

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO COMPLY WITH THE PROVISIONS OF KRS 65.8801 ET SEQ., AND MORE SPECIFICALLY RENUMBERING AND AMENDING THE SECTIONS OF CHAPTER 2B OF THE CODE TO PROVIDE FOR THE APPLICATION OF THE CHAPTER TO ALL ADMINISTRATIVE HEARINGS RELATED TO THE ISSUANCE OF CIVIL FINES; DEFINITIONS; LIMITATIONS ON BOARD MEMBERS; SPECIAL OR EMERGENCY MEETINGS; ADMINISTRATIVE APPEALS TO TAKE PLACE BEFORE HEARING OFFICERS AND ESTABLISHING THEIR ELIGIBILITY, EXPERIENCE, AND TRAINING; ADMINISTRATIVE ENFORCEMENT PROCEEDINGS, CITATIONS, WAIVERS OF APPEALS, AND FINAL ORDERS; NOTIFICATION OF HEARINGS AND NOTICE OF FINAL ORDERS, OATHS, SUBPOENAS, FINDINGS OF FACT, NOTIFICATION, APPEALS, AND THE DESIGNATION OF A SECRETARY TO THE BOARD; AFFIDAVIT FOR LIENS; CHARGES, FEES, AND ABATEMENT COSTS, THE RIGHTS OF THE PROPERTY OWNER AS TO OTHER SECURED PARTIES, THE INSTITUTION OF LEGAL PROCEEDINGS AND THE CREATION AND IMPLEMENTATION OF A NOTIFICATION SYSTEM; AMENDING SUBSECTIONS 13-73.2(1), (2), (6), (7) AND (8) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE, CITATIONS, MAXIMUM FINES RANGING FROM \$25.00 TO \$300.00 BASED UPON THE NUMBER OF VIOLATIONS WITHIN ANY CALENDAR YEAR, AND THE ABILITY TO TAKE AN ALARM USER AWARENESS CLASS IN ORDER TO AVOID PAYING A FINE; AMENDING SECTION 13-73.3 OF THE CODE TO PROVIDE AN APPEAL TIME FOR WARNING NOTICES, ORDERS OF SUSPENSION OR REVOCATION, OR CITATIONS; AMENDING SUBSECTIONS 13-73.4(2) AND (3) OF THE CODE TO PROVIDE FOR ASSIGNED HEARING OFFICERS; AMENDING SUBSECTION 16-34.1(C) OF THE CODE TO PROVIDE FOR ABATEMENT PURSUANT TO CHAPTER 2B OF THE CODE; AMENDING SUBSECTIONS 16-50(A) AND (G) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE AND THE ISSUANCE OF MAXIMUM CIVIL FINES RANGING FROM \$400.00 TO \$1,000.00 BASED UPON THE NUMBER OF CITATIONS WITHIN ANY 12-MONTH PERIOD; AMENDING SUBSECTION 16-76.1(C) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE AND REPEALING SUBSECTIONS 16-76.1(D), (E), AND (F); AMENDING SECTION 16-77 OF THE CODE TO PROVIDE FOR ASSIGNED HEARING OFFICERS AND THE APPLICATION OF CHAPTER 2B OF THE CODE; AMENDING SUBSECTIONS 16-202(B) AND (D) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE; AMENDING SUBSECTIONS 16-205(A), (B), AND (D) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE AND REPEALING SUBSECTION 16-205(E); AMENDING SUBSECTIONS 16-206(C), (F) AND (G) OF THE CODE TO REFERENCE SECTION 2B-9 OF THE CODE, AND REPEALING SUBSECTIONS 16-206 (H) AND (I); AMENDING SUBSECTION 17-4(D) OF THE CODE TO PROVIDE FOR THE APPLICATION OF CHAPTER 2B OF THE CODE; AMENDING SECTION 17-4.1 OF THE CODE TO REFERENCE CITATIONS AND SUBSECTION 6-8(K) OF THE LAND SUBDIVISION REGULATIONS OF THE ZONING ORDINANCE, AND TO PROVIDE FOR MAXIMUM CIVIL FINES RANGING FROM \$100.00 TO \$500.00 BASED UPON THE NUMBER OF CITATIONS WITHIN ANY 12-MONTH PERIOD AND ALLOWING FOR RECOVERY OF RELATED COSTS AND FEES; AMENDING SECTIONS 17-4.2 AND 17-4.3 OF THE CODE TO ADD ASSIGNED HEARING OFFICERS; AMENDING SECTION 17-4.8 OF THE CODE TO REFERENCE SECTION 2B-9 OF THE CODE PERTAINING TO LIENS; AMENDING SUBSECTION 17B-13(C) OF THE CODE TO PROVIDE FOR MAXIMUM CIVIL FINES RANGING FROM \$200.00 TO \$500.00 BASED UPON THE NUMBER OF CITATIONS WITHIN ANY 12-MONTH PERIOD; ALL EFFECTIVE ON JANUARY 1, 2017.

