

ORDINANCE NO. 17- 01

AN ORDINANCE TO THE CITY OF SOMERSET CREATING A CODE ENFORCEMENT BOARD AND ENFORCEMENT PROCEDURES FOR THE PURPOSES SET FORTH HEREIN, PURSUANT TO KRS HB 422, AND ANY STATUTE IN WHICH SAID LAW MAY BE CODIFIED NOW, OR IN THE FUTURE, AS PASSED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH; AND AMENDING OR REPEALING PORTIONS OR ALL OF ORDINANCES: 14-06, 07-25, 91-11, 84-14, AND 650, AS SPECIFICALLY SET FORTH IN THE BODY OF THIS ORDINANCE;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET:

I. Code Enforcement Board and Procedures

1. Title

This Ordinance shall be known and may be cited as the "Somerset Code Enforcement Board Ordinance."

2. Definitions

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

- (a) "**Abatement Costs**" means 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.
- (b) "**Code Enforcement 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, including any *joint boards* created by Inter-Local Agreement between the City of Somerset and any other municipal corporation, for purposes of code enforcement.
- (c) "**Code Enforcement Officer**" means a city police officer, safety officer, citation officer, city code enforcement officer, an agent of the city code enforcement officer, or other public law enforcement officer with the authority to issue a citation.
- (d) "**Final Order**" means any order:
 - 1. Issued by the code enforcement board following a hearing in accordance with Section 9(e) of this ordinance;
 - 2. Created because a violator neither paid nor contested the citation within seven (7) days as provided in Section 8(f) of this ordinance; or
 - 3. Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in Section 9(c) of this ordinance.
- (e) "**Imminent Danger**" means a condition which is likely to cause serious or life-threatening injury or death at any time.
- (f) "**Ordinance**" means an official action of the 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 adopted by the city legislative body which embodies all or part of an ordinance.

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

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

3. **Code Enforcement Board creation and membership; Joint Enforcement Board**

There is hereby created pursuant to KRS 65.8801 to KRS 65.8839, a Code Enforcement Board (hereinafter the "Code Enforcement Board") which shall be composed of three (3) members, each of which shall be residents of the City of Somerset for a period of at least one (1) year prior to the creation of the board, and each of which shall reside within the city limits of the City throughout their term in office.

If an Inter-Local Agreement is entered into by the City of Somerset and other municipalities, the board shall be known as the "Joint Code Enforcement Board", and shall be created pursuant to an Inter-Local Agreement entered into by the City of Somerset, and all other participating jurisdictions. Any Joint Code Enforcement Board which shall be composed of three (3) members for each City participating in the Joint Code Enforcement Board, each of which shall be residents of the City they represent for a period of at least one (1) year prior to the creation of the joint board, and each of which shall reside within the city limits of the City they represent throughout their term in office.

4. **Jurisdiction**

The Somerset Code Enforcement Board shall have jurisdiction over, and shall enforce, the following Somerset Ordinances: 14-06, 14-01, 08-11, 07-25, 95-31, 84-14, 84-10, 81-11, 650, 619, 482, and 376 (including any and all amendments thereto), and all other ordinances herein or hereafter adopted or amended which specifically provide for enforcement by Citation Officers, Code Enforcement Officers, or the Code Enforcement Board in the manner set forth in this Ordinance.

Any Joint Code Enforcement Board shall have jurisdiction over, and shall enforce, Ordinances adopted or amended for all other participating jurisdictions/municipalities for purposes of meeting the requirements of this Ordinance, and per the terms of any Inter-Local creating a Joint Code Enforcement Board.

