

Canned questions for MAAK Code Enforcement CLE

October 5, 2017

The panel presentation is designed in part to elicit scholarly debate amongst several experts in the field of municipal law. Listed below are “canned” questions that will be asked to the panel by the moderator. Many are designed to purposely push common issues outside of black letter law into gray areas in order to facilitate dialogue. Reference materials are attached, including cases, statutes and AG opinions that answer or shed light on the questions. However, since this panel is designed for the benefit of the audience, **we encourage you to ask your own specific questions to the panel.**

What authority does a hearing officer have to issue remedial orders? To set deadlines for remediation? To set penalties for a violation?

Statute allows option of giving Hearing Officer final order authority on behalf of the CEB. Are there due process issues without a Board? Is there a practical issue with having a Board with no essential function?

What due process is required for a code violation?

What are the practical difficulties of using a CEB to enforce ordinances that do not have some nexus to real property? E.g., enforcing an ordinance prohibiting dogs from being walked without a leash. How can those difficulties be overcome?

Assume a citation finding a tall grass violation is final against a property (no appeals left). Does the city have authority to enter the property to mow? If not, what is needed? Would the answer change if the violation involved a junked property? A house that was ordered to be demolished?

What is the honest error doctrine? Has Kentucky adopted this doctrine?

Assume a city has a noise ordinance with a civil penalty enforced by a CEB. When a police officer shows up to the loud party at 1:00 a.m., does the officer have the authority to order the music to stop immediately? What if the property owner refuses to turn down the music? Can the owner be arrested?

A city prohibits swine within its city limits. Can this city enforce a violation for a pet, pot belly pig? What if the pot belly pig is claimed as a support animal, ADA concerns?

A subdivision under construction contains ten adjacent unimproved lots owned by the same developer. Code enforcement receives a complaint that all ten the lots have tall grass in violation of the ordinance. Should the code enforcement officer issue one citation or ten? Is there a separate penalty for each lot?

We have common areas owned by the HOA that either never got started or got started and is now inactive. It is not collecting dues and is not mowing common areas, including drainage areas. The City gets complaints and we try to tell them the property actually belongs to you. However, in some cases it is next to owners not in the HOA area. There is no need to mow and lien. We don't want ownership. Any ideas on how to handle this issue or ideas how we can collect from the HOA members who should be paying for this service anyway. Per KRS 82.085, can we establish a higher property tax for this service. We even thought about citing each owner, but in one instance it is nearly 200 lots. We now have several of these that total about 300 acres. Mowing several times a year will not be cheap.

Does a code enforcement officer need a warrant to enter private property to investigate a violation? Is the answer different on commercial property?

What is the legal basis for obtaining a search warrant for violation of an ordinance with civil penalties?

Can a code enforcement officer issue a citation without witnessing the violation? Can a citizen "swear out" a complaint? What about based upon an affidavit from a police officer?

Can a local government recoup legal fees incurred in prosecuting/defending a code enforcement case in court?

Can code enforcement violate the Americans with Disabilities Act ("ADA")?

Homeowner suffers from a recognized mental health disorder that requires the privacy overgrown vegetation, ADA concerns?

Should a city attorney have the right to negotiate/waive code enforcement fees? Under what circumstances?

Can a local government bypass the code enforcement board process and take a violation of a covered ordinance directly to court?

Assume a violator is cited for a dilapidated property. The owner fails to appeal within 7 days of the citation. When the city shows up to abate, no trespassing signs are posted and the owner is standing on his porch with a gun. What now?

Same facts: Assume the city goes to court to seek injunctive relief against the owner. Can the owner challenge the validity of the charges? What is the standard for injunctive relief?

Does a code enforcement officer have discretion like a police officer?

Code enforcement gets a complaint of tall grass on a property with several recent violations. Can the CE officer call the property owner and give them a heads-up to mow the grass before the property will be inspected the next day?

What effect does zoning have on nuisance ordinances? E.g. tall grass on a property zoned for agriculture. What about scrap auto parts on a property zoned commercial?

Assume an agricultural property is exempt from code enforcement. Is there anything a city can do to control nuisances on the property, e.g. tall grass along an intersection or a prominent location?

Does a City's failure to follow its Nuisance Code Ordinance create legal potential legal exposure for a federal due process civil action?

Does a City's failure to follow its Nuisance Code Ordinance create legal potential legal exposure under state law?