WHEREAS, House Bill 422 was enacted during the 2016 General Legislative Session and requires the Lexington-Fayette Urban County Government to make certain changes to its existing ordinances related to administrative hearing boards; and

WHEREAS, Lexington-Fayette Urban County Government wishes to conform to the requirements of House Bill 422 in order to continue to utilize civil fines and remedial orders and to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with certain ordinances in force within Lexington-Fayette County;

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

Section 1 - That Section 2B-1 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 2B-1. Administrative hearing boards.

This chapter of the code of ordinances is adopted pursuant to KRS 65.8801, et seq. It is the intent of the urban county government that it apply to all administrative hearing boards of the urban county government which are empowered to hear appeals related to the issuance of civil fines unless expressly stated otherwise. All civil fines for violations of ordinances shall be as provided in the applicable chapter or section of the code.

Section 2 - That Section 2B-2 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 2B-2. Definitions.

The following words, terms and phrases, when used in this chapter and the code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Abatement Costs" means the urban county government's necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve the public health, safety and welfare in accordance with any ordinance.

(b) "Code Enforcement Board" or "Board" means an administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839 and this chapter.

(c) "Code Enforcement Officer" means a police officer, peace officer, safety officer, citation officer, or other person authorized by state law or ordinance to issue a citation for a violation of a particular ordinance.

(d) "Final Order" means any order:

- (1) Issued by an assigned hearing officer in accordance with section 2B-7;
- (2) Created because a violator neither paid nor contested the citation within seven (7) days as provided in section 2B-6; or
- (3) Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in section 2B-7.

(e) "Imminent Danger" means a condition which is likely to cause serious or life-threatening injury or death at any time.

(f) "Owner" means a person, association, corporation, partnership or other legal entity having a legal or equitable title in real property.

(g) "Premises" means a lot, plot or parcel of land, including any structures upon it.

Section 3 - That Section 2B-2 of the Code of Ordinances be and hereby is renumbered to Section 2B-3 of the Code, and subsection 2B-3(j) of the Code is created to read as follows:

Sec. 2B-3. Membership of board.

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(j) No member of a Board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the urban county government.

Section 4 - That Section 2B-3 of the Code of Ordinances be and hereby is renumbered to Section 2B-4 of the Code, and subsection 2B-4(b) of the Code is amended to read as follows:

Sec. 2B-4. Organization; meetings.

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(b) Meetings of each board shall be held as specified in the ordinance creating that board. A Board or assigned hearing officer shall be authorized to conduct special or emergency meetings in accordance with the Kentucky Open Meetings law.

Section 5 - That Section 2B-4 of the Code be and hereby is renumbered to Section 2B-5 of the Code, and is amended to read as follows:

Sec. 2B-5. Powers; Hearing Officers.

(a) The Board shall have the power to adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of KRS 65.8801 to 65.8839 and any applicable ordinances.

(b) The Board shall conduct all hearings through the use of assigned hearing officers, who shall determine whether there has been a violation of any local government ordinance that the Board has jurisdiction to enforce.

