

TITLE I: GENERAL PROVISIONS

Chapter

10. RULES OF CONSTRUCTION; GENERAL PENALTY

CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

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§ 10.01 SHORT TITLES.

(A) All ordinances of a permanent and general nature of the city as revised, codified, rearranged, renumbered, and consolidated into component codes, titles, chapters, and sections shall be known and designated as the Benton Code, for which designation “codified ordinances” or “code” may be substituted. Code, title, chapter, and section headings do not constitute any part of the law as contained in the code. (KRS 446.140)

(B) All references to codes, titles, chapters, and sections are to such components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the “traffic code.” Sections may be referred to and cited by the designation “§” followed by the number, such as “§ 10.01.” Headings and captions used in this code other than the title, chapter, and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.02 DEFINITIONS.

For the purpose of this code the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTION. Includes all proceedings in any court of this state. (KRS 446.010(1))

AND. May be read **OR**, and **OR** may be read **AND**, if the sense requires it.

ANIMAL. Includes every warm-blooded living creature except a human being. (KRS 446.010(2))

AVIS. The automated vehicle information system established and maintained by the Transportation Cabinet to collect titling and registration information on vehicles and boat and information on holders of motor vehicle operator's licenses and personal identification cards. (KRS 446.010(55))

BUSINESS TRUST. Includes, except when utilized in KRS Chapter 386, a "statutory trust" as organized under KRS Chapter 386A. (KRS 446.010(6))

CERTIFIED MAIL. Any method of governmental, commercial, or electronic delivery that allows a document or package to have proof of:

(1) Sending the document or package;

(2) The date the document or package was delivered or delivery was attempted; and

(3) The signature of the receipt of the document or package.

(KRS 446.010(8))

CITY, MUNICIPAL CORPORATION, or MUNICIPALITY. When used in this code shall denote the City of Benton irrespective of its population or legal classification.

COMMONWEALTH. The Commonwealth or State of Kentucky.

COMPANY. May extend and be applied to any corporation, company, person, partnership, joint stock company, or association. (KRS 446.010(9))

CORPORATION. May extend and be applied to any corporation, company, partnership, joint stock company, or association. (KRS 446.010(10))

COUNCIL. The city legislative body. (KRS 83A.010(5))

COUNTY. Marshall County, Kentucky.

CRUELTY. As applied to animals, includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted. (KRS 446.010(12))

DIRECTORS. When applied to corporations, includes managers or trustees. (KRS 446.010(13))

DOMESTIC. When applied to a corporation, partnership, business trust, or limited liability company, means all those incorporated or formed by authority of this state. (KRS 446.010(14))

DOMESTIC ANIMAL. Any animal converted to domestic habitat. (KRS 446.010(15))

EXECUTIVE AUTHORITY. The Mayor. (KRS 83A.010(6))

FEDERAL. Refers to the United States. (KRS 446.010(17))

FOREIGN. When applied to a corporation, partnership, limited partnership, business trust, statutory trust, or limited liability company, includes all those incorporated or formed by authority of any other state. (KRS 446.010(18))

KEEPER or PROPRIETOR. Includes all persons, whether acting by themselves or as a servant, agent, or employee.

KRS. Kentucky Revised Statutes.

LAND or REAL ESTATE. Includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest. (KRS 446.010(23))

LEGISLATIVE BODY. The City Council. (KRS 91A.010(8))

LEGISLATIVE BODY MEMBER. A City Councilman. (KRS 83A.010(8))

LIVESTOCK. Cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species. (KRS 446.010(25))

MAY. The act referred to is permissive. (KRS 446.010(26))

MONTH. Calendar month. (KRS 446.010(27))

MUNICIPALITY. The City of Benton, Kentucky.

OATH. Includes **AFFIRMATION** in all cases in which an affirmation may be substituted for an oath. (KRS 446.010(28))

PARTNERSHIP. Includes both general and limited partnerships. (KRS 446.010(30))

PEACE OFFICER. Includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests. (KRS 446.010(31))

PERSON. May extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and limited liability companies. (KRS 446.010(33))

PERSONAL PROPERTY. Includes all property except real.

PREMISES. As applied to property, includes land and buildings.

PROPERTY. Includes real, personal, mixed estates and interests.

PUBLIC AUTHORITY. Includes boards of education; the municipal, county, state, or federal government, its officers or an agency thereof; or any duly authorized public official.

