

Code Enforcement Board

- 35.095 Definitions
- 35.096 Creation and membership
- 35.097 Powers
- 35.098 Appointment of members; term of office; removal from office; oath; and compensation
- 35.099 Organization of Board; meetings; quorum; and alternate Board Members
- 35.100 Jurisdiction
- 35.101 Powers of Code Enforcement Officers
- 35.102 Powers of the Code Enforcement Board
- 35.103 Enforcement proceedings
- 35.104 Hearing; notice and final order
- 35.105 Legal counsel
- 35.106 Appeals; final judgment
- 35.107 Ordinance fine schedule
- 35.108 Liens; fines; charges and fees

CODE ENFORCEMENT BOARD

§ 35.095 DEFINITIONS.

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

"CODE ENFORCEMENT BOARD." An administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 through 65.8839, and as the administrative body created and acting under the authority of KRS 82.700 et seq., the Local Government Nuisance Code Enforcement Act.

"CODE ENFORCEMENT OFFICER." A city police officer, safety officer, citation officer, or other public law enforcement officer with the authority to issue a citation.

"ORDINANCE." An official action of a local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinance by the city legislative body which embodies all or part of an ordinance.

"PERSON." An individual, or a partnership, an association, a corporation or other legal entity.

"VIOLATOR." An individual, a partnership, an association, or a corporation, or other legal entity.
(Ord. 2003-11, passed 9-16-03; Am. Ord. 2011-9, passed 9-12-11)

§ 35.096 CREATION AND MEMBERSHIP.

There is hereby created pursuant to KRS 65.8801 through KRS 65.8839, within the city, a Code Enforcement Board, which shall be composed of three members, all of whom shall be residents of the city for a period of at least one year prior to the creation of the Board and shall reside there throughout the term in office.

(Ord. 2003-11, passed 9-16-03)

§ 35.097 POWERS.

(A) The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances 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 and any moving motor vehicle offense.

(Ord. 2003-11, passed 9-16-03)

§ 35.098 APPOINTMENT OF MEMBERS; TERM OF OFFICE; REMOVAL FROM OFFICE; OATH; AND COMPENSATION.

(A) Members of the Code Enforcement Board shall be appointed by the executive authority of the city by executive order, subject to the approval of the legislative body.

(B) (1) The initial appointment to the Code Enforcement Board shall be as follows:

- (a) One member appointed to a one year term;
- (b) One member appointed to a two year term; and
- (c) One member appointed to a three year term.

(2) All subsequent appointments shall be for a term of three 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 alternate members to serve on the Code Enforcement Board in the absence of regular members. Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply to regular members of the Code Enforcement Board.

(D) Any vacancy on the Board shall be filled by the executive authority by executive order, subject to approval of

the legislative body, within 60 days of the vacancy. If the vacancy is not filled within that time period, the remaining Code Board members shall fill the vacancy, by an order of the Board.

(E) A Code Board member may be removed from office by the executive authority for misconduct, inefficiency, or willful neglect of duty, including, but not limited to prolonged unexcused absences. The executive authority must submit 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) Board members may be reimbursed customary expenses or receive compensation or both as authorized by the City Council.

(H) No member of the Code Enforcement Board may hold any elected or nonelected office, paid or unpaid, or any position of employment with the city.
(Ord. 2003-11, passed 9-16-03; Am. Ord. 2009-6, passed 4-13-09)

§ 35.099 ORGANIZATION OF BOARD; MEETINGS; QUORUM; AND ALTERNATE BOARD MEMBERS.

(A) The Board shall annually elect a Chairperson and Secretary from among its members. The Chair shall be the presiding officer and a full voting member of the Board.

(B) Regular meetings of the Code Enforcement Board shall be held, as needed, on the fourth Thursday of every month at 6:30 p.m. at Elkton City Hall. Meetings 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) Two of the three members shall constitute a quorum.

(E) The affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken.

(F) Any member 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 or herself from voting on the matter and shall not be counted for the purposes of establishing a quorum.

(G) 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.

(H) Pursuant to KRS 65.8815(6) clerical and administrative support may be provided by the City Clerk's office within the limitations provided by the City Council.
(Ord. 2003-11, passed 9-16-03; Am. Ord. 2006-1, passed 4-10-06)

§ 35.100 JURISDICTION.

The Code Enforcement Board shall have jurisdiction to enforce and shall enforce those city ordinances and code provisions which specifically provide for Code Board Enforcement.

(Ord. 2003-11, passed 9-16-03)

§ 35.101 POWERS OF THE CODE ENFORCEMENT OFFICERS.