5. **Powers of the Code Enforcement Board**

- a. The Code Enforcement Board, including any Joint 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, including any Joint Code Enforcement Board, shall *not* have the authority to enforce any ordinance the violation of which constitutes a criminal offense under any provision of the Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

- c. The Code Enforcement Board, including any Joint Code Enforcement Board, shall have the power to:
 - i. 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 ordinances of the local government creating the board.
 - ii. Conduct hearings to determine if there has been a violation of any ordinance that the board has jurisdiction to enforce.
 - iii. To subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas issued by the Board may be served by any code enforcement officer.
 - iv. To take testimony under oath. The Chairperson shall have the authority to administer oaths for the purpose of taking testimony.
 - v. To make findings of fact and issue orders necessary to remedy any violation of any ordinance that the Board has jurisdiction to enforce.
 - vi. To impose civil fines, as authorized, on any person found to have violated an ordinance over which the Board has jurisdiction.

6. Appointment of Members for the Somerset Code Enforcement Board; Appointment of Members for any Joint Code Enforcement Board; Terms of Office; Removals from Office; Oaths; and Compensation.

- a. Members of a Code Enforcement Board for the City of Somerset shall be appointed by the Mayor, subject to approval of the City Council. If a Joint Code Enforcement Board is created by Inter-Local Agreement, the Mayor of each participating City shall appoint their members, subject to the approval of the City Council.
- b.
 - (1) Initial Board appointments for the City of Somerset's Code Enforcement Board shall be as follows:
 - i. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of one (1) year; and
 - ii. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of two (2) years; and
 - iii. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of three (3) years;

OR
 - (2) If a Joint Code Enforcement Board is created by Inter-Local Agreement as described in this Ordinance, initial board appointments for the Joint Code Enforcement Board shall be as follows:
 - i. One-third (1/3) of the membership for each participating City or one-third (1/3) of the membership for each participating City and one (1) member of the board shall be appointed for a term of one (1) year; and

- ii. One-third (1/3) of the membership for each participating City or one-third (1/3) of the membership for each participating City and one (1) member of the board shall be appointed for a term of two (2) years; and
 - iii. One-third (1/3) of the membership for each participating City or one-third (1/3) of the membership for each participating City and one (1) member of the board shall be appointed for a term of three (3) years.
- c. All subsequent appointments for any City, or joint board, shall be made for a term of three (3) years. A member may be reappointed by the Mayor, subject to the approval of the Council.
 - d. The Mayor may appoint, subject to the approval of the Council, two (2) alternate members to serve 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 Board.
 - e. Any vacancy on the Board shall be filled by the Mayor that appointed the member vacating, subject to approval of the Council, within sixty (60) days of the vacancy. If a vacancy is not filled within sixty (60) days, the remaining members of the code enforcement board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.
 - f. Any member of the Code Enforcement Board may be removed from office by the Mayor that appointed that member for misconduct, inefficiency, or willful neglect of duty. The Mayor shall submit a written statement to the member and to the Council setting forth the reasons for removal. The member so removed shall have the right of appeal to the Pulaski Circuit Court.
 - g. All members of any Code Enforcement Board must, before entering into office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.
 - h. Members of the Board shall be compensated at the rate of \$ 50 dollars per member, per meeting attended, not to exceed \$600 dollars per member per year. Alternates shall be compensated 50 dollars for each meeting to which they are called to attend as an alternate member, but otherwise shall not be compensated.
 - i. No member of the Board may hold any elected or appointed office, whether paid or unpaid, or any position of employment with the City of Somerset, or if a Joint Code Enforcement Board is created by Inter-Local Agreement, no member of the Joint Board may hold any elected or appointed office, whether paid or unpaid, or any position of employment with any of the participating Cities.
 - j. Each member of the Code Enforcement Board shall have resided within the boundaries of the City of Somerset, or whatever City they represent if a Joint Code Enforcement Board is created, for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.