PUBLIC PLACE. Includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance, or any other place for the sale of merchandise, public accommodation, or amusement.

REAL PROPERTY. Includes lands, tenements, and hereditaments.

REGISTERED MAIL. Any governmental, commercial, or electronic method of delivery that allows a document or package to have:

- (1) Its chain of custody recorded in a register to enable its location to be tracked;
- (2) Insurance available to cover its loss; and
- (3) The signature of the recipient of the document or package available to the sender.

(KRS 446.010(36))

REGULAR ELECTION. The election in even numbered years at which members of Congress are elected and the election in odd numbered years at which state officers are elected. (KRS 446.010(37))

SHALL. The act referred to is mandatory. (KRS 446.010(39))

SIDEWALK. That portion of the street between the curb line and the adjacent property line intended for the use of pedestrians.

STATE. The State or Commonwealth of Kentucky.

STREET. Includes alleys, avenues, boulevards, lanes, roads, highways, viaducts, and all other public thoroughfares within the city.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

SWORN. Includes **AFFIRMED** in all cases in which an affirmation may be substituted for an oath. (KRS 446.010(43))

TENANT or OCCUPANT. As applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises, alone or with others.

UNMANNED AIRCRAFT SYSTEM. An aircraft that is operated without the possibility of direct human interaction from within or on the aircraft and includes everything that is on board or otherwise attached to the aircraft and all associated elements, including communication links and the components that control the small unmanned aircraft, that are required for the safe and efficient operation of the unmanned aircraft in the national airspace system. (KRS 446.010(57))

VACANCY IN OFFICE. Such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county, city, or district, or otherwise. (KRS 446.010(46))

VIOLATE. Includes failure to comply with. (KRS 446.010(47))

YEAR. Calendar year. (KRS 446.010(49))

§ 10.03 RULES OF CONSTRUCTION.

(A) *Singular includes plural.* A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing, and a word importing the plural number only may extend and be applied to one person or thing as well as to several persons or things. (KRS 446.020(1))

(B) *Masculine includes feminine.* A word importing the masculine gender only may extend and be applied to females as well as males. (KRS 446.020(2))

(C) *Liberal construction.* All sections of this code shall be liberally construed with a view to promote their objects and carry out the intent of Council. (KRS 446.080(1))

(D) *Retroactivity.* No ordinance shall be construed to be retroactive, unless expressly so declared. (KRS 446.080(3))

(E) *Technical terms.* All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning. (KRS 446.080(4))

§ 10.04 COMPUTATION OF TIME.

(A) In computing any period of time prescribed or allowed by order of court, or by any applicable ordinance or regulation, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the public office in which a document is required to be filed is actually and legally closed, in which event the period runs until the end of the next day which is not one of the days just mentioned. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(B) When an ordinance, regulation, or order of court requires an act to be done either a certain time before an event or a certain time before the day on which an event occurs, the day of the event shall be excluded in computing the time. If the day thereby computed on which or by which the act is required to be done falls on a Saturday, Sunday, legal holiday, or a day on which the public office in which the act is required to be completed is actually and legally closed, the act may be done on the next day which is none of the days just mentioned.

(C) If any proceeding is directed by law to take place, or any act is directed to be done, on a particular day of a month and that day is Sunday, the proceeding shall take place, or the act shall be done, on the next day that is not a legal holiday. (KRS 446.030)

(D) In all cases where the law requires any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall mean the time only as may be necessary for the prompt performance of such duty or compliance with such notice.

§ 10.05 MAJORITY MAY ACT FOR ALL; AUTHORIZED AGENT.

(A) Words giving authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons. (KRS 446.050)

(B) When the law requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include such acts when done by an authorized agent.

§ 10.06 WRITINGS AND SIGNATURES.

(A) When this code requires any writing to be signed by a party thereto, it shall not be deemed to be signed unless the signature is subscribed at the end or close of the writing.

(B) Every writing contemplated by this code shall be in the English language.
(KRS 446.060)

§ 10.07 SEVERABILITY.

It shall be considered that it is the intent of Council in enacting any ordinance, that if any part of the ordinance be held unconstitutional the remaining parts shall remain in force, unless the ordinance provides otherwise, or unless the remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that Council would not have enacted the remaining parts without the unconstitutional part, or unless the remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the intent of Council.
(KRS 446.090)

§ 10.08 REVIVOR.