The city's Code Enforcement Officers shall have the authority to take all actions necessary to enforce all ordinances, which fall under this chapter; such authority shall include, but not be limited to, the following powers and duties:

(A) To enter upon private property, only after receiving written approval from the property owner or a search warrant, for the purpose of inspection or enforcement of this subchapter, after both personal contact and a courtesy letter have been sent neither of which produces a correction of the violation from the owner or responsible person after a reasonable period of time, and further inspection appears to be appropriate and necessary due to the failure to correct the discrepancy or violation of the subchapter about which the owner or other responsible person has been notified, and given reasonable time to correct.

(B) To apply for and obtain a search warrant, if necessary;

(C) To issue notices of violation and warnings regarding those violations;

(D) To exercise discretion in allowing those who violate ordinances periods of time in which to cure the violations and comply with the ordinances;

(E) To monitor property for compliance with ordinances;

(F) To file a notice of lien against real estate;

(G) To cause the lien to be enforced; and

(H) To do all other things and take all other actions reasonably necessary to carry out the intent and purpose of, and to enforce, this chapter.

(Ord. 2003-11, passed 9-16-03; Am. Ord. 2004, passed 9-13-04;
Am. Ord. 2008-6, passed 6-16-08)

§ 35.102 POWERS OF THE CODE ENFORCEMENT BOARD.

The 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, specifically including, but not limited to:

(1) Abatement of Violation. If the owner of property in violation of any city ordinance enforced under this chapter fails to properly cure or remedy the violation within the time prescribed in the notice of violation or within the time given by this subchapter following the entry of an order by the Code Enforcement Board, whichever is later, then the city, in its discretion and without obligation, may enter upon the real estate and take such action as it deems appropriate to cure the violation and abate the nuisance. Such action may include, but not be limited to, the cutting or removing of grass and weeds, the removal of trash, debris, garbage, commercial refuse, building material, waste, junk, litter, overgrowth vegetation, dead and deteriorated trees and other matter constituting a violation;

(2) Assertion of Lien. The city shall have the right to assert a lien against the real estate for the reasonable value of labor, materials, and equipment used in remedying the situation, together with all civil penalties, together with all attorneys' fees, costs, and expenses incurred by the city as a result of enforcing any ordinance and the lien. The 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 the ordinance, and 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

thereafter at the rate of 12% per annum until paid. The lien created shall be superior to and have priority over all other liens, except state, county, school board and city taxes, and may be enforced by judicial proceedings. In addition to enforcement of the lien described above the owners of real estate upon which a lien has been attached pursuant to this subchapter shall be jointly and severably liable for the amount of the lien, including all interest, civil penalties, attorneys' fees incurred by the city, expenses of litigation, court costs, and other charges, and the city may bring a civil action against any owners and shall have the remedies as provided for the recovery of a debt owed.

(3) Other remedies. Nothing contained herein shall prohibit the city from pursuing any other remedy available, including, without limitation, applying for injunctive relief or correcting the violation itself, after notice, as provided in this chapter or any ordinance.

(F) To impose civil fines, as authorized, on any person found to have violated an ordinance over which the Board has jurisdiction.
(Ord. 2003-11, passed 9-16-03)

§ 35.103 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 notice and/or citation by a Code Enforcement Officer;

(B) Service of the citation upon the offender shall be made by a Code Enforcement Officer and shall be effectuated in the following manner:

(1) Personal service to the alleged violator;

(2) Leaving a copy of the citation with any person 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;

(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;

(4) By any other manner prescribed for the service of a summons under CR 4.01 to 4.10, Kentucky Rules of Civil Procedure, or RCr 2.10, Kentucky Rules of Criminal Procedure.

(C) Except as provided in division (D) below, if a Code Enforcement Officer believes, based on his or her personal observation or investigation, that a person has violated a city ordinance, he or she may issue a notice of code violation to the offender allowing the offender a specified period of time to remedy the violation without fine. The notice of violation may be delivered to the alleged violator by personal service or by regular, first-class mail of the United States Postal Service. If the offender fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer is authorized to issue a citation;

(D) Nothing in this subchapter shall prohibit the city from taking immediate action to remedy a violation of its ordinances when there is reason to believe the violation presents a threat to public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible;

(E) 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 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 and elects to pay the minimum fine set forth in § 35.107(A);
- (8) The maximum civil fine set forth in § 35.107(B) that may be imposed if the person elects to contest the citation and requests a hearing before the Board;
- (9) The procedure for the person to follow in order to pay the minimum civil fine or to contest the citation and request a hearing;
- (10) A statement that if the person fails to pay the minimum civil fine set forth in the citation or to contest the citation and request a hearing before the Board, 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, that the determination the violation was committed shall be final, and the civil fine set forth in § 35.017(C) shall be imposed.