(c) The following shall apply to all hearing officers, hearings, Final Orders, and appeals:

(1) Eligibility. The Board may assign any of its members, including the chair, to be a hearing officer. The Board may also assign an individual who is not a member of the board as long as he or she does not hold any elected or appointed office or position of employment with the urban county government.

(2) Experience and training. All hearing officers shall have experience or shall have received training in the code enforcement process and basic procedural due process and as otherwise required by state law. The Board may also establish additional standards in writing, including but not limited to examples of qualifying experience and training, and minimum amounts of experience or training required.

Section 6 - That Section 2B-5 of the Code of Ordinances be and hereby is renumbered to Section 2B-6 of the Code, and is amended to read as follows:

Sec. 2B-6. Enforcement proceedings; citations.

The following requirements shall govern all administrative enforcement proceedings:

(a) Enforcement proceedings shall be initiated by the issuance of a citation by a Code Enforcement Officer.

(b) When a Code Enforcement Officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of an ordinance, the officer is authorized to issue a 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 of the United States Postal Service to the owner of record of the property if no one is on the premises at the time the citation is issued.

A Code Enforcement Officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time if authorized by ordinance for a violation of that nature. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation. Nothing in this section shall prohibit the government from taking immediate action if necessary as further provided in section 2B-10 or the applicable ordinance.

(c) The citation issued by the Code Enforcement Officer shall be in a form prescribed by the urban county government and shall contain, in addition to any other information required by ordinance or rule of the Board:

- (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 (if the ordinance establishing the fine provides for such an option);
- (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 an administrative hearing to contest the citation and that the determination that a violation was committed shall be final and the person shall be deemed to have waived his or her right to appeal.

(d) After issuing a citation to an alleged violator, the Code Enforcement Officer shall notify the Code Enforcement Board by delivering the citation to the administrative official designated by ordinance or by the Board.

(e) When a citation is issued, the person to whom the citation is issued shall respond to the citation 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, an administrative hearing 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 violation was committed shall be considered final. In this event, the citation, as issued, shall be deemed a Final Order determining that a violation was committed and imposing

the civil fine as set forth in the citation, and the person shall be deemed to have waived his or her right to an appeal.

Section 7 - That Section 2B-6 of the Code of Ordinances be and hereby is renumbered to Section 2B-7 of the Code, and is amended to read as follows:

Sec. 2B-7. Hearings and procedure.

(a) When an administrative hearing is requested a hearing shall be scheduled. Not less than seven (7) days before the date set for the hearing, the person who requested the hearing will be notified in writing of the date, time, and place of the hearing. The notice may be given by regular first-class mail; 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 (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing 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. In this event, the citation, as issued, shall be deemed a Final Order determining that a violation was committed and imposing the civil fine set forth in the citation, and the person shall be deemed to have waived his or her right to an appeal. Notice of the Final Order shall be provided to the cited violator in the manner set forth in paragraph (i), below.

(b) Any party to an administrative hearing may participate in person or may be represented by counsel. Each case that is the subject of a hearing may be presented by an attorney selected by the urban county government or by a member of the administrative staff of the government. An attorney may either be counsel to the Code Enforcement Board and the assigned hearing officer or may represent the urban county government by presenting cases at the hearing, but in no case shall an attorney serve in both capacities.

(c) A hearing officer may administer oaths to witnesses prior to their testimony and subpoena alleged violators, witnesses, and evidence to the hearing to which the officer is assigned.

(d) All testimony shall be under oath and shall be recorded. The hearing officer shall take testimony from the Code Enforcement Officer, the alleged offender, and any witnesses to the alleged violation offered by the Code Enforcement Officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Any person, upon request, may receive a copy of the recording, provided, however, that the party making the request shall be responsible for the cost of any transcript or copy.

(e) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party, or if such practice is authorized by statute. Any party shall have the right, upon reasonable request, to inspect the documentary or tangible evidence relating to an administrative hearing, either in person or through counsel. Copies of documentary evidence may be obtained by parties upon the payment of a fee, except where disclosure is protected by state or federal law.

(f) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(g) The hearing officer may take official notice of any matter of which a court of the Commonwealth of Kentucky may take such notice.