7. Organization of Board; Quorum.

- a. The Board, whether singular or joint, shall, upon the initial appointment of its members, and annually thereafter, elect a Chair from among its members. The Chairperson shall be the presiding officer and a full voting member of the Board. If the chairperson is not present at a meeting, the remaining Board members present shall select one of its members to preside in place of and exercise the powers of the chairperson.
- b. The Board whether singular or joint, shall hold regular meetings at least quarterly on the second Thursday of each of the following months: January, April, August and December. Meetings other than established regular meetings 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 any Code Enforcement Board shall be public meetings held in accordance with all applicable State statutes and the Kentucky Open Meetings Act.
- d. The presence of at least a majority of a Board's entire membership shall constitute a quorum. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken.
- e. Any member of a Board, whether singular or joint, 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/herself from voting on the matter and shall not be counted for purposes of establishing a quorum.
- f. Minutes shall be kept for all proceedings of the Board, and the vote of each member on any issue decided by the Board shall be recorded in the minutes.
- g. All meetings and hearings of any Code Enforcement Board shall be open to the public.

8. Enforcement Proceedings.

- a. Enforcement proceedings before a code enforcement board shall only be initiated by the issuance of a citation by a code enforcement officer having jurisdiction in the issuing City.
- b. Except when immediate action is necessary pursuant to paragraph (8)(g) of this ordinance, if a code enforcement officer, or other official having authority under this Ordinance as a code enforcement agent, has reasonable cause to believe, based upon personal observation or investigation, that a person has violated a city ordinance, he or she is authorized to issue a citation.
- c. The code enforcement officer, or his/her agent, shall issue a citation by one of the following methods:

- i. Personally serve the alleged violator;
 - ii. 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
 - iii. 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.
- d. The citation issued by the code enforcement officer, or his/her agent, shall contain the following information:
- i. The date and time of issuance;
 - ii. The name and address of the person to whom the citation is issued;
 - iii. The date and time the offense was committed;
 - iv. The address of the premises where the offense was committed;
 - v. The facts constituting the offense;
 - vi. The section of the code or the number of the ordinance violated;
 - vii. The name of the code enforcement officer;
 - viii. When the code enforcement officer has 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, a statement so indicating;
 - ix. If applicable, the time period within which the person must remedy the violation;
 - x. A specific statement of the remediation necessary.
 - xi. A statement that, if the person fails to remedy the violation within the time period specified, the city may abate the violation and bill the person for abatement costs plus an administrative fee of \$100;
 - xii. When specifically authorized by the ordinance or code being violated, that the citation and any applicable penalties will be waived if the violation is remedied within the time period specified by the ordinance, which period shall be set forth in the citation;
 - xiii. A statement that the city shall possess a lien on property owned by the person for all charges and fees incurred by the city in connection with the enforcement of the ordinance, including abatement costs;
 - xiv. The civil fine that will be imposed for the violation, including, if applicable: 1) The civil fine that will be imposed if the person does not contest the citation; and 2) The maximum civil fine that may be imposed if the person elects to contest the citation;
 - xvi. The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
 - xvii. A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation within seven (7) days of the date the citation is issued, 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 that a violation was committed shall be final, that 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 Pulaski District Court.

- xviii. A statement that contesting the citation shall serve to toll the city's abatement of the violation except where the code enforcement officer has 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.
- e. After issuing a citation to an alleged violator, the code enforcement officer, or his/her agent, shall notify the code enforcement board by delivering the citation to the administrative official designated by ordinance or by the board. The code enforcement officer or code enforcement board may also elect to provide notice of the issuance of the citation to any lien holder with an interest in the subject premises.
- f. Notices of violation or citations involving motor vehicles shall be sent to the property owner or other person having control or management of the premises or property, and the motor vehicle owner if known.
- g. ***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.***
- h. 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 filing written notice with the City Clerk ***of the issuing City*** requesting a 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 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 Pulaski District Court. Notice of the final order shall be provided to the cited violator in the manner set forth in this Ordinance.
- i. Notwithstanding the provisions of paragraph (h) of this section, whenever a hearing before an administrative body is required by law for a particular violation, remedy or abatement action, or when, in the opinion of a Code Enforcement Officer or the City Attorney, such a hearing is necessary or advisable, the Code Enforcement Officer or the City Attorney may request such a hearing before the Board, and the Board shall schedule the hearing and provide notice to the person to whom the citation is issued in accordance with the provisions of this Section.
- j. Fines shall be payable to the City Clerk of the City that issued the citation.
- k. Notice of Violation.