(11) A statement that if the person requests a hearing before the Board within the time allowed, but fails to appear before the Board at the time set for the hearing, that the person shall be deemed to have waived the right to a hearing before the Code Enforcement Board to contest the citation, the determination the violation was committed shall be final, and the civil fine set forth in § 35.107(C) shall be imposed.

(F) After issuing a citation to an alleged violator, the Code Enforcement Officer shall notify the Code Enforcement Board by delivering a copy of the citation along with proof of proper service to the Elkton City Clerk, who shall provide a copy to the Chairperson of the Code Enforcement Board;

(G) The person to whom the citation is issued shall respond to the citation within ten calendar days of the date of issuance by either paying the minimum civil fine or requesting, in writing, to the Code Enforcement Board, in the care of the City Clerk, a hearing before the Code Enforcement Board to contest the citation. If response to the citation is not received by the Code Enforcement Board, in the care of the City Clerk, within ten 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; and

(H) If the alleged violator does not pay the minimum fine set forth in the citation and does not contest the citation by requesting a hearing within the time prescribed, the Code Enforcement Board shall enter a final order determining the violation was committed and impose the civil fine set forth in § 35.107(C). A copy of the final order shall be served on the person guilty of the violation.
(Ord. 2003-11, passed 9-16-03; Am. Ord. 2006-1, passed 4-10-06; Am. Ord. 2011-9, passed 9-12-11)

§ 35.104 HEARING; NOTICE AND FINAL ORDER.

(A) When a hearing has been requested, the Code Enforcement Board shall schedule a hearing.

(B) Not less than seven calendar days before the date of the hearing, the Code Enforcement Board, through the City Clerk, 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 18 years of age 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 § 35.107(C). 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) At the hearing the Code Enforcement Board shall, based on the evidence, determine whether a violation was committed. If it determines no violation was committed, an order dismissing the citation shall be entered. If it determines a violation was committed, an order shall be issued upholding the citation and the Code Enforcement Board 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, as authorized by ordinance. The final order may impose a civil fine for each day the violation continues to exist after a given time to remedy the violation. The final order shall inform the person of their responsibility to notify the Code Enforcement Officer that the violation has been remedied.

(F) Every final order of the Code Enforcement Board shall be reduced to writing, which shall include the findings and conclusions of the Board, and 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 to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the order.

(Ord. 2003-11, passed 9-16-03; Am. Ord. 2006-1, passed 4-10-06; Am. Ord. 2011-9, passed 9-12-11)

§ 35.105 LEGAL COUNSEL.

Each case that is the subject of a hearing may be presented by an attorney selected by the city or by a Code Enforcement Officer for the city. An attorney may either be counsel to the Code Enforcement Board or may present cases before the Code

Enforcement Board, but in no case shall the same attorney serve in both capacities.

(Ord. 2003-11, passed 9-16-03; Am. Ord. 2011-9, passed 9-12-11)

§ 35.106 APPEALS; FINAL JUDGMENT.

(A) An appeal from any final order of the Code Enforcement Board may be made to the County District Court within 30 calendar days of the date the order is 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 division (A) above, the Code Enforcement Board's order shall be deemed final for all purposes.

(Ord. 2003-11, passed 9-16-03)

§ 35.107 ORDINANCE FINE SCHEDULE.

Violations of ordinances that are enforced by the 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 person may elect to pay the minimum penalty set forth in this division (A).

<u>Violated</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and Other Offenses</u>
90.02 Animals	\$25	\$50	\$100
91.31 Streets and Sidewalk Obstruction	\$25	\$50	\$100
91.32 Materials on Street or Sidewalk	\$25	\$50	\$100
92.03(A) Dangerous Trees	\$50	\$100	\$150
92.03(B) Accumulation of Rubbish	\$25	\$50	\$100
92.03(C) Storage of Explosives	\$50	\$100	\$150
92.03(D) Weeds and Grass	\$25	\$50	\$100
92.03(E) Open Wells	\$50	\$100	\$150
92.03(F) Trees and Shrubbery	\$25	\$50	\$100

92.03(G) Keeping of Animals	\$25	\$50	\$100
92.03(H) Junk; Scrap Metal; motor vehicles	\$25	\$50	\$100
92.03(I) Dilapidated Structures	\$100	\$150	\$200
92.03(J) Electrified fence	\$25	\$50	\$100
92.03(K) Garbage and refuse containers	\$25	\$50	\$100
95 Cemeteries	\$25	\$50	\$100
98.02 Display of House Numbers	\$25	\$50	\$100
110 Occupational License Taxes	\$25	\$50	\$100
114 Yard Sale Permit Required	\$5	\$10	\$20
151 Zoning	\$25	\$50	\$100
Property Maintenance Code	\$25	\$50	\$100