(h) Following a hearing, the hearing officer shall make written findings of facts and conclusions of law, and enter a Final Order which includes the date the order was issued. When a hearing officer determines that no violation was committed, an order dismissing the citation shall be entered. When a hearing officer determines that a violation has been committed, an order shall be issued upholding the citation and the hearing officer may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the

imposition of a fine, or both.

(i) Within twenty-four (24) hours of entry, these findings, conclusions, and Final Order shall be forwarded to the violator(s), and to the Board. The findings, conclusions, and order may be delivered to the violator(s) at the conclusion of the hearing or by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the documents 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 delivery.

(j) A violator(s) may appeal a Final Order issued as a result of a hearing directly to Fayette District Court, in accordance with section 2B-8.

(k) The chief administrative officer shall designate a staff person to serve as secretary to each Board. The secretary shall file a detailed record of all proceedings in the office of the appropriate commissioner or director.

Section 8 - That Section 2B-7 of the Code of Ordinances be and hereby is renumbered to Section 2B-8 of the Code, and is amended to read as follows:

Sec. 2B-8. Appeals.

(a) An appeal from any Final Order issued by a hearing officer may be made to the Fayette 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 Final Order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

(b) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Kentucky Rules of Civil Procedure.

(c) If no appeal from a Final Order issued by a hearing officer is filed within the time period set forth in this section, the order shall be deemed final for all purposes.

(d) Pursuant to state law and this chapter, the failure to timely utilize the administrative hearing process to challenge a citation or to appear at the administrative hearing shall result in a Final Order which is not appealable.

Section 9 - That Section 2B-8 of the Code of Ordinances be and hereby is renumbered to Section 2B-9 of the Code, and is amended to read as follows:

Sec. 2B-9. Liens; personal liability; releases; notifications.

(a) The urban county government shall possess a lien on property owned by the person found by a Final Order, or by a final judgment of the court, to have committed a violation of a local government ordinance for all civil fines assessed for the violation and for all charges and fees incurred by the government in connection with the enforcement of the ordinance including abatement costs. An affidavit of the Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 65.8801 to KRS 65.8839. 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. The lien shall take precedence over all other subsequent liens, except state, county, school board, and city taxes unless otherwise provided by law, and may be enforced by judicial proceedings.

(b) In addition to the remedy prescribed in subsection (a) of this section, the person found to have committed the violation shall be personally responsible for the amount of the lien, including all civil fines associated for the violation and for all charges, fees, and abatement costs incurred by the local government in connection with the enforcement of the ordinance. The urban county government may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

(c) Pursuant to state law, nothing in this section shall otherwise affect the rights or obligation between the owner of the property and those persons who claim a security interest in the property.

(d) The mayor is authorized and directed to execute a release of the lien:

- (1) Upon payment in full of all civil fines, charges and fees evidenced by the lien, together with applicable interest,
- (2) Upon conclusion of court proceedings resulting in the sale of the property regardless of whether any part of the liens, charges and fees were paid from the proceeds of the sale, or
- (3) Upon a determination made in conjunction with the commissioner of law and the appropriate commissioner or director that the cost of collection of the lien would be greater than the lien itself, or when intervening in existing litigation is not cost effective, or when the lien would not be enforceable as a matter of law.

(e) The commissioner of law is hereby authorized to make the determination that liens shall not be filed if the cost of collection of the lien would be greater than the lien itself, or when intervening in existing litigation is not cost effective, or when the lien would not be enforceable as a matter of law.

(f) The commissioner of law is hereby authorized to institute proceedings, in the name of the urban county government, in any court having jurisdiction over such matter, to enforce any liability or lien arising under a civil enforcement action taken pursuant to this chapter of the code.

(g) The urban county government shall implement a system for notification to lienholders that meets the minimum requirements of KRS 65.8836 and that permits remedial action by lienholders as required by the statute. The personnel responsible for administering this section shall be as directed by the chief administrative officer.

Section 10 - That Section 2B-9 of the Code of Ordinances be and hereby is renumbered to Section 2B-10 of the Code, and is amended to read as follows:

Sec. 2B-10. Immediate action by government.

