

CITY OF BENTON
ORDINANCE NO. 20-08-01

**AN ORDINANCE OF THE CITY OF BENTON, KENTUCKY AMENDING
PRIOR ORDINANCE CREATING A CODE ENFORCEMENT BOARD**

WHEREAS, it is the intent of KRS 65.8801 to 65.8839 to protect, promote, and improve the health, safety, and welfare of the citizens residing within the City by authorizing the creation of an administrative board with the authority to issue remedial orders and impose fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the ordinances in force within the City; and

WHEREAS, it is the desire of the City of Benton, Kentucky to utilize the authority granted in KRS 65.8801 to 65.8839 related to the City of Benton Code Enforcement Board; and

WHEREAS, the City of Benton desires to amend and restate Ordinance 16-12-02 titled “An Ordinance relating to the Abatement of Nuisances and Governing the Maintenance of Structures and Premises Essential for the Protection of the Health and Safety of the Citizens of the City of Benton”.

NOW THEREFORE be it ordained by the City of Benton as follows:

SECTION 1. 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.

(c) **“Code Enforcement Officer”** means a city police officer, safety officer, citation officer, or other public law enforcement officer with the authority to issue a citation.

(d) **“Final Order”** means any order:

1. Issued by an assigned hearing officer in accordance with Section 8 of this ordinance;
2. Created because a violator neither paid nor contested the citation within seven (7) days as provided in Section 9(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 10(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 a local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinances 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.

SECTION 2. Creation and membership.

There is hereby created pursuant to KRS 65.8801 to KRS 65.8839i within the city, a code enforcement board which shall be composed of three (3) members, all of whom shall be residents of the city for a period of at least one (1) year prior to their appointment and shall reside there throughout the term in office.

SECTION 3. Enforcement powers.

(a) The code enforcement board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances when a violation of the ordinance has been classified as a civil offense.

(b) The code enforcement board shall not have the authority to enforce any ordinance regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.

(c) The code enforcement board has the power to appoint a hearing officer, review the hearing officer's Orders and subpoenas, may remove a hearing officer in the board's discretion and may compensate a hearing officer at \$100.00 an hour for all work performed on a case up to a maximum of \$500.00 per case. Hearing officer compensation is to be paid by the City.

SECTION 4. Appointment of members; term of office; removal from office; oath; compensation.

(a) Members of the code enforcement board shall be appointed by the executive authority of the City, subject to the approval of the legislative body.

(b) The initial appointment to the code enforcement board shall be as follows:

1. One (1) member of the board shall be appointed for a term of one (1) year.

2. One (1) member of the board shall be appointed for a term of two (2) years;
and

3. One (1) member of the board shall be appointed for a term of three (3) years.

(c) All subsequent appointments shall be for a term of three (3) years. A member may be reappointed, subject to the approval of the legislative body.

(d) The executive authority may appoint, subject to the approval of the legislative body, two (2) alternate members to serve on the code enforcement board in the absence of regular members. Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply to regular members of the code enforcement board.

(e) Any vacancy on the board shall be filled by the executive authority, subject to approval of the legislative body, within sixty (60) days of the vacancy. If the vacancy is not filled within that time period, the remaining code enforcement board member shall fill the vacancy. A vacancy shall be filled for the remainder of the unexpired term.

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

(g) All members of the code enforcement board shall, before entering upon the duties of their office, take the oath prescribed by section 228 of the Kentucky Constitution.

(h) Members of the code enforcement board shall be reimbursed for actual expenses and compensated in the amount of \$50.00 per meeting or \$25.00 an hour for any work done individually on a case by a board member (issue of subpoenas, sending notices, etc.)

(i) No member of the code enforcement board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the City.

SECTION 5. Organization of board; meetings; quorum

(a) The code enforcement board shall annually elect a chair from among its members. The chair shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the board shall select a member to preside in place of and exercise the powers of the chair.

(b) Regular meetings of the code enforcement board shall be held annually on the second Monday in January. Meetings other than those regularly scheduled shall be special meetings or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act.

(c) All meetings and hearings of the code enforcement board shall be public meetings held in accordance with the requirements of KRS 65.8815(5) and the Kentucky Open Meetings Act.

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

(e) Minutes shall be kept for all proceedings of the code enforcement board and the vote of each member on any issue decided by the board shall be recorded in the minutes.

SECTION 6. 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, disqualify

himself from voting on the matter in which he has an interest, and shall not be counted for purposes of establishing a quorum.

SECTION 7. Powers of the code enforcement board.

The City of Benton Code Enforcement Board shall have the following powers and duties:

(a) To adopt rules and regulations to govern its operations and the conduct of its hearings consistent with this ordinance.

