

**CHAPTER 95****( SB 135 )**

AN ACT relating to the enforcement of local government ordinances.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 65.8821 is amended to read as follows:

Each code enforcement board shall have the power to:

- (1) 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 *or local governments creating the board*.
- (2) Conduct hearings, *or assign a hearing officer to conduct a hearing*, to determine whether there has been a violation of any local government ordinance that the board has jurisdiction to enforce. *Any member of the code enforcement board, including the chairman, may be assigned to conduct hearings on behalf of the board. All hearing officers, including members of a code enforcement board who serve as hearing officers, shall receive training related to the conduct of administrative hearings in accordance with procedures set out in KRS 13B.080.*
- (3) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the board may be served by any code enforcement officer.
- (4) Take testimony under oath. The chairman of the board, *or an assigned hearing officer*, shall have the authority to administer oaths to witnesses prior to their testimony before the board on any matter.
- (5) Make findings and issue orders that are necessary to remedy any violation of a local government ordinance that the board has jurisdiction to enforce.
- (6) Impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has jurisdiction to enforce.

➔Section 2. KRS 65.8825 is amended to read as follows:

- (1) Enforcement proceedings before a code enforcement board shall be initiated by the issuance of a citation by a code enforcement officer.
- (2) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of a local government ordinance, 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*~~[to the offender]~~.

When authorized by ordinance, 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 to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

- (3) The citation issued by the code enforcement officer shall be in a form prescribed by the local government and shall contain, in addition to any other information required by ordinance or rule of the board:
  - (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 facts constituting the offense;

- (e) The section of the code or the number of the ordinance violated;
  - (f) The name of the code enforcement officer;
  - (g) The civil fine that will be imposed for the violation if the person does not contest the citation;
  - (h) The maximum civil fine that may be imposed if the person elects to contest the citation;
  - (i) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
  - (j) 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 and that the determination that a violation was committed shall be final.
- (4) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to the administrative official designated by ordinance or by the board.
- (5) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the code enforcement board 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 board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

➔Section 3. KRS 65.8828 is amended to read as follows:

- (1) When a hearing before the code enforcement board ~~is~~~~has been~~ requested, the code enforcement board, through its clerical and administrative staff, shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the code enforcement board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing ~~before the code enforcement board~~ who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.
- (2) Each case *that is the subject of a hearing*~~before a code enforcement board~~ may be presented by an attorney selected by the local government or by a member of the administrative staff of the local government. An attorney may either be counsel to the code enforcement board or may represent the local government by presenting cases *at the hearing*~~before the code enforcement board~~, but in no case shall an attorney serve in both capacities.
- (3) All testimony shall be under oath and shall be recorded. The code enforcement board, *or assigned hearing officer* shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (4) *If a code enforcement board conducts the hearing, or upon the receipt of recommendations of a hearing officer pursuant to this subsection, then*~~At the hearing,~~ the code enforcement board shall determine, based on the evidence presented, whether a violation was committed. *If a hearing officer conducts the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the board.* When the board determines that no violation was committed, an order dismissing the citation shall be entered. When the board determines that a violation has been committed, the board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.
- (5) Every final order of a code enforcement board shall be reduced to writing, which shall include the *findings and conclusions of the board, and the* date the order was issued.~~, and~~ 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 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.

➔Section 4. KRS 65.8815 is amended to read as follows:

- (1) The board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who 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 one (1) of their number to preside in place of the chair and exercise the powers of the chair.
- (2) Meetings of the code enforcement board shall be held as specified in the ordinance creating the board.
- (3) The presence of *at least a majority of the board's entire membership shall constitute a quorum*~~{two (2) or more members shall constitute a quorum on a three (3) member board, the presence of three (3) or more members shall constitute a quorum on a five (5) member board, and the presence of four (4) or more members shall constitute a quorum on a seven (7) member board}~~. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of a 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 from voting on the matter and shall not be counted for purposes of establishing a quorum.
- (4) Minutes shall be kept for all proceedings of the code enforcement board and the vote of each member on any issue decided by the board shall be recorded in the minutes.
- (5) All meetings and hearings of the code enforcement board shall be open to the public.
- (6) The local government legislative body shall provide clerical and administrative personnel as reasonably required by its code enforcement board for the proper conduct of its duties.

➔Section 5. KRS 82.615 is amended to read as follows:

- (1) Any person who receives notice of a parking violation shall respond to such notice as provided in this section within seven (7) days of the date of the notice, by either paying the fine set forth in the notice or requesting a hearing pursuant to KRS 82.620.
- (2) If the owner of a vehicle cited for a parking violation has not responded to the notice within seven (7) days as provided in subsection (1) of this section, the local government shall send a second notice by *regular first-class mail of the United States Postal Service*~~{certified mail}~~ to the last known address of the registered owner of the vehicle as listed on the certificate of title. Such notice shall state that if the owner of the vehicle does not respond to the notice by either paying the fine or by requesting in writing a hearing pursuant to KRS 82.620, within seven (7) days of the receipt of the notice, the owner shall be deemed to have waived his right to a hearing and the determination that a violation was committed shall be considered final. Any person who fails to request a hearing or pay the fine within the seven (7) days shall be deemed to have refused to pay the fine levied by the citation.
- (3) The registered owner of a vehicle at the time the violation occurred shall be liable for all fines, fees and penalties which he has refused to pay.