- i. *Unless the code enforcement officer has 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*, a Notice of Violation shall be issued in lieu of a citation for violation of any ordinance subject to enforcement under this section, where any of the following is true:
 - a. the property upon which the violation exists has not been the subject of a citation or notice of violation within the past 24 months, or
 - b. the owner of the property has not been issued a citation or notice of violation within the past 24 months, or
 - c. the alleged violator has not been issued a citation or notice of violation within the past 24 months.
- ii. The Notice of Violation shall be in writing and shall give notice of:
 - a. The date and time of issuance;
 - b. The name and address of the person to whom the citation is issued;
 - c. The date and time the offense was committed;
 - d. The address where the offense was committed;
 - e. The facts constituting the offense;
 - f. The section of the code or the number of the ordinance violated;
 - g. That the person must remedy the violation within five (5) calendar days or a citation will be issued;
- iii. A Notice of Violation shall be delivered in the same manner as a citation, as specified in this Ordinance.
- iv. A Notice of Violation is not appealable.
- v. If a Notice of Violation is not remedied within 5 calendar days, the code enforcement officer is authorized to issue a citation.

9. Hearing, Notice and Final Order.

- a. When a hearing has been requested, the Board or its administrative staff, shall schedule a hearing.
- b. Not less than seven (7) days before the date of the hearing, the 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; 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. The Board may also elect to provide notice of hearing to any lien holders with an interest in the subject premises.
- c. 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 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 Pulaski District Court.

- d. Notice of the 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 eighteen (18) years of age or older and who is informed of the contents of the notice.
- e. All testimony at the hearing shall be taken under oath and recorded. The Board shall take testimony 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.
- f. Each case that is the subject of a hearing may be presented by an attorney selected by the local government, a code enforcement officer for the city, or by a member of the city's administrative staff. An attorney may either be counsel to the Board or may represent the local government by presenting cases at the hearing, but in no case shall an attorney serve in both capacities.
- g. The Board shall, based on the evidence, determine whether a violation was committed. If the Board determines that no violation was committed, an order dismissing the citation shall be entered. If the Board determines that a violation was committed, an order shall be issued upholding the citation and ordering the offender to do either, or both, of the following:
 - i. Pay a civil fine up to the maximum authorized by ordinance; or
 - ii. Remedy a continuing violation in order to avoid the imposition of a fine as authorized by ordinance.
- h. Every final order of the 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 of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the board is issued, the order shall be delivered to that person by regular first-class mail; 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 eighteen (18) years of age or older and who is informed of the contents of the order.

10. Appeals; Final Judgment.

- a. An appeal from any final order of the Board following a hearing conducted pursuant to this ordinance may be made to the Pulaski 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 Board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.
- b. If no appeal of the final order of the Board is filed within the time allowed in subsection (a) of this section, the Board's order shall be deemed final for all purposes.

11. Abatement.

- a. All violations of ordinances and codes enforced under this ordinance shall be remedied by the violator within the time period specified in the specific ordinance or code, unless the code enforcement officer determines that a shorter time is warranted. In the absence of a specified time period, the time period for remedy of a violation shall not exceed (10) days, however the code enforcement officer, Board or hearing officer may grant an extension of this time period. The time period for the violation to be remedied shall not be less than twenty-four (24) hours following issuance of the citation, unless the code enforcement officer has 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. The time period shall commence upon the issuance of a citation in accordance with this Ordinance.
- b. If the property owner so served does not abate the violation within the applicable time period, the city may proceed to abate such violation, keeping an account of the expense of abatement. The abatement costs, including 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 local government ordinance, shall be charged to and paid by the property owner.
- c. Filing of notice to contest a citation in accordance with this Section shall serve to toll the city's abatement of the violation, unless the code enforcement officer has 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. In the event the Board determines that the violation contested did occur, the Board may order that the abatement proceed immediately or within a specified time period not to exceed 30 days.
- d. The code official shall bill the owner of the property subject to the citation at least once following abatement. No lien claimed shall be filed against the subject property until seven (7) days have elapsed after the bill is sent. If the property is the subject of litigation, the lien may be filed immediately upon the mailing of the bill.