(b) To assign a hearing officer to conduct hearings in accordance with Section 8 of this ordinance.

(c) To review the work of the assigned hearing officer and to remove and reappoint a hearing officer in the board's discretion.

SECTION 8. Hearing officers

(a) Eligibility.

The board shall appoint an individual who is not a member of the board to be a hearing officer who does not hold any elected or appointed office or position of employment with the City. The hearing officer is not required to be a resident of the City but must be a resident of Marshall County and have been a resident of the county at least one (1) year prior to that appointment.

(b) Experience and training.

1. A person assigned to be a hearing officer by the code enforcement board shall have experience or shall have received training in the code enforcement process and basic procedural due process. At a minimum, the experience or training shall include acquired knowledge regarding a party's fundamental due process right to:

- a. Be accompanied and advised by counsel at the hearing;
- b. Present evidence and witnesses on his or her behalf at the hearing;

- c. Examine the evidence opposing the party; and
- d. Confront and cross-examine the witnesses opposing the party.

2. The code enforcement board may establish additional standards in writing, including but not limited to examples of qualifying experience and training, and minimum amounts of experience or training required.

3. Before appointing a person as a hearing officer, the code enforcement board shall require the person to submit a written, signed affidavit describing and verifying the experience or training received. The affidavit shall be provided on a form prescribed by the code enforcement board.

4. The code enforcement board shall determine whether the affidavit satisfies the experience or training requirements as set forth in this paragraph and any additional standards established in writing by the board. The board shall not assign a person as a hearing officer unless it has determined that the affidavit satisfies the experience or training requirements.

(c) Hearing powers and procedures.

1. An assigned hearing officer may administer oaths to witnesses prior to their testimony and subpoena alleged violators, witnesses, and evidence.

2. Any hearing conducted by a hearing officer shall conform to the procedural requirements in Section 10 of this ordinance.

(d) Final order.

1. Following a hearing, the hearing officer shall make written findings of facts and conclusions of law and enter a final order in accordance with Section 10(3) of this ordinance.

2. Within twenty-four (24) hours of entry, these findings, conclusions, and final order shall be forwarded to the alleged violator, and to the code enforcement board. The

findings, conclusions, and recommended order may be delivered to the alleged 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 delivery.

- (e) Appeal from final order.

An alleged violator may appeal a final order issued by a hearing officer directly to the Marshall District Court, in accordance with Section 12 of this ordinance.

SECTION 9. Enforcement proceedings.

The following requirements shall govern all enforcement proceedings before the code enforcement board or hearing officer:

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

- (b) Except when immediate action is necessary pursuant to Section 17 of this ordinance, if a code enforcement officer believes, based on this personal observation or investigation, that a person has violated a city ordinance, he may issue a Notice of Violation allowing the alleged violator a specified period of time to remedy the violation without incurring a fine. If the alleged violator fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

The code enforcement officer is authorized to issue only one notice per individual per calendar year; violations in excess of one per individual per calendar year is subject to the issuance of a citation without further notice.

- (c) The code enforcement officer shall issue the citation by one of the following methods:

1. Personal service to the alleged violator;
2. 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

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

4. If, in the exercise of reasonable diligence, the issuance of a citation using the methods set out in sections (c) (1), (c) (2), or (c) (3) is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular, first-class mail 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 shall contain the following information:

1. The date and time of issuance;
2. The name and address of the person to whom the citation is issued;
3. The physical address of the premises where the violation occurred;
4. The date and time the offense was committed;
5. The facts constituting the offense;
6. The section of the code or the number of the ordinance violated;
7. The name of the code enforcement officer;
8. The civil fine that may be imposed for the violation, including, if applicable:
 - a. The civil fine that will be imposed if the person does not contest the citation; and

b. The maximum civil fine that may be imposed if the person elects to contest the citation.

9. The procedure of the person to follow in order to pay the civil fine or to contest the citation; and

10. A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the code enforcement board or hearing officer to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and, the person shall be deemed to have waived the right to appeal the final order to District Court.

(e) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to the City Clerk.

(f) 1. The person to whom the citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the civil fine or requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation within 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. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to District Court.

2. Notice of the final order shall be delivered to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving a copy of

the order 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 order.

SECTION 10. Hearing; notice; and final order.

(a) When a hearing has been requested, the City Clerk or his or her designee shall contact the hearing officer to schedule a hearing and send notice of the requested hearing to the code enforcement board.