➔Section 6. KRS 82.700 is amended to read as follows:

As used in KRS 82.700 to 82.725:

- (1) *"Abatement costs" means a local government's costs for and associated with cleaning, 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 to maintain and preserve public health, safety, and welfare in accordance with the portion of a local government's nuisance code pertaining to the condition of and maintenance of structures or premises, adopted pursuant to KRS 82.700 to 82.725 or KRS 381.770;*
- (2) "Local government" means a consolidated local government, *county, urban-county government, charter county government, unified local government*, or a city of *any*~~{the first, second, third, or fourth}~~ class;
- (3)~~{(2)}~~ "Hearing board" means a body established by ordinance and empowered to conduct hearings pursuant to KRS 82.710 and composed of one (1) or more persons appointed by the mayor, *county judge/executive, or chief executive officer* of the local government. "Hearing board" also means any hearing officers appointed by the board. Any action of a hearing officer shall be deemed to be the action of the board;~~{and}~~

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

(5) ~~(3)~~ "Nuisance code" means an ordinance or ordinances enacted by a local government pursuant to KRS 82.705 ~~or~~ ~~and~~ 381.770; **and**

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

➔Section 7. KRS 82.715 is amended to read as follows:

(1) Any person who violates the nuisance code shall be cited for the violation and shall receive notice of the violation. The form of the notice shall be designed by the local government in a manner reasonably calculated to inform the person of the nature of the violation, the penalties for violation, the procedure to be followed by him to respond to the notice, and that the determination shall be final unless contested pursuant to the hearing procedures provided under KRS 82.710.

(2) The notice of violation shall represent a determination that a violation has been committed, and that determination shall be final unless contested.

(3) The owner of the property at the time the violation occurred shall be liable for all fines, fees, **abatement costs**, and penalties assessed for the violation.

(4) An appeal from the hearing board's determination may be made to the District Court of the county in which the city is located within **thirty (30)** ~~seven (7)~~ days of the board's determination. 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 Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the local government to establish that a violation occurred. If the court finds that a violation occurred, the owner shall be ordered to pay to the local government all fines, fees, and penalties occurring as of the date of the judgment. If the court finds a violation did not occur, the local government shall be ordered to dismiss the notice and the plaintiff shall be authorized to recover his costs.

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

➔Section 8. KRS 82.720 is amended to read as follows:

(1) The local government shall possess a lien on property for all fines, penalties, charges, **abatement costs**, and fees imposed pursuant to KRS 82.700 to 82.725. The lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes.

(2) Nothing in KRS 82.700 to 82.725 shall otherwise affect the rights or obligations between the owner of the property and those persons who claim a security interest in the property.

➔SECTION 9. A NEW SECTION OF KRS 82.700 TO 82.725 IS CREATED TO READ AS FOLLOWS:

***The provisions of KRS 82.700 to 82.725 shall not be enforced by a county government upon any property situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.***

➔Section 10. KRS 381.770 is amended to read as follows:

(1) As used in this section:

(a) "Automobile collector" means a person who collects and restores motor vehicles; and

(b) "Ordinary public view" means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property; ~~and~~

(c) "Parts car" means an automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of other automobiles; **and**

(d) ***"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.***

(2) Except as provided in subsection (3) of this section, it shall be unlawful for the owner, occupant or person having control or management of any land within a city, county, consolidated local government, urban-county, or unincorporated area to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:

- (a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;
  - (b) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or nonoperative and which are not inhabited;
  - (c) Rubbish; or
  - (d) The excessive growth of weeds or grass.
- (3) The provisions of paragraph (a) of subsection (2) of this section shall not apply to:
- (a) Junked, wrecked, or nonoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);
  - (b) Junked, wrecked, or nonoperative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, or other means; and
  - (c) Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed, or leased by a motor carrier.
- (4) It shall be unlawful in any city, county, consolidated local government, or urban-county for the owner of a property to permit any structure upon the property to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist in the structure which are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures, or other residents of the city, county, consolidated local government, or urban-county.
- (5) Any city, county, consolidated local government, or urban-county may establish by ordinance reasonable standards and procedures for the enforcement of this section. The procedures shall comply with all applicable statutes, administrative regulations, or codes. Proper notice shall be given to property owners before any action is taken pursuant to this section; and, prior to the demolition of any unfit or unsafe structure, the right to a hearing shall be afforded the property owner.
- (6) ***Unless imminent danger exists on the subject property that necessitates immediate action, the city, county, consolidated local government, or urban-county government shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the property owner, a copy of the determination to any lien holder of record of the subject property by first-class mail with proof of mailing. The lien holder of record may, within forty-five (45) days from receipt of that notice, correct the violations cited or elect to pay all fines, penalty charges, and costs incurred in remedying the situation as permitted by subsection (7) of this section.***
- (7) A city, county, consolidated local government, or urban-county shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this statute, and shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other ~~subsequent~~ liens, except state, county, school board, and city taxes, ***except as provided in subsection (8) of this section. The lien ~~and~~ may be enforced by judicial proceeding.***
- (8) ***The lien provided in subsection (7) of this section shall not take precedence or priority over a previously recorded lien if:***
- (a) ***The city, county, consolidated local government, or urban-county government failed to provide the lien holder a copy of the determination in accordance with subsection (6) of this section; or***
  - (b) ***The lien holder received a copy of the determination as required by subsection (6) of this section, and the lien holder corrected the violations or paid the fines, penalty charges, and costs incurred in remedying the violation.***
- ~~(9)~~(7) In addition to the remedy prescribed in subsection (5) of this section or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city, county, or urban-county may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. ***The failure of a city, county, consolidated local government, or urban-county***

*government to comply with subsection (6) of this section, and the failure of a lien to take precedence over previously filed liens as provided in subsection (8) of this section, shall not limit or restrict any remedies that the city, county, consolidated local government, or urban-county government has against the owner of the property.*

~~(10)(8)~~ The provisions of subsections (5), ~~(7)(6)~~, and ~~(9)(7)~~ of this section shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area if the owner, occupant, or person is not the generator of the rubbish or is not dumping or knowingly allowing the dumping of the rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons onto the property.

**Signed by Governor March 17, 2011.**