

**ORDINANCE NO. 4, 2017 SERIES**

**AN ORDINANCE AMENDING SECTIONS 36.015, 36.016, 36.017, 36.018, 36.019, 36.020, 36.021, 36.022, 36.023, 36.024, 36.025, AND 36.026 AND ADOPTING SECTION 36.017 OF THE CITY OF FRANKFORT CODE OF ORDINANCES RELATING TO THE CODE ENFORCEMENT BOARD**

WHEREAS, in order to comply with the provisions of KRS 65.8801 through KRS 65.8840, the City of Frankfort's ordinances concerning its Code Enforcement Board are hereby amended.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF FRANKFORT, KENTUCKY, that Sections 36.015, 36.016, 36.017, 36.018, 36.019, 36.020, 36.021, 36.022, 36.023, 36.024, 36.025, 36.026 of the City of Frankfort Code of Ordinances are hereby amended and Section 36.017 of the City of Frankfort Code of Ordinances is hereby adopted. These ordinances relate to the City of Frankfort's Code Enforcement Board.

**§ 36.015 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. See also KRS 65.8805

**CODE ENFORCEMENT BOARD** or **THE BOARD.** An administrative body created and acting under the authority of KRS 65.8801 to 65.8839.

**CODE ENFORCEMENT OFFICER.** A city police officer, safety officer, citation officer, county police officer, sheriff, deputy sheriff, university police officer, airport police officer or other public law enforcement officer with the authority to issue a citation and employees of the City Planning and Building Codes Department designated as "code officials," pursuant to the Property Maintenance Code or the Nuisance Code. These "code officials" hold the following positions within the Planning and Building Codes Department: Director, Senior Staff Planner, Staff Planner, Electrical Inspector, Building Inspector, Code Enforcement Inspector and Code Inspector Supervisor.

**ABATEMENT COSTS.** Means a local government's necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve the public health, safety, and welfare in accordance with any local government ordinance;

**IMMINENT DANGER.** Means a condition which is likely to cause serious or life-threatening injury or death at any time;

**MINIMUM PROPERTY MAINTENANCE STANDARDS:** the adopted Nuisance Code within chapter 150 of the Code of Ordinances provides the minimum property maintenance standards for the health, safety and welfare for premises within the City. These standards are in addition to any other adopted ordinance relating to health, safety and welfare for the City; such as the building codes, electrical codes, zoning regulations, etc.

**OWNER.** Means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property;

**PREMISES.** Means a lot, plot, or parcel of land, including any structures upon it.

**ORDINANCE.** An official action of the city, 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 Board of Commissioners which embodies all or part of an ordinance.

**§ 36.016 CREATION AND MEMBERSHIP.**

(A) There is hereby created, pursuant to KRS 65.8801 to KRS 65.8839, the Code Enforcement Board which shall be composed of five members, all of whom shall be residents of the city for at least one year prior to their appointment, shall reside there throughout their term in office and shall meet all qualifications and requirements imposed by law.

**§ 36.017 APPOINTMENT OF MEMBERS; TERM, COMPENSATION AND THE LIKE.**

(A) Members of the Code Enforcement Board shall be appointed by the Mayor and confirmed by the Board of Commissioners,

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

- (a) One member appointed for a term of one year;
- (b) One member appointed for a term of two years;
- (c) One member appointed for a term of three years; and
- (d) Two additional members for terms of two years each.

(2)

All subsequent appointments to either Board shall be for a term of three years.

(C) (1) Any vacancy on the Board of Code Enforcement shall be filled by the Board of Commissioners within 60 days of the vacancy for the remainder of the unexpired term.

(2) If the vacancy is not filled within the 60 day time period, the remaining Board members shall fill the vacancy on the Board.

(D) (1) A member of the Board may be removed from office by the Board of Commissioners for misconduct, inefficiency or willful neglect of duty.

(2) The Board of Commissioners must submit a written statement to the member setting forth the reasons for removal.

(E) All members of the Board must, before entering upon the duties of their office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(F) Members of the Board shall be compensated in the amount of \$50 per meeting.

(G) No member of either Board may hold any elected or non-elected office, paid or unpaid, or any position of employment with the city.

(H) (1) The appointed Board members acting on behalf of the city shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as result of any act made in relation to conducting Board activities. Any suit instituted against a Board member brought about because of an act performed by that Board member in the lawful accomplishment of duties and under the legal authority of the Board on which the member serves shall be defended by the legal representative of the city until the final termination of the proceedings.

(2) The Board member shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this subchapter or the Nuisance Code.

