

AN ORDINANCE CREATING SECTION 14-105 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PERTAINING TO CIVIL ENFORCEMENT OF LITTERING VIOLATIONS AND PROVIDING FOR CLASSIFYING THE OFFENSE OF LITTERING PROSCRIBED BY KRS 512.070(1) AS A CIVIL OFFENSE PURSUANT TO KRS § 512.070(4) AND AUTHORIZING ISSUANCE OF CIVIL CITATIONS FOR LITTERING; DESIGNATING THE ENVIRONMENTAL HEARING BOARD AS THE CODE ENFORCEMENT BOARD HAVING AUTHORITY TO DETERMINE WHETHER A VIOLATION HAS OCCURRED; ESTABLISHING ADMINISTRATIVE PROCEDURES TO CONTEST CITATIONS; FIXING CIVIL PENALTIES FOR LITTERING VIOLATIONS IN THE FOLLOWING AMOUNTS: FIFTY DOLLARS (\$50.00), FIRST OFFENSE, UNCONTESTED; SEVENTY-FIVE DOLLARS (\$75.00), FIRST OFFENSE, CONTESTED; TWO HUNDRED DOLLARS (\$200.00), SECOND OFFENSE, UNCONTESTED; THREE HUNDRED DOLLARS (\$300.00), SECOND OFFENSE, CONTESTED; FIVE HUNDRED DOLLARS (\$500.00), THIRD OR SUBSEQUENT OFFENSE, UNCONTESTED; AND SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00), THIRD OR SUBSEQUENT OFFENSE, CONTESTED; DESIGNATING USE OF PENALTY AMOUNTS RECEIVED AS FOLLOWS: SEVENTY-FIVE PERCENT (75%) TO KEEP LEXINGTON BEAUTIFUL FOR LITTER EDUCATION AND ABATEMENT AND TWENTY-FIVE PERCENT (25%) TO THE ISSUING DIVISION OR AGENCY; AUTHORIZING LIENS AND IMPOSING PERSONAL LIABILITY FOR CIVIL PENALTIES AND COSTS OF ENFORCEMENT; AMENDING SUBSECTIONS 14-10(f)(4) and 14-10(f)(9) OF THE CODE OF ORDINANCES TO DESIGNATE CITATION OFFICERS TO ENFORCE THIS ORDINANCE; AND AMENDING SECTION 16-76 OF THE CODE OF ORDINANCES TO AUTHORIZE THE ENVIRONMENTAL HEARING BOARD TO HEAR MATTERS RELATING TO ENFORCEMENT OF THIS ORDINANCE; ALL EFFECTIVE ON JANUARY 1, 2013.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 14-105 of the Code of Ordinances be and hereby is created to read as follows:

Section 14 - 105. – Littering.

- (a) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) *Littering.* The offense of littering as defined by KRS § 512.070.
 - (2) *Citation Officer.* A peace officer or other person authorized by state law or ordinance to issue a citation for a violation of KRS § 512.070 or a citation officer identified in Section 14-10(f)(4) or Section 14-10(f)(9) of the Code.
 - (3) *Board.* The Environmental Hearing Board created pursuant to Section 16-76 of the Code.
- (b) *Civil Enforcement of Littering Violations.* Pursuant to KRS § 512.070(4), the Urban County Council hereby classifies the offense of littering proscribed by KRS § 512.070 as a civil offense enforceable in accordance with KRS § 65.8808 and the provisions of this section of the Code. Such civil enforcement is in addition to other remedies that may be available at law, including criminal prosecution under KRS § 512.070.

- (c) *Code Enforcement Board.* The Environmental Hearing Board shall be the code enforcement board having authority to determine whether there has been a littering violation.
- (d) *Enforcement.* Proceedings before the Environmental Hearing Board to determine whether there has been a littering violation shall be initiated by the issuance of a civil citation by a citation officer.
 - (1) When a citation officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a littering violation, the citation officer is authorized to issue a civil citation in the manner prescribed by Section 2B-5 of the Code. A citation officer may, in her discretion and in lieu of immediately issuing a citation, give notice of the violation and allow the person to immediately remedy the violation. If the person to whom such notice is given fails or refuses to immediately remedy the violation, the citation officer is authorized to issue a citation.
 - (2) The citation issued shall be in a form prescribed by the urban county government and shall contain the information required by Section 2B-5 of the Code. After issuing a citation to an alleged violator, the citation officer shall notify the Environmental Hearing Board by delivering the citation to the administrative official designated by the Board.
 - (3) When a littering citation is issued, the person to whom the citation is issued shall respond within seven (7) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the Environmental Hearing 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 to contest the citation and the determination that a littering violation was committed shall be considered final. In that event, the Board shall enter a final order imposing the civil fine set forth in the citation.
- (e) *Hearing.* If the alleged violator responds within seven (7) days of the date that the citation was issued by requesting, in writing, a hearing before the Environmental Hearing Board, a hearing shall be conducted in accordance with procedures set forth in Chapter 2B of the Code. The alleged violator shall be entitled to the rights described in Chapter 2B.
 - (1) If a hearing before the Environmental Hearing Board is requested, the Board, through its clerical and administrative staff, shall schedule a hearing. Pursuant to Section 2B-4(b), the Board may assign a hearing officer to conduct the hearing. Not less than seven (7) days before the date set for the hearing, the Board shall notify the person who requested the hearing of the date, time, and place of the hearing. Notice of the hearing shall be given in the manner prescribed by Section 2B-6(b) of the Code.
 - (2) If the Environmental Hearing Board conducts the hearing, or upon receipt of recommendations of a hearing officer assigned to conduct the hearing, the Environmental Hearing Board shall determine, based on the evidence presented, whether a littering violation was committed. If a hearing officer conducts the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the Board.
 - (3) If the Board determines that no littering violation was committed, an order dismissing the citation shall be entered. If the Board