Nothing contained in this chapter shall prohibit the urban county government from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the existence of the violation presents imminent danger, 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.

Section 11 - That subsections 13-73.2(1), (2), (6), (7), and (8) of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 13-73.2. - False alarms.

(1) When an alarm system generates a false alarm in any calendar year, the alarm administrator shall issue a warning notice to the alarm user and the alarm company providing service for that alarm system informing them that subsequent false alarms within the same calendar year may subject the alarm user to civil fine. Unless otherwise specified herein, the provisions of chapter 2B of the code of ordinances shall apply to all civil enforcement.

(2) Any alarm system that has four (4) or more false alarms in any calendar year shall subject the alarm user to a maximum civil fine, which must be issued in the form of the citation specified in section 2B-6 of the code of ordinances, as follows:

Violation Maximum Civil Fine

- Fourth \$25.00
- Fifth \$60.00
- Sixth \$125.00
- Seventh \$200.00
- Eighth \$250.00
- Ninth \$300.00

If the alarm user does not contest the citation issued for a false alarm, then the civil fine shall be in the amount of the citation.

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(6) Alarm users shall have the option of attending the alarm user awareness class approved or created by the alarm administrator in lieu of paying one (1) civil fine. An alarm system user who elects to attend an alarm user awareness class shall not be eligible to attend the alarm user awareness class more than once and must notify the alarm administrator in writing of the decision to take the class prior to the deadline for filing an appeal.

(7) Any person operating an alarm system without the required license or permit or while the required license or permit is suspended or revoked shall be subject to an additional civil fine of one hundred dollars (\$100.00) for each false alarm, which shall be issued in the form of the citation specified in section 2B-6 of the code of ordinances.

(8) If cancellation occurs before the responding local law enforcement agency arrives at the alarm site the alarm will not be considered a false alarm and no warning notice or citation will be issued.

Section 12 - That Section 13-73.3 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 13-73.3. - Appeal of warning notice, civil fines, suspension and revocation.

Any person who has received a warning notice, a citation or an order of suspension or revocation shall have a right to appeal such order to the alarm advisory board. Any appeal of an order of a warning notice or an order of suspension or revocation must be in writing and shall be filed with the alarm administrator within ten (10) days of receipt of the notice or order. An appeal from a citation must comport with the requirements of section 2B-6 of the code of ordinances (i.e., filed within seven (7) days). All appeals will be heard by an assigned hearing officer as provided in section 2B-5 of the code of ordinances using the process provided in chapter 2B of the code.

Section 13 - That subsections 13-73.4 (2) and (3) of of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 13-73.4. - Reinstatement.

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(2) If after a reinstatement conference the alarm administrator finds that the petitioner has failed to establish that permit or license reinstatement and renewed use of the system will not result in excessive false alarms and will not constitute a public nuisance, the suspension or revocation shall remain in effect and the petitioner may appeal the ruling to an assigned hearing officer acting for the alarm advisory board.

(3) If after an appeal the assigned hearing officer finds that the petitioner has failed to establish that permit or license reinstatement and renewed use of the system will not result in excessive false alarms and will not constitute a public nuisance, the suspension or revocation shall remain in effect. If, after the initial reinstatement conference or after an appeal, the petitioner has established through proof of renewed user training, system maintenance, modification or

repair that permit or license reinstatement and use of the system will not result in excessive false alarms and will not constitute a public nuisance, the order of suspension or revocation shall be dissolved upon submission of a new permit application and payment of a nonrefundable reinstatement fee of fifteen dollars (\$15.00).

Section 14 – That subsection 16-34.1(c) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16-34.1. - Failure to maintain privately owned roadways or alleyways declared nuisance.

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(c) Any person who causes or maintains a nuisance in violation of subsections (a) and (b) of this section is subject to having the nuisance abated by the urban county government at the expense of that person pursuant to chapter 2B of the code of ordinances.

Section 15 - That subsections 16-50(a) and (g) of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 16-50. - Penalty.