### **§ 36.018 ORGANIZATION OF BOARD; MEETINGS, STAFF AND THE LIKE.**

(A) (1) The Code Enforcement Board shall annually elect the Chair from among its members. The Chair of the Board shall be the presiding officer and a full voting member of the Board.

(2) In the absence of the Chair, the remaining members of the Board shall select one of their members to preside in place of the Chair and exercise the powers of the Chair.

(B) The Code Enforcement Board shall hold a regularly scheduled meeting on the fourth Tuesday of each month at 5:00 p.m. in the City Hall Chamber or another place as the Chair may designate. The meetings other than those regularly scheduled shall be special meetings held in accordance with the requirements of the State Open Meetings Act. A Code Enforcement Board shall be authorized to conduct special or emergency meetings in accordance with KRS 61.805 to 61.850.

(C) All meetings and hearings of the Code Enforcement Board shall be held in accordance with the requirements of KRS 65.8815 and the State Open Meetings Act.

(D) The affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken. A quorum shall consist of three or more members.

(E) 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 of the Board.

(F) The city shall provide clerical, administrative and legal staff as reasonably required by the Code Enforcement Board for the proper conduct of its duties.

(G) The Code Enforcement Board is authorized by this ordinance in accordance to KRS 65.8829 to assign a hearing officer to conduct hearings as in accordance with the procedures set forth in KRS 65.8801 to 65.8839.

### **§ 36.019 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 and shall disqualify himself or herself from voting on the matter in which he or she has an interest and shall not be counted for purposes of establishing a quorum.

(Ord. 14, 2013, passed 11-25-13)

### **§ 36.020 JURISDICTION.**

The Code Enforcement Board shall have jurisdiction to issue remedial orders and impose civil fines as a method of enforcing a city ordinance when a violation of the Nuisance Code has been classified as a civil offense. The Code Enforcement Board shall also have jurisdiction to hear and resolve citations or Board orders issued by either the Code Enforcement Board or the Nuisance Code Hearing Board prior to January 1, 2017 and to issue remedial orders and impose civil fines with respect to said citations or board orders.

### **§ 36.021 POWERS.**

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 that are consistent with the requirements of KRS 65.8801 to 65.8839 and ordinances of the City;

(B) To conduct hearings to determine if there has been a violation of an ordinance over which it has jurisdiction to enforce;

(C) To subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas issued by the Code Enforcement Board, or an assigned hearing officer, may be served by any code enforcement officer;

(D) To take testimony under oath (the Chair of the Board, any assigned hearing officer, Vice-Chair or Secretary, if the Secretary is a Notary Public; shall have the authority to administer oaths to witnesses prior to their testimony before the Board on any matter);

(E) To make findings of fact and issue orders necessary to remedy any violation of a city ordinance or code provision which the Board has jurisdiction to enforce and to enforce its remedial orders by imposition of a civil penalty in an amount not to exceed, per day of noncompliance with the term of the remedial order, the maximum civil penalty prescribed in the ordinance which has been violated;

(F) To impose civil fines as authorized by ordinance, in its discretion, on any person found to have violated an ordinance that the Board has jurisdiction to enforce in amounts which the Board deems appropriate within the range authorized by the ordinance;

(G) The Code Enforcement Board shall not have the authority to enforce any ordinance as a civil offense if the same conduct that is regulated by the ordinance would also, under provisions of state statutes, constitute either a criminal offense or a moving motor vehicle offense.

(H) The Code Enforcement Board shall not grant more than a 60 day extension of time to correct violations found as being valid and may probate the fines only if all of the violations are corrected within the described timeframe.

### **§ 36.022 ENFORCEMENT PROCEEDINGS.**

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

(A) Enforcement proceedings before the Board shall only be initiated by the issuance of a citation by a code enforcement officer.

(B) Where a code enforcement officer has reasonable cause to believe, based upon personal observations or investigation, that a person has committed a violation of an ordinance, which the Board has jurisdiction to enforce, the code enforcement officer shall issue a code citation to that person. The officer is authorized to issue a citation by: (a) Personal service to the alleged violator; (b) 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 (c) 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.

