

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 clearly indicates a different meaning:

"ABATEMENT COSTS." A city'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 city ordinance.

"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.

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

"FINAL ORDER." Any order:

(1) Issued by the code enforcement board following a hearing in accordance with § 35.103(E);

(2) Created because a violator neither paid nor contested the citation within seven days as provided in § 35.102(F); or

(3) Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in § 35.103(E).

"IMMINENT DANGER." A condition which is likely to cause serious or life-threatening injury or death at any time.

"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 ordinances by the city legislative body which embodies all or part of an ordinance.

"OWNER." A person, association, corporation, partnership or other legal entity having a legal or equitable title in real property.

"PREMISES." A lot, plot or parcel of land, including any structures upon it.
(Ord. 2017-17, passed 1-8-18)

§ 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. 2017-17, passed 1-8-18)

§ 35.097 ENFORCEMENT 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 regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.
(Ord. 2017-17, passed 1-8-18)

§ 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, 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 of the Board shall be appointed for a term of one year;

(b) One member of the Board shall be appointed for a term of two years; and

(c) One member of the Board shall be appointed for a term of three years.

(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, 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 Enforcement Board members shall fill the vacancy. A vacancy shall be filled for the remainder of the unexpired term.

(E) A Board member may be removed from office by the executive authority for misconduct, inefficiency, or willful neglect of duty. The executive authority shall submit a written statement to the member and the legislative body setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.

(F) All members of the Code Enforcement Board shall, before entering upon the duties of their office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(G) Members of the Code Enforcement Board may be reimbursed customary expenses or receive compensation or both as authorized by the City Council.

(H) No member of the Code Enforcement Board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the city.

(Ord. 2017-17, passed 1-8-18)

§ 35.099 ORGANIZATION OF BOARD; MEETINGS; QUORUM.

(A) The Code Enforcement 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. In the absence of the Chair, the remaining members of the board shall select a member to preside in place of and exercise the powers of the chair.

(B) Regular meetings of the Code Enforcement Board may be held on the fourth Thursday of every month at 6:30 p.m. as necessary at Elkton City Hall. Meetings other than those regularly scheduled shall be special meetings or emergency

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 public meetings held in accordance with the requirements of KRS 65.8815(5) and the Kentucky Open Meetings Act.

(D) The presence of at least a majority of the Board's entire membership shall constitute a quorum. The affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken.

(E) Minutes shall be kept for all proceedings of the Code Enforcement Board and the vote of any member on any issue decided by the Board shall be recorded in the minutes.
(Ord. 2017-17, passed 1-8-18)

§ 35.100 CONFLICT OF INTEREST.

Any member of the Code Enforcement Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest, shall disqualify himself from voting on the matter in which he has an interest, and shall not be counted for purposes of establishing a quorum.

(Ord. 2017-17, passed 1-8-18)

§ 35.101 POWERS OF THE CODE ENFORCEMENT BOARD.

The city's 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 consistent with this subchapter.

(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.

(F) To impose civil fines, as authorized, on any person found to have violated an ordinance over which the Board has jurisdiction.

(Ord. 2017-17, passed 1-8-18)

§ 35.102 ENFORCEMENT PROCEEDINGS.

The following requirements shall govern all enforcement proceedings before the Code Enforcement Board:

(A) Enforcement proceedings shall only be initiated by the issuance of a citation by a Code Enforcement Officer;

(B) Except when immediate action is necessary pursuant to § 35.110, a Code Enforcement Officer believes, based on his personal observation or investigation, that a person has violated a city ordinance, he may issue a courtesy letter or a Notice of Violation allowing the alleged violator a specified period of time to remedy the violation without incurring a fine. The courtesy letter or Notice of Violation may be delivered to the alleged violator by posting a copy in a conspicuous place on the premises, personal service or by regular, first-class mail of the United States Postal Service. If the alleged violator fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer is authorized to issue a citation.

(C) The Code Enforcement Officer shall issue a citation by one of the following methods:

(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; or

(3) Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator; or

(4) If, in the exercise of reasonable diligence, the issuance of a citation using the methods set out in divisions (C)(1), (C)(2), or (C)(3) is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises.

(D) 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 physical address of the premises where the violation occurred;
- (4) The date and time the offense was committed;
- (5) The facts constituting the offense;
- (6) The section of the code or the number of the ordinance violated;
- (7) The name of the Code Enforcement Officer;
- (8) The civil fine that may be imposed for the violation, including, if applicable:
 - (a) The civil fine that will be imposed if the person does not contest the citation; and
 - (b) 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 a hearing before the Code Enforcement Board to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to District Court.

(E) After issuing a citation to an alleged violator, the code enforcement officer shall notify the Code Enforcement Board by delivering the citation to the Elkton City Clerk or the Code Enforcement Board administrative staff. The Code Enforcement Officer, Code Enforcement Board, Code Enforcement Board administrative staff, or City Clerk may also elect to provide notice of the issuance of the citation to any lienholder with an interest in the subject premises.

(F) (1) The person to whom the citation is issued shall respond to the citation within ten days of the date of issuance by either paying the civil fine or requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation 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. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; 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 or older and who is informed of the contents of the order.
(Ord. 2017-17, passed 1-8-18)

§ 35.103 HEARING; NOTICE AND FINAL ORDER.

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

(B) Not less than seven days before the date of the hearing, the Code Enforcement Board shall notify the requester of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; 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 or older and who is informed of the contents of the notice.

(C) (1) 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 the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; 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 or older and who is informed of the contents of the notice.