65.8801 Purpose of KRS 65.8801 to 65.8839.

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 local governments of this state by authorizing the creation of administrative boards with the authority to issue remedial orders and impose civil fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the ordinances in force in local governments. KRS 65.8801 to 65.8839 is intended and shall be construed to provide an additional or supplemental means of obtaining compliance with local government ordinances, and nothing contained in KRS 65.8801 to 65.8839 shall prohibit the enforcement of local government ordinances by any other means authorized by law.

Effective: July 15, 1996

History: Created 1996 Ky. Acts ch. 177, sec. 1, effective July 15, 1996.

65.8805 Definitions for KRS 65.8801 to 65.8839.

As used in KRS 65.8801 to 65.8839, unless the context otherwise requires:

- (1) "Local government" means any county, consolidated local government, urban-county government, charter county government, unified local government, or city of any class;
- (2) "Code enforcement board" means an administrative body created and acting under the authority of KRS 65.8801 to 65.8839;
- (3) "Joint code enforcement board" means two (2) or more local governments that have entered into an interlocal agreement in accordance with KRS 65.210 to 65.300 to perform and enforce the duties of a code enforcement board as provided in KRS 65.8801 to 65.8839;
- (4) "Code enforcement officer" means 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;
- (5) "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 a local government which embodies all or part of an ordinance;
- (6) "Imminent danger" means a condition which is likely to cause serious or life-threatening injury or death at any time;
- (7) "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;
- (8) "Final order" means any order:
 - (a) Issued by the code enforcement board in accordance with KRS 65.8828(4) or (6);
 - (b) Issued by an assigned hearing officer in accordance with KRS 65.8829(7) and that is not appealed to the code enforcement board as provided in KRS 65.8828(6);
 - (c) Created because a violator neither paid nor contested the citation within seven (7) days as provided in KRS 65.8825(6); or
 - (d) Created because of a failure of a violator to appear at a hearing the violator requested to contest the citation as provided in KRS 65.8828(1);
- (9) "Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property; and
- (10) "Premises" means a lot, plot, or parcel of land, including any structures upon it.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 1, effective July 15, 2016. -- Amended

2006 Ky. Acts ch. 12, sec. 1, effective July 12, 2006. -- Created 1996 Ky. Acts ch. 177, sec. 2, effective July 15, 1996.

65.8808 Code enforcement board creation -- Joinder with additional cities or counties -- Powers -- Classification of violation of ordinance as civil offense.

- (1) The legislative body of a local government may, by ordinance, create a code enforcement board which shall have the power to issue remedial orders and impose civil fines as a method of enforcing a local government ordinance when a violation of the ordinance has been classified as a civil offense in accordance with this section. Any local government may expand its code enforcement board to include additional cities or counties within its jurisdiction for performing the function for which the code enforcement board was organized.
- (2) Subject to the limitations set forth in subsection (3) of this section, the legislative body of a local government may utilize a code enforcement board to enforce any ordinance of the local government, including but not limited to, any zoning or nuisance ordinance. Each ordinance to be enforced by a code enforcement board, by its express terms, shall provide that each violation of the ordinance shall constitute a civil offense. The ordinance shall provide either:
 - (a) A specific civil fine or fines that may be imposed for each violation of the ordinance; or
 - (b) Two (2) separate civil fines as follows:
 1. A maximum civil fine that may be imposed for each offense if the citation is contested under KRS 65.8825(6); and
 2. A specific civil fine of less than the maximum civil fine that will be imposed for each offense if the person who has committed the offense does not contest the citation.
- (3) No legislative body of a local government shall classify the violation of an ordinance as a civil offense if the same conduct that is regulated by the ordinance would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 2, effective July 15, 2016. -- Amended 2006 Ky. Acts ch. 12, sec. 2, effective July 12, 2006. -- Amended 1998 Ky. Acts ch. 364, sec. 1, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 177, sec. 3, effective July 15, 1996.

65.8811 Membership of board -- Term -- Reappointment -- Vacancy -- Removal -- Compensation.

- (1)
 - (a) A code enforcement board shall consist of no fewer than three (3) members who shall be appointed by the executive authority of the local government, subject to the approval of the legislative body.
 - (b) A joint code enforcement board shall be appointed as set out in the terms of an interlocal agreement and shall include representation on the board of all participating local governments. Two (2) or more participating local governments may share an appointment or appointments as set out in the terms of the interlocal agreement.
- (2) The initial appointments to a code enforcement board shall be as follows:
 - (a) One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of one (1) year;
 - (b) One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of two (2) years; and
 - (c) One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of three (3) years.