(C) A code enforcement officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. If the person fails or refuses to remedy the violation within the specified time, the code enforcement officer shall issue a code 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 that the violation presents imminent danger, or 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) The code citation issued by the code enforcement officer shall contain at the minimum the following information:

- (1) The date and time of issuance;
- (2) The name and address of the person to whom the code citation is issued;
- (3) The date and time the offense was committed;
- (4) The facts constituting the offense;
- (5) The section of the Nuisance 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;
- (8) The maximum civil fine that may be imposed if the person elects to contest the code citation;
- (9) The procedure for the person to follow in order to pay the civil fine or to contest or appeal the code citation; and

(10) A statement that if the person fails to pay the civil fine set forth in the code citation or contest the code citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the Code Enforcement Board, or hearing officer if assigned, to contest the citation and that the determination that the violation was committed shall be final, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

(F) When a citation is issued, the person to whom the code citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the civil fine, as provided herein, or requesting, in writing, a hearing to contest or appeal the code citation. If the person pays the civil penalty or fails to respond to the code citation within seven (7) 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 the citation, as issued, shall be deemed a final order of the Board determining that the violation was committed and impose the civil fine set forth in the code citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator by delivery in person; by certified mail, return receipt requested; or by regular first-class mail and by posting the final order upon the premises.

### **§ 36.023 HEARINGS; NOTICE; FAILURE TO APPEAR; AND FINAL ORDER.**

(A) When a hearing has been requested in connection with a citation of the Nuisance Code, the Code Enforcement Board through its clerical and 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 18 years of age or older and who is informed of the contents of the notice.

(C) Any person requesting a hearing before a 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 code 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 of the Board determining the violation was committed and impose the civil fine set forth in the code citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

Notice of the final order shall be provided to the cited violator by delivery in person; by certified mail, return receipt requested; or by regular first-class mail and by posting the final order upon the premises.

(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 before the Board, the Board shall, based on the evidence, determine whether a violation was committed. If it determines that no violation was committed, an order dismissing the code citation shall be entered. If it determines that a violation was committed, an order shall be issued upholding the code citation and to order the offender to either, or both, pay a civil fine up to the maximum authorized by the ordinance or requiring the offender to remedy a continuing violation within a specified time, not to exceed 60 days, to avoid the imposition of a fine as authorized by ordinance.

(F) Every final order of a Code Enforcement Board shall be reduced to writing, which shall include the date the order was issued and a copy of the order shall be served upon the person named in the code 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 18 years of age or older and who is informed of the contents of the order.  
(Ord. 14, 2013, passed 11-25-13)

#### **§ 36.024 APPEALS; FINAL JUDGMENT.**

(A) An appeal from any final order of the Code Enforcement Board [ ] pursuant to KRS 65.8829(7)(c)2., or pursuant to KRS 65.8828(4) or (6) may be made to the Franklin 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. The District Court shall review the final order de novo.

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

(C) If no appeal from a final order of the Board with jurisdiction is filed within the time period set in division (A) above, the Board's order shall be deemed final for all purposes.

#### **§ 36.025 PREPAYMENT OF CIVIL PENALTIES.**

A person receiving his or her first citation for violation of an applicable ordinance at a specific address may pay a civil penalty, if uncontested, without appearing before the Code Enforcement Board by paying 50% of the established penalty within seven (7) days of the issuance of the code citation. A person receiving his second or third citation for a violation of this code within two (2) years, for that specific address may pay a civil penalty, if uncontested, without appearing before the Code Enforcement Board by paying 90% of the civil penalty prescribed in the ordinance within the seven (7) day period. A person receiving four or more citation for a violation of this code within two (2) years, for that specific address may pay a civil penalty, if uncontested, without appearing before the Code Enforcement Board by paying 100% of the civil penalty prescribed in the ordinance within the seven (7) day period. Section 36.022 addresses situations arising from persons not paying the civil penalty or persons not requesting a hearing, both within the seven (7) day period.

#### **§ 36.026 LIENS, FINES AND THE LIKE.**

(A) The city shall possess a lien on property owned by the person found by a non-appealable final order of the Code Enforcement Board, 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 the 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. The lien:

1. Shall be recorded in the Office of the County Clerk;
2. Shall be notice to all persons from the time of its recording and shall bear interest until paid;
3. Subject to 36.027 of this chapter, take precedence over all other subsequent liens, except state, county, school board and city taxes;
4. Shall continue for ten (10) years following the date of the nonappealable final order, or final judgement of the court; and
5. May be enforced by judicial proceedings, including an action to foreclose.