(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) The Code Enforcement Board shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, an order dismissing the citation shall be entered. If it is determined that a violation was committed, an order may be issued upholding the citation. The Board may impose a fine up to the maximum authorized by ordinance, or require the offender to remedy a continuing violation to avoid a fine, or both. The final order may impose a civil fine for each day the violation continues to exist beginning 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. The final order shall inform the person of their responsibility to notify the Code Enforcement Officer that the violation has been remedied.

(F) (1) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions reached and the date the order was issued. A copy shall be furnished to the person named in the citation.

(2) If the person named in the citation is not present when the final order is issued, the order shall be delivered to the person by regular first-class mail; certified mail, return receipt requested; 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 or older and who is informed of the contents of the notice.

(Ord. 2017-17, passed 1-8-18)

§ 35.104 PRESENTATION OF CASES.

Each case before the Code Enforcement Board shall be presented by an attorney selected by the city, a Code Enforcement Officer for the city, or by a member of the city's administrative staff. The City Attorney may either be counsel to the Code Enforcement Board or may present cases before the Code Enforcement Board, but shall in no case serve in both capacities.

(Ord. 2017-17, passed 1-8-18)

§ 35.105 APPEALS; FINAL JUDGMENT.

(A) An appeal from a final order of a Code Enforcement Board following a hearing conducted pursuant to § 35.103(E) may be made to the Todd County District Court within 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) If no appeal from a final order of the Code Enforcement Board is filed within the time period set in division (A) of this section, the Code Enforcement Board's order shall be deemed final for all purposes.

(Ord. 2017-17, passed 1-8-18)

§ 35.106 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 penalties 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. 2017-17, passed 1-8-18)

§ 35.107 LIENS; FINES; CHARGES; AND FEES.

(A) The city shall possess a lien on property owned by the person found by a nonappealable final order as defined by § 35.095(D), or by a final judgment of the court, to have committed a violation of a city ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the city 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 regularity of the proceedings pursuant to KRS 65.8801 to 65.8839.

(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. The lien shall continue for ten years following the date of the nonappealable final order or final court judgment.

(C) Subject to § 35.107, the lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings, including a foreclosure action.

(D) In addition to the remedy prescribed in division (A) of this section, the person found to have committed the violation shall be personally responsible for the amount of all civil fines assessed for the violation and for all charges, fees and abatement costs 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. 2017-17, passed 1-8-18)

§ 35.108 LIENHOLDER NOTIFICATION SYSTEM.

The city shall obtain and maintain priority over previously filed liens, as provided in § 35.107, in accordance with the following provisions:

(A) Individuals and entities, including but not limited to lienholders, may register with the city to receive electronic notification of final orders entered pursuant to this subchapter.

(B) In order to receive the notification, the registrant shall submit the following information to the City Clerk or the Code Enforcement Board administrative staff:

- (1) Name;
- (2) Mailing address;
- (3) Phone number; and
- (4) Electronic mailing address.

(C) It shall be the responsibility of the registrant to maintain and update the required contact information with the city. The city shall inform a registrant of any evidence received that the electronic mailing address is invalid or not functional so that the registrant may provide an updated electronic mailing address.

(D) No less than once per month the city shall send electronic mail notification of all final orders entered pursuant to this subchapter since the last date of notification to each party registered pursuant to this section. The notification shall, at a minimum, include or provide an electronic link to a document or database that contains the following information relating to each final order:

- (1) The name of the person charged with a violation;
- (2) The physical address of the premises where the violation occurred;
- (3) The last known mailing address for the owner of the premises where the violation occurred;
- (4) A copy of the full citation;
- (5) A copy of the full final order; and
- (6) The status of the final order regarding its ability to be appealed pursuant to this subchapter.

(E) If an appeal is filed on a final order pursuant to this subchapter, the city shall send electronic mail notification to all registrants.

(F) Within ten days of the issuance of a final order pursuant to this subchapter, the city shall update its code enforcement database to reflect the issued final order, and shall post the notification required by division (D) of this section containing an updated link to the code enforcement database on the city Web site.

(G) The city shall maintain the records created under this section for ten years following their issuance.

(Ord. 2017-17, passed 1-8-18)

§ 35.109 LIENS.

(A) A lienholder of record who has registered pursuant to § 35.108(B) may, within 45 days from the date of issuance of notification under § 35.108(D):

- (1) Correct the violation, if it has not already been abated; or
- (2) Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with

enforcement of the ordinance, including abatement costs.

(B) Nothing in this section shall prohibit the city from taking immediate action if necessary under § 35.110.

(C) The lien provided by § 35.107 shall not take precedence over previously recorded liens if:

(1) The city failed to comply with the requirements of § 35.108 for notification of the final order; or

(2) A prior lienholder complied with division (A) of this section.

(D) A lien that does not take precedence over previously recorded liens under division (C) of this section shall, if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.

(E) The city may record a lien before the 45 day period established in division (A) of this section expires. If the lien is fully satisfied prior to the expiration of the 45 day period, the city shall release the lien in the County Clerk's Office where the lien is recorded within 15 days of satisfaction.

(F) Failure of the city to comply with §§ 35.108 and 35.109, or failure of a lien to take precedence over previously filed liens as provided in division (C) of this section, shall not limit or restrict any other remedies the city has against the property of the violator.
(Ord. 2017-17, passed 1-8-18)

§ 35.110 IMMEDIATE ACTION.

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 that the violation presents 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.
(Ord. 2017-17, passed 1-8-18)