All subsequent appointments shall be made for a term of three (3) years.
- (3)
 - (a) Each member of a code enforcement board shall have resided within the boundaries of the local government unit for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.
 - (b) Board members serving on joint code enforcement boards shall have resided within the boundaries of the local government they represent for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.
- (4) A member may be reappointed, subject to approval of the legislative body or, in the case of a joint appointment, approval of the legislative bodies.
- (5) Any vacancy on a code enforcement board shall be filled within sixty (60) days by the executive authority, subject to the approval of the legislative body. Joint appointments shall require an agreement of the executive authorities and approval of the legislative bodies in filling the vacancy. If a vacancy is not filled within sixty (60) days, the remaining members of the code enforcement board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.
- (6) Any member of a code enforcement board may be removed by the appointing authority or authorities for misconduct, inefficiency, or willful neglect of duty. Any appointing authority or authorities exercising the power to remove a member of a code enforcement board shall submit a written statement to the member and to the legislative body of the local government or local governments, setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.

- (7) All members of a code enforcement board shall, before entering upon their duties, take the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky.
- (8) The members of a code enforcement board may be reimbursed for expenses or compensated, or both, as specified in the ordinance creating the board.
- (9) No member of a local government code enforcement board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the unit of local government that is subject to the jurisdiction of the code enforcement board.
- (10) Each legislative body that elects to establish a code enforcement board is encouraged to provide opportunities for education regarding pertinent topics for the members of the code enforcement board.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 86, sec. 1, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 86, sec. 3, effective July 15, 2016. -- Amended 2007 Ky. Acts ch. 106, sec. 2, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 12, sec. 3, effective July 12, 2006. -- Amended 1998 Ky. Acts ch. 364, sec. 2, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 177, sec. 4, effective July 15, 1996.

65.8815 Organization of board -- Meetings -- Quorum -- Minutes -- Administrative personnel.

- (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) Regular meetings of the code enforcement board shall be held as specified in the ordinance creating the board. A code enforcement board shall be authorized to conduct special or emergency meetings in accordance with KRS 61.805 to 61.850.
- (3) The presence of at least a majority of the board's entire membership shall constitute a quorum. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. 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 for the proper conduct of the duties of the code enforcement board.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 4, effective July 15, 2016. -- Amended 2011 Ky. Acts ch. 95, sec. 4, effective June 8, 2011. -- Amended 1998 Ky. Acts ch. 364, sec. 3, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 177, sec. 5, effective July 15, 1996.

65.8818 Alternate board members.

The executive authority may appoint two (2) alternate members to serve on the code enforcement board in the absence of regular members. The appointment of alternate members shall be subject to the approval of the legislative body. Alternate members shall meet all of the qualifications and be subject to all of the requirements of KRS 65.8801 to 65.8839 that apply to regular members.

Effective: July 15, 1996

History: Created 1996 Ky. Acts ch. 177, sec. 6, effective July 15, 1996.

65.8821 Powers of board.

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;
- (3) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the board, or an assigned hearing officer, 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; and
- (6) Impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has jurisdiction to enforce.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 6, effective July 15, 2016. -- Amended 2011 Ky. Acts ch. 95, sec. 1, effective June 8, 2011. -- Created 1996 Ky. Acts ch. 177, sec. 7, effective July 15, 1996.

65.8825 Enforcement proceedings -- Procedure.

- (1) Enforcement proceedings before a code enforcement board or hearing officer 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;
 - (c) Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator; or
 - (d) If, in the exercise of reasonable diligence, the issuance of a citation using the methods set out in paragraphs (a) to (c) of this subsection is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises.
- (3) 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.
- (4) 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 if the local government has elected to use the alternative authorized under KRS 65.8808(2)(b);
 - (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 or hearing officer to contest the citation and that the determination that a 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.