(a) Except as otherwise specified herein, the provisions of chapter 2B of the code of ordinances shall apply to all civil enforcement actions. Any person found to be violating any provision of sections 16-36 through 16-46 or 16-48 through 16-55, or any provision of a permit or order issued under these sections, shall, for the first violation of such section, be served by the urban county government with written notice of violation stating the nature of the violation and providing a reasonable time period of at least twenty-four (24) hours for the satisfactory correction thereof. The offender shall, within the time stated in such notice, permanently cease all violations. No notice of violation shall be required prior to the issuance of a citation for any offense which occurs after the first citation is issued to a person or entity for the same property address.

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(g) For violation of sections 16-37, 16-38, 16-40, 16-40.1, 16-41, 16-44 or 16-48 the civil fines associated with the issuance of a citation are as follows:

(1) Upon issuance of the first citation for violation of these sections within any twelve-month period the maximum fine shall be four hundred dollars (\$400.00).

(2) Upon the issuance of the second citation for violation of these sections within any twelve-month period the maximum fine shall be six hundred dollars (\$600.00).

(3) Upon issuance of the third citation for violation of these sections within any twelve-month period the maximum fine shall be eight hundred dollars (\$800.00).

(4) Upon issuance of the fourth or more citation for violation of these sections within any twelve-month period the maximum fine shall be one thousand dollars (\$1,000.00).

Section 16 - That subsections 16-76.1(d), (e), and (f) of the Code of Ordinances be and hereby are repealed in their entirety, and subsection 16-76.1(c) of the Code is amended to read as follows:

Sec. 16-76.1. - Members.

(c) Terms and qualification: Appointed board members, and alternate members shall serve a term of three (3) years from the date of appointment, provided that the terms of those originally appointed shall be for one (1) year, two (2) years, and three (3) years, so as to be staggered in the manner required by KRS 65.8811 and shall be subject to the provisions of section 2B-3 of the code of ordinances. All administrative hearings shall take place before an assigned hearing officer in conformity with chapter 2B of the code.

Section 17 - That Section 16-77 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16-77. - Meetings.

The board or its assigned hearing officer shall meet on a designated day of each calendar month, as established by the board, if written applications for appeal have been filed or other business is pending before the board, or at such other times as deemed necessary by the board. The board secretary shall give public notice of board meetings or administrative hearings in conformity with chapter 2B of the code. An application for appeal shall not be heard by the assigned hearing officer until the required public notice has been given.

Section 18 - That subsections 16-202(b) and (d) of the Code of Ordinances be and hereby are amended to read as follows:

Sec. 16-202. Enforcement; response authorities; rights; remedies.

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(b) Civil citations: Any person who violates any provision of chapter 16 shall for every civil offense be subject to civil fine for each day the violation continues based upon the provisions in section 16-203. All civil citations issued for violations of any provision of chapter 16 shall be issued by an authorized Code Enforcement Officer or a peace officer and shall contain the information required in chapter 2B of the code and a cross-reference to the notice of violation or administrative order that describes the corrective or remedial measures to be taken by the violator to address the violation. The notice of violation or administrative order may be attached to the citation.

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(d) All notices of violation and administrative orders may be served upon the responsible party by personal service or by regular mail, and if the responsible party is not the property owner, a copy shall also be provided to the property owner (or, where appropriate, his designee pursuant to subsection 16-10(e)), by personal service or by fax transmission or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll or to the designee's address. All citations shall be served in conformity with section 2B-6 of the code and are appealable as provided in chapter 2B of the code.

Section 19 - That subsection 16-205(e) of the Code of Ordinances be and hereby is repealed in its entirety, and subsections 16-205(a), (b), and (d) of the Code are amended to read as follows:

Sec. 16-205. - Appeal.

(a) Any person affected by a determination of the director of environmental services under subsections 16-4(b)(3) or 16-4.1(c), or the assessment of a civil fine in a civil citation issued in connection with the enforcement of article II, shall have the right to be granted a hearing on the matter. To perfect an appeal such person shall file, with the environmental hearing board, or its designee, a written request for such hearing and the grounds therefore within the time established under section 2B-6 of the code. A notice of violation issued pursuant to section

16-202(a)(2)(a) is not a final determination and shall not be subject to appeal under this section.