determines that a littering violation has been committed, the Board shall issue an order upholding the citation and ordering the violator to pay the appropriate civil penalty specified in subsection (g). The order shall be in writing and shall include findings and conclusions of the Board and the date the order was issued. A copy of the order shall be furnished to the person named in the citation in accordance with Section 2B-6(h).

- (f) *Appeal.* An appeal from any final order issued by the Environmental Hearing Board pursuant to this section may be made to the Fayette District Court within thirty (30) days of the date the order is issued, as provided by Section 2B-7 of the Code. An appeal of the judgment of the Fayette District Court may be made to the circuit court in accordance with the rules of civil procedure. If no appeal from a final order of the Environmental Hearing Board is filed within the time period set forth in Section 2B-7, the Board's order shall be deemed final for all purposes.
- (g) *Civil Penalty.* A person found to have committed a littering violation proscribed by KRS § 512.070(1) and enforced pursuant to KRS § 512.070(4) and this section shall be subject to the following civil fines:

	Uncontested	Contested
First Violation	\$50	\$75
Second Violation	\$200	\$300
Third or Subsequent Violation	\$500	\$750

- (1) *Time Period for Subsequent Violations.* If a person commits a second, third, or subsequent littering violation within a twenty-four (24) month period, he or she shall pay the appropriate civil fine stated herein. A violation occurring more than twenty-four (24) months after a previous violation shall be treated as a first violation for the purpose of determining the appropriate civil fine.
- (2) *Designated Uses.* Civil fines collected pursuant to this section shall be designated for the following uses:
 - (a) *Keep Lexington Beautiful.* Seventy-five percent (75%) of the amounts collected as civil fines for littering violations shall be designated for Keep Lexington Beautiful for its use in litter education and abatement.
 - (b) *Issuing Division or Agency.* Twenty-five percent (25%) of the amounts collected as civil fines for littering violations shall be designated for those divisions or agencies charged with enforcement of the littering ordinance.
- (h) *Costs of Enforcement; Liens; Personal Liability.* The urban county government shall be entitled to all civil fines imposed and all charges and fees incurred by the local government in enforcing this section. The urban county government shall be entitled to enforce this section against persons found to have committed a violation of this section by final, non-appealable order of the Environmental Hearing Board by resort to all remedies described in Section 2B-8 of the Code, including a lien on property owned by the person and/or a civil action against the person responsible for the violation for all civil fines, fees, charges, and costs of enforcement. All amounts collected by the urban county government in the enforcement of this ordinance shall be designated as provided in subsection (g)(2).

Section 2 – That subsections 14-10(f)(4) and 14-10(f)(9) of the Code of

Ordinances be and hereby are amended to read as follows:

(f) *Issuance of Citations.* The mayor may designate certain officers, agents, and employees, holding the positions listed below, to issue citations with respect to the ordinances set out for their respective positions.

TABLE INSET:

Subsection	Position Title	Ordinances To Be Enforced
(4)	Code enforcement officer, nuisance control officer, code enforcement supervisor, and director of code enforcement employed in the division of code enforcement.	Code of Ordinances sections 12-1 through 12-8, 14-105, article IV of chapter 17; and subsections 17-4(g) and (j) of the zoning ordinance (per Ordinance No. 349-2005).
(9)	Parking control officers employed by or otherwise under the control of the Lexington and Fayette County Parking Authority.	Code of Ordinances sections 14-105, 18-63, 18-64, 18-106, 18-108, 18-110 through 18-112, 18-113.3 through 18-115, 18-118 through 18-131, 18-133, 18-135 through 18-138, 18-141, 18-142.

Section 3 – That Section 16-76 of the Code of Ordinance be and hereby is amended to read as follows:

Two (2) hearing boards are hereby created pursuant to KRS 65.8801 through 65.8839, one (1) to be known and referred to as the infrastructure hearing board and one (1) to be known and referred to as the environmental hearing board. The infrastructure hearing board shall hear matters regarding enforcement of ordinances by the divisions of engineering, water quality, planning, traffic engineering, and streets, roads and forestry, as specified in applicable code sections, and those portions of the zoning ordinance and subdivision regulations subject to enforcement through civil citations. The environmental hearing board shall hear matters regarding enforcement of ordinances by the division of solid waste and shall also hear matters relating to the enforcement of Section 14-105 of the code which classifies littering as a civil offense. The boards shall operate under and be subject to the provisions of chapter 2B of the code.

Section 4 – That this Ordinance shall become effective on January 1, 2013.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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