- (5) 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. The code enforcement officer, hearing officer, or code enforcement board may also elect to provide notice of the issuance of the citation to any lienholder with an interest in the subject premises.
- (6) 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 to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator by:
 - (a) Regular first-class mail;
 - (b) Certified mail, return receipt requested;
 - (c) Personal delivery; or
 - (d) 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.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 86, sec. 2, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 86, sec. 7, effective July 15, 2016. -- Amended 2011 Ky. Acts ch. 95, sec. 2, effective June 8, 2011. -- Created 1996 Ky. Acts ch. 177, sec. 8, effective July 15, 1996.

65.8828 Hearing -- Notice -- Failure to appear -- Procedure -- Final order.

- (1) When a hearing is 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 regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. The code enforcement board may also elect to provide notice of hearing to any lienholders with an interest in the subject premises. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator in the manner set forth in subsection (5) of this section.
- (2) Each case that is the subject of a hearing 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, 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 KRS 65.8829(6), then the code enforcement board shall determine, based on the evidence presented, whether a violation was committed. 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 may issue an order upholding the citation and may order the offender to do either or both of the following:
 - (a) Pay a civil fine in an amount up to the maximum authorized by ordinance; or
 - (b) Remedy a continuing violation within a specified time to avoid the imposition of a fine as authorized by ordinance.
- (5) Every final order following a hearing 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. A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a

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

- (6) If the code enforcement board is reviewing a final order entered by a hearing officer on appeal as authorized by KRS 65.8829(7), the code enforcement board shall review the record created before the hearing officer and determine whether there is substantial evidence on the record to support a finding by the hearing officer that a violation was committed. If the code enforcement board determines that there is not substantial evidence on the record, it shall issue an order dismissing the citation. If the code enforcement board determines that there is substantial evidence on the record that a violation was committed, it shall issue a final order upholding the order entered by the hearing officer. The provisions of subsections (1) and (4) of this section shall apply to any appeal hearing conducted pursuant to this subsection.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 8, effective July 15, 2016. -- Amended 2011 Ky. Acts ch. 95, sec. 3, effective June 8, 2011. -- Amended 1998 Ky. Acts ch. 364, sec. 4, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 177, sec. 9, effective July 15, 1996.

65.8829 Hearing officer -- Duties -- Procedures -- Ordinance for alternative procedure.

- (1) A code enforcement board may assign a hearing officer as provided by ordinance to conduct hearings in accordance with the procedures set forth in KRS 65.8828.
- (2)
 - (a) Any member of the code enforcement board, including the chair, may be assigned as a hearing officer.
 - (b) An individual that is not a member of the code enforcement board may be assigned by the code enforcement board as a hearing officer as long as the individual does not hold any elected or appointed office or position of employment with a unit of local government that created the code enforcement board.
- (3) Any person assigned to be a hearing officer by a code enforcement board shall have experience or shall have received training in the code enforcement process and basic procedural due process, as specified in the ordinance creating the code enforcement board. The experience or training shall include, at a minimum, 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.
- (4) An assigned hearing officer may administer oaths to witnesses prior to their testimony and subpoena alleged violators, witnesses, and evidence to the hearing to which the officer is assigned.
- (5) Any hearing conducted by a hearing officer under this section shall conform to the procedural requirements of KRS 65.8828(1) to (5).
- (6) The hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the code enforcement board. The hearing officer shall, within twenty-four (24) hours of entry, forward these findings, conclusions, and recommended order to the alleged violator in the manner required by KRS 65.8828(5) and to the code enforcement board for its action under KRS 65.8828.
- (7)
 - (a) In lieu of subsection (6) of this section, a local government may provide in the ordinance establishing the code enforcement board that a hearing officer shall make written findings of facts and conclusions of law, and enter final orders consistent with the authority granted to the code enforcement board under KRS 65.8828(4).
 - (b) The findings of fact, conclusions of law, and final order shall be forwarded within twenty-four (24) hours of entry to the alleged violator in the manner required by KRS 65.8828(5) and to the code enforcement board.
 - (c) For appeals of a final order of a hearing officer issued under this subsection, the local government shall designate in the ordinance governing the operation of the code enforcement board that either:

1. A final order issued by a hearing officer under this subsection may be appealed by the alleged violator to the code enforcement board in accordance with terms specified in the ordinance governing the operation of the code enforcement board. If the local government provides appeals to the code enforcement board, the appeal shall be filed in writing to the code enforcement board within seven (7) days of the receipt of the final order. The failure to file an appeal within seven (7) days shall render the order entered by the hearing officer final for all purposes and an individual receiving a final order under this subparagraph shall be required to exhaust the administrative remedy of appeal to the code enforcement board before appealing to District Court as authorized under KRS 65.8831; or
2. A final order issued by a hearing officer under this subsection may be appealed by the alleged violator directly to District Court, in accordance with the provisions of KRS 65.8831.