(A) A repealed ordinance without a delayed effective date is revived when the ordinance that repealed it is repealed by another ordinance enacted at the same meeting of Council.

(B) A repealed ordinance with a delayed effective date is revived by the enactment of a repealer of the ordinance that repealed it at the same or any subsequent meeting of Council as long as it takes effect prior to the effective date of the original repealer.

(C) An amended ordinance without a delayed effective date remains unchanged with respect to an amendment which is repealed at the same meeting of Council which enacted the amendment.

(D) An amended ordinance with a delayed effective date remains unchanged with respect to that amendment if the ordinance making the amendment is repealed at the same or at a subsequent meeting of Council as long as the repealing ordinance takes effect prior to the effective date of the original amendment.

(E) No other action of Council repealing a repealer or an amendment shall have the effect of reviving the original language of the repealer or amendment as the case may be.
(KRS 446.100)

§ 10.09 RIGHTS AND LIABILITIES ACCRUING BEFORE REPEAL OF ORDINANCE.

No new ordinance shall be construed to repeal a former ordinance as to any offense committed against a former ordinance, nor as to any act done, or penalty, forfeiture, or punishment incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising before the new ordinance takes effect, except that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture, or punishment is mitigated by any provision of the new ordinance, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new ordinance takes effect.

(KRS 446.110)

§ 10.10 CONSTRUCTION OF SECTION REFERENCES.

(A) Wherever in a penalty section reference is made to a violation of a section or an inclusive group of sections, such reference shall be construed to mean a violation of any provision of the section or sections included in the reference.

(B) References in the code to action taken or authorized under designated sections of the code include, in every case, action taken or authorized under the applicable legislative provision which is superseded by this code.

(C) Whenever in one section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered, unless the subject matter be changed or materially altered by the amendment or revision.

§ 10.11 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code of ordinances.

§ 10.12 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not enumerated and embraced in this code of ordinances, shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.13 ORDINANCES SAVED.

Whenever an ordinance by its nature either authorizes or enables the Council, or a certain city officer or employee, to make additional ordinances or regulations for the purpose of carrying out the intent of the ordinance, all ordinances and regulations of a similar nature serving such purpose effected prior to the codification and not inconsistent thereto, shall remain in effect and are saved.

§ 10.14 AMENDMENTS TO CODE; AMENDATORY LANGUAGE.

(A) Any chapter, section, or division amended or added to this code by ordinances passed subsequent to this code may be numbered in accordance with the numbering system of this code and printed for inclusion herein. Any chapter, section, or division repealed by subsequent ordinances may be excluded from this code by omission from reprinted pages. Subsequent ordinances as printed or omitted shall be prima facie evidence of such subsequent ordinances until Council shall adopt a new code of ordinances.

(B) The method of amendment set forth in § 32.37 should be used by the city to amend, add, or repeal a chapter, section, or division of this code of ordinances.

§ 10.15 CONFLICTING PROVISIONS.

If the provisions of different codes, chapters, or sections of the codified ordinances conflict with or contravene each other, the provisions bearing the latest passage date shall prevail. If the conflicting provisions bear the same passage date, the conflict shall be so construed as to be consistent with the meaning or legal effect of the questions of the subject matter taken as a whole.

§ 10.16 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of the city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.17 ERRORS AND OMISSIONS.

If a manifest error be discovered consisting of the misspelling of any word or words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached, or the use of a word or words when another word or words was clearly intended to express the intention, the spelling shall be corrected, and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provision shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.18 HISTORICAL AND STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) If a KRS cite is included in the history, this indicates that the text of the section reads word-for-word the same as the statute. Example: (KRS 83A.090) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85). If a KRS cite is set forth as a "statutory reference" following the text of the section, this indicates that the reader should refer to that statute for further information. Example:

§ 31.10 MAYOR.

The executive authority of the city shall be vested in and exercised by the Mayor.
(Ord. 10, passed 1-1-80)

Statutory reference:

For powers and duties of the Mayor, see KRS 83A.130

§ 10.99 GENERAL PENALTY.

Where an act or omission is prohibited or declared unlawful in this code of ordinances, and no penalty is otherwise provided, the offense shall be deemed a violation and the offender shall be fined not more than \$250 for each offense.