(b) Not less than seven (7) days before the date of the hearing, the hearing officer on behalf of the code enforcement board shall notify the requester of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

(c) 1. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation, and the determination that a violation was committed shall be final. In this event, the citation as issued shall be deemed a final order determining the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

2. Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

(d) All testimony at the hearing shall be taken under oath and recorded. Testimony shall be taken from the code enforcement officer, the alleged violator, and any witnesses to the violation offered by the code enforcement officer or alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(e) The hearing officer shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, the hearing officer shall issue an order dismissing the citation. If it is determined that a violation was committed, the hearing officer shall issue an order upholding the citation. The hearing officer may impose a fine up to the maximum authorized by ordinance.

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

2. If the person named in the citation is not present when the final order is issued, the order shall be delivered 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.

SECTION 11. Presentation of cases.

Each case before the hearing officer shall be presented by an attorney selected by the city, a code enforcement officer for the city, or by a member of the city's administrative staff. The city attorney may either be counsel to the code enforcement board or hearing officer or may present cases before the board or hearing officer but shall in no case serve in both capacities.

SECTION 12. Appeals; final judgment.

(a) An appeal from a final order of the hearing officer following a hearing conducted pursuant to Section 10(e) of this ordinance may be made to the Marshall County District Court within thirty (30) days of the date the order issued. The appeal shall be initiated by the filing of a complaint and a copy of the final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

(b) If no appeal from a final order following a hearing is filed within the time period set in subsection (1) above, the order shall be deemed final for all purposes.

SECTION 13. Ordinance fine schedule.

Violations of ordinances that are enforced by the hearing officer on behalf of the code enforcement board shall be subject to the following schedule of civil fines:

(a) If a citation for a violation of an ordinance is not contested by the person charged with the violation, the penalties set forth in this subsection shall apply:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
Animals (unsafe and unfit)	\$ 25.00	\$ 50.00	\$100.00
Structure Code	\$100.00	\$125.00	\$150.00
Garbage	\$ 25.00	\$ 50.00	\$100.00
Occupational License	\$ 50.00	\$ 75.00	\$100.00
Weeds	\$ 25.00	\$ 50.00	\$100.00

(b) If the citation is contested and a hearing before the code enforcement board or assigned hearing officer is required, the following maximum penalties may be imposed at the discretion of the code enforcement board or hearing officer:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
Animals	\$100.00	\$200.00	\$ 300.00
Building and Construction Code	\$500.00	\$750.00	\$1,000.00
Garbage	\$ 50.00	\$100.00	\$ 200.00

Occupational License	\$500.00	\$750.00	\$1,000.00
Weeds	\$ 50.00	\$100.00	\$ 200.00

SECTION 14. Lien; fines, charges, and fees.

(a) The city shall possess a lien on property owned by the person found by a nonappealable final order as defined by Section 1(d), or by a final judgment of the court, to have committed a violation of a city ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance, including abatement costs. An affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and regularity of the proceedings pursuant to KRS 65.18801 to 65.8839.

(b) The lien shall be recorded in the office of the Marshall County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid. The lien shall continue for ten (10) years following the date of the nonappealable final order or final court judgment.

(c) Subject to Section 16 of this ordinance, the lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings, including a foreclosure action.

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

(e) Nothing in this section shall otherwise affect the rights or obligations between the owner of the property and those persons who claim a security interest in the property.

(f) The enforcement provisions of this ordinance 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 premises. The City of Benton shall have the authority to enforce against the occupant(s) (such as a renter and/or tenant) or non-occupant owners (such as landlords) if the non-occupant owner has been given notice of the violation and fails to take reasonable steps to abate. Notice is deemed sufficient if served 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 notice.

(g) The enforcement provisions of this ordinance shall not be enforced by the City of Benton upon any premises situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.

SECTION 15. Liens.

(a) A lien that does not take precedence over previously recorded liens 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.

(b) Once the violator, his or her heirs or assigns, pays in full the lien including any interest incurred, the city shall release the lien within thirty (30) days of the lien being paid in full.

SECTION 16. Immediate action.

Nothing in this ordinance 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.

SECTION 17. Repealing Ordinance 16-12-02.

Ordinance 16-12-02 title, “An Ordinance Relating to the Abatement of Nuisances and Governing the Maintenance of Structures and Premises Essential for the Protection of the Health and Safety of the City of Benton” is repealed.

Passed this the 17th day of August, 2020.



RITA DOTSON, MAYOR

ATTEST:



BETHANY COOPER, CITY CLERK

First Reading 7/31/2020
Second Reading 8/17/2020
Publication 8/25/2020

COUNCIL MEMBERS VOTING

	<u>AYE</u>	<u>NAY</u>
CHARLES EDMONDS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ANN RILEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KEVIN FARLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RITA MURRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SHERRA RILEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BUTCH HOLLAND	<input checked="" type="checkbox"/>	<input type="checkbox"/>