12. Ordinance fine schedule.

Violations of ordinances that are enforced by the Code Enforcement Board shall be subject to the fine set forth in the ordinance. If no fine schedule is set forth in the individual ordinance(s) being enforced, the fine schedule set forth in this Ordinance shall be used.

13. Liens, Fines, Charges and Fees.

- a. The City in which the property is located shall possess a lien on property owned by the person found by a final, non-appealable order as defined by KRS 65.8805(8), 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 the regularity of the proceedings pursuant to KRS 65.8801 to 65.8839.

- b. The lien:
 - i. Shall be recorded in the office of the county clerk;
 - ii. Shall be notice to all persons from the time of its recording and shall bear interest until paid;
 - iii. Subject to KRS 65.8836, shall take precedence over all other liens, except state, county, school board, and city taxes;
 - iv. Shall continue for ten (10) years following the date of the non-appealable final order, or final judgment of the court; and
 - v. May be enforced by judicial proceedings, including an action to foreclose.
- c. A copy of the notice of the lien shall be mailed to the owner of the premises. However, the failure to mail the owner a copy of such notice or the failure of the owner to receive such notice shall not affect the right of the city to enforce its lien for such charges as provided by law.
- d. In addition to the remedy prescribed above, 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, fees and abatement costs incurred by the City in connection with the enforcement of the applicable Code of Ordinances.
- e. Unless this Ordinance states otherwise, 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.
- f. The City Attorney in the City where the property is located is authorized to bring a civil action for the collection of delinquent liens and other costs incurred by the City, and the City shall have the same remedies as provided for the recovery of a debt. The City Attorney is granted authority to use his or her best judgment and discretion to settle any fine and remedy assessments and to release liens as he/she deems to be in the best interests of the City. The City Attorney is further authorized to make a determination that a lien not be filed if the cost of the lien and collection is greater than the amount of the lien, when intervening in existing litigation is not cost effective, or when the lien would not be enforceable as a matter of law. The City Attorney is also authorized to release any existing liens that meet the above criteria.

14. **Lien holder notification system.**

Pursuant to KRS 65.8835 – 65.8836, the city shall obtain and maintain priority over previously filed liens in accordance with the following provisions:

- a. Individuals and entities, including but not limited to lien holders, may register with

the city to receive electronic notification of final orders entered pursuant to this ordinance.

- b. In order to receive the notification, the registrant shall submit the following information to the City Clerk:
 - 1. Name;
 - 2. Mailing address;
 - 3. Phone number; and
 - 4. Electronic mailing address.

- c. **A registrant may use the electronic form provided on the city Web site to submit the information required by this Ordinance.** 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. Once a month, the city shall send electronic mail notification of all final orders entered pursuant to this Article since the last date of notification to each party registered pursuant to this Section. **The notification shall provide an electronic link to the city code enforcement database located on the city Web site.** The database shall include the following information regarding 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 ordinance.

- e. If an appeal is filed on a final order pursuant to this ordinance, the city shall send electronic mail notification to all registrants.

- f. **Within ten (10) days** of the issuance of a final order pursuant to this Article, the city shall update its code enforcement database to reflect the issued final order, and shall post the notification required by this Ordinance 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 (10) years following their issuance.

15. **Lien priority**

- a. A lien holder of record who has registered pursuant to Section 14 of this ordinance may, within forty-five (45) days from the date of issuance of notification under this ordinance:
 - 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.
 - c. The lien provided by this ordinance shall not take precedence over previously recorded liens if:
 1. The city failed to comply with the requirements of Section 14 of this ordinance for notification of the final order; or
 2. A prior lien holder complied with subsection (a) of this Section.
 - d. A lien that does not take precedence over previously recorded liens under subsection (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 forty-five (45) day period established in subsection (a) of this Section expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period, the city shall release the lien in the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.
 - f. Failure of the city to comply with Sections 14 and 15 of this ordinance, or failure of a lien to take precedence over previously filed liens as provided in subsection (c) of this Section, shall not limit or restrict any other remedies the city has against the property of the violator.