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

#### **36.027 System for notification of lienholder -- Requirements -- Correction of violation -- Precedence of lien.**

- A. A local government adopting the provisions of KRS 65.8801 to 65.8839 shall implement a system for notification to lienholders that meets the minimum requirements of subsection (B) of this section and shall comply with the procedures to permit remedial action by lienholders as provided in subsection (C) of this section in order to obtain and maintain the lien priority over previously filed liens granted in KRS 65.8835.
- B. A local government shall create a notification system that provides lienholders and others that elect to do so with electronic notifications of all final orders entered pursuant to KRS 65.8801 to 65.8839. The system shall meet the following minimum requirements:
  - 1) An individual or entity may register with the local government to receive information on each final order by providing a name, mailing address, phone number, and an electronic mailing address to the local government. The local government shall accept this information in any form submitted by a registrant. It shall be the responsibility of the registrant to maintain and update its contact information with the local government, except that a local government shall inform a registrant of any evidence the local government receives that the electronic mailing address is invalid or not functional in order to provide the registrant an opportunity to submit an updated electronic mailing address;
  - 2) No less than once a month but no more frequently than once per week, the local government shall send electronic mail notification of all final orders issued pursuant to the provisions of KRS 65.8801 to 65.8839 since the last date of notification

to each party registered pursuant to paragraph (1) of this subsection. The notification shall, at a minimum, include or provide an electronic link to a document or database meeting the requirements of this paragraph that includes:

- a) The name of the person charged with a violation;
- b) The physical address of the premises where the violation occurred;
- c) The last known mailing address for the owner of the premises where the violation occurred.
- d) A specific description of the citation leading to the final order, including the citation detail set forth in KRS 65.8825(4)(a) to (h), which may be satisfied by including a copy of the full citation;
- e) The findings of the final order, including the penalty or penalties imposed by the final order, which may be satisfied by providing a copy of the full final order; and
- f) The status of the final order in regards to its ability to be appealed pursuant to KRS 65.8831, except that the local government shall provide an update to registrants if an appeal is filed on a final order pursuant to KRS 65.8831;

- 3) A local government shall post the notification required under paragraph (2) of this subsection or provide a summary of the information regarding each final order required by paragraph (2) of this subsection in a conspicuous place on its public Web site, which shall be affiliated with the local government and contain other information about the local government, within ten (10) days of the issuance of the final order. If the local government posts using summary form: 1. The summary shall be calculated to reasonably allow identification of the specific properties which may be impacted by the lien; and 2. Upon request, the local government shall provide the complete record of a final order created under paragraph (2) of this subsection without charge; and
- 4) A local government shall maintain the records created under this subsection for a period of ten (10) years following their issuance.

C. (1) A lien holder of record may, within forty-five (45) days from the date of issuance of notification under subsection (B) of this section, correct the violation if it has not already been abated, or elect to pay all civil fines assessed for the violation and all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs. This subsection shall not prohibit the local government from taking immediate action if necessitated under KRS 65.8838.

(2) The lien provided by KRS 65.8835 shall not take precedence over previously recorded liens if:

- (a). The local government failed to comply with the requirements of subsection (B) of this section for notification of the final order; or
- (b) A prior lienholder corrected the violation or paid all civil fines assessed for the violation and all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs within forty-five (45) days as provided in paragraph (1) of this subsection.

(3) A lien that does not take precedence over previously recorded liens under the circumstances outlined in paragraph (2) of this subsection, shall, if the final order remains partially unsatisfied, take precedence over all other subsequent liens except liens for state, county, school board and city taxes.

(4) Nothing contained in this subsection shall prohibit a local government from recording a lien before the forty-five (45) day period established in paragraph (1) of this subsection expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period established in paragraph (1) of this subsection, the local government shall release the lien in the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.

D. The local government may delegate responsibility for compliance with this section to the code enforcement board or its administrative staff as specified in the ordinance establishing and governing the operation of the code enforcement board.

E. The failure of a local government to comply with this section or the failure of a lien to take precedence over previously filed liens as provided in subsection (C)(2) of this section, shall not limit or restrict any other remedies that the local government has against the property or the violator.

F. The requirements of this section shall not be mandatory for a local governmental compliance with KRS 65.8839.

G. The requirements of this section shall not apply to a local government when it enforces KRS 65.8839.

First Reading on the 27 day of March, 2017.

Final adoption on the 2 day of May, 2017.

S/William I. May, Jr.  
T/Mayor

Attest:

S/Chermie Maxwell  
T/City Clerk

SUMMARY: This ordinance amends City of Frankfort Code of Ordinances Chapter 36 by providing additional definitions, revising the provisions concerning the Code Enforcement Board, addressing the jurisdiction of the Code Enforcement Board, limiting the extensions of times the Code Enforcement Board can grant, amending the provisions concerning enforcement proceedings, addressing a person's failure to appear at a scheduled hearing, providing for a de novo appeal before the district court, revising the provisions concerning prepayment of civil penalties and concerning liens, and providing a system to notify the lienholders.

S/Laura Milam Ross  
T/City Solicitor

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