(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>Violated</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and Other Offenses</u>
90.02 Animals	\$50	\$100	\$200
91.31 Streets and Sidewalk Obstruction	\$50	\$100	\$200
91.32 Materials on Street or Sidewalk	\$50	\$100	\$200
92.03(A) Dangerous Trees	\$100	\$200	\$300
92.03(B) Accumulation of Rubbish	\$50	\$100	\$200
92.03(C) Storage of Explosives	\$100	\$200	\$300
92.03(D) Weeds and Grass	\$50	\$100	\$200
92.03(E) Open Wells	\$100	\$200	\$300
92.03(F) Trees and Shrubbery	\$50	\$100	\$200
92.03(G) Keeping of Animals	\$50	\$100	\$200

92.03(H) Junk; Scrap Metal; motor vehicles	\$50	\$100	\$200
92.03(I) Dilapidated Structures	\$200	\$300	\$400
92.03(J) Electrified fence	\$50	\$100	\$200
92.03(K) Garbage and refuse containers	\$50	\$100	\$200
95 Cemeteries	\$50	\$100	\$200
98.02 Display of House Numbers	\$50	\$100	\$200
110 Occupational License Taxes	\$50	\$100	\$200
114 Yard Sale permit Required	\$10	\$20	\$40
151 Zoning	\$50-\$100	\$100-\$500	\$200-\$1,000
Property Maintenance Code	\$50	\$100	\$200

(C) If the person charged with a violation does not elect to pay the minimum civil fine and does not contest the citation by requesting a hearing within the time prescribed, or, if the alleged violator requests a hearing before the Board and fails to appear at the hearing, the Code Enforcement Board shall enter a final order determining the violation was committed and impose the civil fine set forth below:

<u>Violated</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and Other Offenses</u>
90.02 Animals	\$50	\$100	\$200
91.31 Streets and Sidewalk Obstruction	\$50	\$100	\$200
91.32 Materials on Street or Sidewalk	\$50	\$100	\$200
92.03(A) Dangerous Trees	\$100	\$200	\$300
92.03(B) Accumulation of Rubbish	\$50	\$100	\$200
92.03(C) Storage of Explosives	\$100	\$200	\$300
92.03(D) Weeds and Grass	\$50	\$100	\$200
92.03(E) Open Wells	\$100	\$200	\$300
92.03(F) Trees and Shrubbery	\$50	\$100	\$200

92.03(G) Keeping of Animals	\$50	\$100	\$200
92.03(H) Junk; Scrap Metal; motor vehicles	\$50	\$100	\$200
92.03(I) Dilapidated Structures	\$200	\$300	\$400
92.03(J) Electrified fence	\$50	\$100	\$200
92.03(K) Garbage and refuse containers	\$50	\$100	\$200
95 Cemeteries	\$50	\$100	\$200
98.02 Display of House Numbers	\$50	\$100	\$200
110 Occupational License Taxes	\$50	\$100	\$200
114 Yard Sale permit Required	\$10	\$20	\$40
151 Zoning	\$50-\$100	\$100- \$500	\$200-\$1,000
Property Maintenance Code	\$50	\$100	\$200

(D) Upon the fourth offense for the same violation, if the Code Enforcement Board finds that a violation did exist, the Board shall enter a final order imposing a daily fine in the amount set forth in division (C) above for third and other offenses, which shall accrue up to a maximum amount of \$5,000. The daily fine shall begin on the date the final order is issued until the day the Code Enforcement Officer declares the violation cured. It shall be the responsibility of the property owner to request an inspection by the Code Enforcement Officer to certify the violation has been cured.

(Ord. 2003-11, passed 9-16-03; Am. Ord. 2003-21, passed 12-8-03; Am. Ord. 2006-1, passed 4-10-06; Am. Ord. 2009-4, passed 3-9-09; Am. Ord. 2009-14, passed 6-4-09)

§ 35.108 LIENS; FINES; CHARGES; AND FEES.

(A) If the penalty is unpaid, the city shall possess a lien on property owned by the person 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 subchapter.

(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 at the rate allowed by law.

(C) The lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings.

(D) In addition to the remedy prescribed in division (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 a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

(Ord. 2003-11, passed 9-16-03; Am. Ord. 2011-9, passed 9-12-11)