(b) Any person affected by a determination of the director of environmental policy under section 16-202, the assessment of a civil fine in a civil citation issued in connection with the enforcement of this chapter, or any administrative order issued pursuant to this article, shall have the right to request and shall have granted a hearing on the matter. To perfect an appeal such person shall file, with the infrastructure hearing board as set forth in article IX, or its designee, a written request for such hearing and the grounds therefore in the manner and time specified in section 2B-6 of the code. A notice of violation issued pursuant to subsection 16-202(a)(2)(a) is not a final determination and shall not be subject to appeal under this section.

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(d) All appeals shall be as specified in chapter 2B of the code.

Section 20 - That subsections 16-206(h) and (i) of the Code of Ordinances be and hereby are repealed in their entirety, and subsections 16-206(c), (f), and (g) of the Code are amended to read as follows:

Sec. 16-206. - Expenses; violation of chapter 16; abatement by the urban county government; other enforcement actions.

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(c) When there is reason to believe that the violation of chapter 16 presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the continuation of the violation would be irreparable, irreversible, or otherwise detrimental to the environment, the urban county government may abate the conditions without prior notice. In such cases the government may, in addition to any civil fine imposed on the violator, charge the responsible person with an administrative fee of two hundred and fifty dollars (\$250.00) and with the costs for any expense, loss or damage incurred by the urban county government by reason of such violation. Said person shall also be liable for the costs of repairing or restoring any sanitary sewer, stormwater control device, or other infrastructure or stream that is damaged, obstructed or impaired by such violation to its pre-existing condition. The urban county government may file a lien for the costs of such abatement in accordance with section 2B-9 of the code and this article. Citations, if issued, shall not preclude the government from abating the conditions and billing the responsible person, persons, or entities for the cost of abatement.

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(f) The urban county government may file a lien for the cost of such abatement under subsections (c) and (d) in accordance with section 2B-9 of the code and this article.

(g) Pursuant to 401 KAR 5:057 Section 6, relating to pretreatment program requirements, the names of all industrial dischargers that significantly violated applicable pretreatment standards in the previous twelve (12) months will be published in the largest local daily newspaper at least annually.

Section 21 - That subsection 17-4(d) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-4. - Maintenance of number display; defacement; noncompliance, penalties.

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(d) Alternative civil enforcement. Except as otherwise specified herein, the provisions of chapter 2B of the code of ordinances shall apply to all civil enforcement actions. As an alternative remedy to the criminal penalties contained in this section, any person who violates any provision of sections 17-2 through 17-4, or subsection 6-8(k) of the Land Subdivision Regulations of the Zoning Ordinance, may be assessed civil fines of not less than fifty dollars

(\$50.00) nor more than five hundred dollars (\$500.00), pursuant to the civil fine guidelines in section 17-4.1.

Section 22 - That Section 17-4.1 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-4.1. - Notice of violation; fines.

(a) Notice of violation. Prior to issuing the initial civil citation for any violation, the director, enhanced 911 or his representative, who shall be referred to hereinafter as the "code enforcement officer", may first issue a written notice of violation. The notice of violation shall provide the following:

- (1) The date and time of issuance;
- (2) The name and address of the person to whom the notice of violation is issued;
- (3) The date and time the offense was committed;
- (4) The facts constituting the offense;
- (5) The section of the code of ordinances or zoning ordinance violated;
- (6) The name of the code enforcement officer issuing the notice of violation;
- (7) The period of time within which the violation must be corrected in order to avoid the issuance of a citation; and
- (8) A statement to the effect that the failure to abate or correct the violation may result in the issuance of a citation and civil fine in the amounts set forth in this section.

(b) The provisions of chapter 2B of the code shall apply to the issuance of all civil citations and the administrative hearing process.