16. Due Process and Right of Entry

Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the code enforcement officer has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the code enforcement officer, or his/her agent, is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied, the code enforcement officer, or his/her agent, shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the code enforcement officer, or his/her agent, shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused or the person having charge or control cannot be located, the code enforcement officer, or his/her agent, shall utilize the procedures set forth in this ordinance to obtain an Administrative Search Warrant, unless a lawful exception to the requirement for a warrant exists.

17. Penalties.

- a. Unless otherwise stated therein, the penalty for violation of any ordinance or code provision enforced by the Board under this Division shall be as follows:

(i) The maximum civil fine that may be imposed for each offense if the citation is contested is \$2,000.

(ii) If the citation is not contested, civil fines will be imposed according to the following schedule:

- a. For a first offense within a 24-month period, where the violation is remedied within the time period required by the ordinance or for which no remediation is required, there shall be no fine.
- b. For a first offense within a 24-month period, where the violation is not remedied within the time period allowed by the ordinance, the penalties shall be as set forth in subsection (g) of this ~~Section~~ **ORDINANCE**.
- c. For the second offense within a 24-month period, the initial fine shall be two hundred dollars \$200.
- d. For the third offense within a 24-month period, the initial fine shall be three hundred dollars \$300.
- e. For the fourth offense within a 24-month period, the initial fine shall be four hundred dollars \$400.
- f. For the fifth and subsequent offenses within a 24-month period, the initial fine shall be five hundred dollars \$500.
- g. For any offense that continues un-remedied beyond the time period by which the ordinance requires the violation to be remedied, an additional three hundred dollars (\$300) for every seven (7) days or portion thereof beyond the remediation date shall be added to the initial fine until the violation is remedied by the responsible person or is abated by the city or until the total fine reaches one thousand dollars (\$1,000).
- h. The maximum civil fine that may be imposed for each offense if the citation is not contested is \$1,000.

18. **Stop Work Order**

A code enforcement officer and/or other authorized City Official may order the immediate cessation of any construction or reconstruction work being done in violation of any ordinance or being done on property that is in violation of any ordinance. The stop work order shall be issued in conjunction with or in supplement to a citation for the violation. Work shall not resume until the violation has been remedied and any applicable fees and fines have been paid.

19. **Administrative Search Warrant.**

- a. Definition:

- (i) An administrative search warrant is a written order of a judge or other officer authorized by statute to issue search warrants that commands the search or inspection of any property, place or thing, and the seizure, photographing, copying, or recording of property or physical conditions found. An administrative search warrant authorizes an officer to enter any premises to conduct any inspection, sampling, and other functions required or authorized by law to determine compliance with the provisions of an ordinance, code, or other regulation including, but not limited to, those relating to the use, condition, or occupancy of property or structures.
- b. Who may apply for warrant:
 - (i) Whenever a law requires or authorizes an inspection or investigation of any place or thing, the administrative officer charged to enforce that law, acting in the course of his or her official duties, may apply for an administrative search warrant. For this purpose, administrative officer includes, but is not limited to, a City building inspector, a City code enforcement officer, a fire chief or their deputies, or any other duly authorized representative, as the case may be.
 - (ii) Before filing an application for an administrative search warrant, the administrative officer shall consult with legal counsel as to its legality in both form and substance.
- c. Contents of application.
 - (i) The application shall:
 - (a) Be supported by an affidavit sufficient under Section 10 of the Kentucky Constitution and be sworn to before an officer authorized to administer oaths as provided in the Kentucky Rules of Criminal Procedure or other applicable law;
 - (b) State the applicant's status in applying for the warrant, the ordinance or regulation requiring or authorizing the inspection or investigation, and the nature, scope and purpose of the inspection to be performed;
 - (c) Describe the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - (d) State:
 - (A) that, for the purpose of making an inspection, access to the property has been sought from and refused by the regulated party; or
 - (B) that, after making a reasonable effort, the applicant has been unable to locate the regulated party; or
 - (C) that the facts or circumstances reasonably show that the purposes of the inspection or investigation might be frustrated if entry were sought without first procuring a warrant; and
 - (E) state the basis upon which sufficient cause exists to search or inspect for violations of the ordinance or regulation specified.
- d. Grounds for issuance.
 - (i) An administrative search warrant may issue upon a showing that probable cause for the inspection or investigation exists and that the other requirements for granting the warrant are satisfied. Probable cause may be shown by:

- (a) Reasonable legislative or administrative standards for conducting a routine, periodic, or area inspection and that those standards are satisfied with respect to the location;
 - (b) A reasonable administrative inspection program exists regarding the condition of the property and that the proposed inspection comes within that program;
 - (c) A health, public protection or safety ordinance, regulation, rule, standard or order and that specific evidence of a condition or nonconformity exists with respect to the particular location; or
 - (d) An investigation is reasonably believed to be necessary in order to determine or verify the condition of the location.
 - (ii) A copy of the administrative search warrant and supporting affidavit shall be retained by the issuing officer and filed by such officer with the clerk of the court to which the warrant is returnable.
- e. Contents of warrant.
- (i) The warrant:
 - (a) May direct its execution and return by the administrative officer charged to enforce the ordinance or regulation specified in the application;
 - (b) Shall specify the property, place, structure, premises, vehicle or records to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - (c) May contain a direction as to the time and manner of its execution; and
 - (d) Shall command the return to the appropriate court of any evidence of ordinance violations found, or of any property seized pursuant thereto, or a description of such property seized, to be dealt with according to law.
- f. Execution and return.
- (i) Unless otherwise prescribed in the warrant, the officer executing an administrative search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.
 - (ii) Except as provided in the following sentence, in executing a search warrant the person authorized to execute it shall before entry make a reasonable effort to present credentials, authority and purpose to an occupant or person in possession of the location designated in the warrant and show him or her the warrant or a copy thereof upon request. In executing a search warrant, the person authorized to execute the warrant need not inform anyone of his or her authority and purpose, as prescribed in the preceding sentence, but may promptly enter the designated location if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition, but shall orally announce their credentials and authority to execute the warrant prior to entry.
 - (iii) If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place. The return shall be accompanied by any photographs, copies or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section.

(iv) The officer may summon as many persons as he deems necessary to assist him in executing the warrant and may request that a peace officer assist in the execution of the warrant.

II. MISCELLANEOUS:

1. If any 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 provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

2. All prior ordinances and/or parts of ordinances, specifically provisions regarding Enforcement Proceedings, Citations, Hearings, Notice, Final Orders, Appeals and Final Judgments, and Liens/Costs/Fees, which are in conflict with this present Ordinance, are hereby repealed and replaced by the provisions contained in this Ordinance. The following Ordinances, and/or provisions of Ordinances, are specifically repealed and replaced in full by the applicable provisions in the present Ordinance:

- a. 14-06: *Article II(A)(1), (2), and (3); Article II(A)(6); Article II(E); and Article VI – Repealed and Replaced.*
- b. 07-25: *Articles V, VI, VII, and VIII – Repealed and Replaced.*
- c. 91-11 (Amending 650): *Repealed in full.*
- d. 84-14 (Amending 650): *Repealed in full.*
- e. 650: *Section 5 – Repealed and Replaced.*

3. This Ordinance shall become effective after passage and upon publication according to the law.

First Reading: JANUARY 9th, 2017

Second Reading: JANUARY 23rd, 2017

APPROVED:


EDWARD R. GIRDLER, MAYOR

ATTEST:


NICK BRADLEY, CITY CLERK