two or more of the above occurring within a twelve (12) month period.

2. Occurrence. Occurrence as used herein means an event taking place on any area of a parcel of property owned, leased, occupied or subject to the control of by the person charged with creating the chronic nuisance, regardless of whether such person was directly or indirectly involved in the event. It is the conduct of permitting these occurrences to take place at businesses in the City of Shively that is regulated by this ordinance.

3. Person shall include an individual, partnership, corporation, unincorporated association or any other legal entity recognized pursuant to Kentucky law.

- (B) *Prima Facie* Evidence and Rebuttable Presumption. Chronic Violations shall constitute *prima facie* evidence of the existence of a nuisance subject to remediation pursuant to this Chapter, which presumption may be rebutted by a finding of innocence to any charge giving rise to a Chronic Nuisance; provided, however, that disposition of any charge through a plea to an amended charge shall not rebut the presumption created hereby. All other defenses to a violation of Chapter 94.80 and a charge of common law nuisance are otherwise preserved.
- (C) It shall be unlawful for the owner, occupant, or person having possession, control or management of any land within the City of Shively, Kentucky to permit a chronic nuisance thereon.
- (D) Adjudication. A Citation for a violation of Section 94.80 of the Code of Ordinances shall be brought before the Code Enforcement Board of Shively, Kentucky pursuant to and in accordance with Chapter 41 of the Shively Code of Ordinances.
- (E) Penalty for Violation.

1. Violation of this chapter shall constitute a criminal violation for which a citation may issue returnable to District Court with a fine to be assessed for each violation consistent with subsection 2 of this section, or at the option of the city, and in addition to the foregoing, a violation shall constitute a civil offense and shall be enforced pursuant to the provisions of Chapter 41.
2. Any person, firm, corporation or entity in violation of this subchapter shall be guilty of a misdemeanor and upon conviction thereof in District Court of Jefferson County, be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not more than six (6) months. Each day on which a violation occurs shall constitute a separate offense.
3. The civil penalty for violating this subchapter shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). Each day's violation shall constitute a separate offense. This subchapter is subject to enforcement by the Code Enforcement Board of the city.
4. In addition to the penalties set forth above, the Code Enforcement Board of the city may suspend and/or revoke any license issued by the City of Shively, Kentucky, to the person charged for a violation of Section 94.80, including, but not limited to, a license to do business or to traffic in alcoholic beverages. If, pursuant to a hearing, the Code Enforcement Board finds that there is an imminent and substantial threat to public safety, the Board may enter emergency orders temporarily suspending the license(s) issued by the City of Shively, Kentucky to the person so charged until a final adjudication of the matter.

SECTION 2. The sections of this ordinance shall be severable and any provision herein found to be unenforceable shall not affect the validity of the remaining provisions hereof.

SECTION 3. This ordinance shall take effect upon its adoption by the City Council and publication as required by law.

FIRST READING DECEMBER 6, 2021
SECOND READING DECEMBER 20, 2021
PASSED AND APPROVED DECEMBER 20, 2021
 Introduced by: Shanell Thompson

Beverly Chester-Burton

Beverly Chester-Burton, Mayor

Attest: *Mitzi R. Kasitz*
Mitzi R. Kasitz, City Clerk

Council	Yea	Nay
Ms. Baker	ABSENT	
Mr. Burrell	√	___
Ms. Burton-McBroom	√	___
Ms. Johnson	√	___
Ms. Thompson	√	___
Mr. Vincent	√	___