(c) Notices of violation shall be served upon the person in violation, which in most instances shall be the owner of the property where the violation(s) exists. The following methods of service are deemed to be sufficient: any method of personal service recognized under Kentucky law and/or the Kentucky Rules of Civil Procedures; mailing the notice via regular U.S. mail to the last known address of that person as it appears on the current tax assessment roll; delivery of the notice by certified mail, return receipt requested; or in the event that the address of the person in violation cannot readily be ascertained from the tax rolls in the exercise of reasonable diligence, publication in a newspaper of general circulation for two (2) consecutive days upon the code enforcement officer making an affidavit to that effect. If notice is made by publication, a copy of such notice shall also be posted in a conspicuous place on the premises affected by the notice. All costs incurred in serving a person are recoverable. Any person may designate, in writing on a form provided by and filed with the division of enhanced 911, the name and address to where any notice or citations can be provided, and service to said name and address shall be sufficient. However, such designation does not shift or change the responsibility for compliance with the provisions of sections 17-2 to 17-4 to the designee, instead of the designating person. All citations shall be served in the manner specified in section 2B-6 of the code.

(d) Civil fines assessed for violations of sections 17-2 through 17-4 or subsection 6-8(k) of the Land Subdivision Regulations of the Zoning Ordinance shall be based on the number of citations issued within a twelve-month period as follows:

- (1) The civil fine imposed upon the issuance of the first citation within any twelve-month period shall be a maximum of one hundred dollars (\$100.00);

- (2) The civil fine imposed upon the issuance of the second citation within any twelve-month period shall be a maximum of two hundred dollars (\$200.00);
- (3) The civil fine imposed upon the issuance of the third citation within any twelve-month period shall be a maximum of three hundred dollars (\$300.00);
- (4) The civil fine imposed upon issuance of the fourth or more citation of the same nature within any twelve-month period shall be a maximum of five hundred dollars (\$500.00); and
- (5) All fines may also include all charges and fees incurred by the government in connection with enforcement, including but not limited to an administrative fee of seventy-five dollars (\$75.00) and the costs of service, publication, and recording.

Section 23 - That Section 17-4.2 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-4.2. - Address enforcement administrative hearing board.

A hearing board is hereby created pursuant to KRS 65.8801 through 65.8839, to be known and referred to as the address enforcement administrative hearing board or address hearing board, with any administrative appeals to be heard by an assigned hearing officer pursuant to chapter 2B of the code, to address matters regarding enforcement of ordinances by the department of public safety through its division of enhanced 911, as specified in code sections 17-2 through 17-4. The board shall be composed of three (3) members. Two (2) alternate members may serve on the board in the absence of regular members. The board shall operate under and be subject to the provisions of chapter 2B of the code.

Section 24 - That Section 17-4.3 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-4.3. - Meetings.

The board (or its assigned hearing officer in the event of an administrative hearing) shall meet on a designated day of each calendar month, as established by the board, if written applications for appeal have been filed, or other business is pending before the board, or at such other times as deemed necessary by the board. All meetings shall be noticed as required under chapter 2B of the code.

Section 25 - That Section 17-4.8 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17-4.8. - Lien(s).

Section 2B-9 of the code shall apply to all liens recorded for violations of sections 17-2 through 17-4 of the code or subsection 6-8(k) of the Land Subdivision Regulations of the Zoning Ordinance.

Section 26 - That subsection 17B-13(c) of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-13. Violation.

* * * * *

(c) For violations of this chapter, the civil fines associated with the issuance of a civil citation are as follows:

- (1) Upon issuance of the first citation within any 12-month period the civil fine shall be a maximum of two hundred dollars (\$200.00).
- (2) The civil fine imposed upon the issuance of the second citation for violation of the same section of this chapter within any 12-month period shall be a maximum of three hundred dollars (\$300.00).
- (3) The civil fine imposed upon issuance of the third citation for violation of the same section of this chapter within any 12-month period shall be a maximum of four hundred fifty dollars (\$450.00).
- (4) The civil fine imposed upon issuance of the fourth or more citation for violation of the same section of this chapter within any 12-month period shall be a maximum fine of five hundred dollars (\$500.00).

Section 27 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 28 - That this Ordinance shall become effective on January 1, 2017.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:

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