Effective: July 15, 2016

History: Created 2016 Ky. Acts ch. 86, sec. 5, effective July 15, 2016.

65.8831 Appeals -- Final judgment.

- (1) An appeal from any final order issued pursuant to KRS 65.8829(7)(c)2., or pursuant to KRS 65.8828(4) or (6) may be made to the District Court of the county in which the local government is located within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the final order in the same manner as any civil action under the Rules of Civil Procedure. The District Court shall review the final order de novo.
- (2) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.
- (3) If no appeal from a final order is filed within the time period set forth in subsection (1) of this section, the order shall be deemed final for all purposes.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 9, effective July 15, 2016. -- Amended 1998 Ky. Acts ch. 364, sec. 5, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 177, sec. 10, effective July 15, 1996.

65.8835 Lien -- Recording -- Responsibility for fines, charges, and fees.

- (1) The local government shall possess a lien on property owned by the person found by a nonappealable final order as defined by KRS 65.8805(8), or by a final judgment of the court, to have committed a violation of a local government ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the local government 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:
 - (a) Shall be recorded in the office of the county clerk;
 - (b) Shall be notice to all persons from the time of its recording and shall bear interest until paid;
 - (c) Subject to KRS 65.8836, shall take precedence over all other liens, except state, county, school board, and city taxes;
 - (d) Shall continue for ten (10) years following the date of the nonappealable final order, or final judgment of the court; and
 - (e) May be enforced by judicial proceedings, including an action to foreclose.
- (2) In addition to the remedy prescribed in subsection (1) of this section, 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 local government may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.
- (3) 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.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 10, effective July 15, 2016. -- Created 1996 Ky. Acts ch. 177, sec. 11, effective July 15, 1996.

65.8836 System for notification of lienholder -- Requirements -- Correction of violation -- Precedence of lien.

- (1) 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 (2) of this section and shall comply with the procedures to permit remedial action by lienholders as provided in subsection (3) of this section in order to obtain and maintain the lien priority over previously filed liens granted in KRS 65.8835.
- (2) 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:
 - (a) 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;
 - (b) 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 (a) 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:
 1. The name of the person charged with a violation;
 2. The physical address of the premises where the violation occurred;
 3. The last known mailing address for the owner of the premises where the violation occurred if, in the exercise of reasonable diligence, it is ascertainable.
 4. 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;
 5. 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
 6. 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;
 - (c) At the same time the electronic notification required under paragraph (b) of this subsection is sent, a local government shall post this notification or

provide a summary of the information regarding each final order required by paragraph (b) 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. 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 (b) of this subsection without charge; and
- (d) A local government shall maintain the records created under this subsection for a period of ten (10) years following their issuance.
- (3) (a) A lien holder of record may, within forty-five (45) days from the date of issuance of notification under subsection (2) 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.
- (b) The lien provided by KRS 65.8835 shall not take precedence over previously recorded liens if:
1. The local government failed to comply with the requirements of subsection (2) of this section for notification of the final order; or
 2. 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 (a) of this subsection.
- (c) A lien that does not take precedence over previously recorded liens under the circumstances outlined in paragraph (b) 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.
- (d) Nothing contained in this subsection shall prohibit a local government from recording a lien before the forty-five (45) day period established in paragraph (a) of this subsection expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period established in paragraph (a) 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.
- (4) 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.
- (5) 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 (3)(b) of this section, shall not limit or restrict any other remedies that the local government has against the property or the violator.

- (6) The requirements of this section shall not apply to a local government when it enforces KRS 65.8840.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 86, sec. 3, effective June 29, 2017. -- Created 2016 Ky. Acts ch. 86, sec. 11, effective July 15, 2016.

65.8838 Immediate action to remedy violation of ordinances.

Nothing contained in KRS 65.8801 to 65.8839 shall prohibit a local government from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the existence of the violation presents imminent danger, a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 86, sec. 12, effective July 15, 2016. -- Created 1996 Ky. Acts ch. 177, sec. 12, effective July 15, 1996.

65.8839 Short title for KRS 65.8801 to 65.8839.

The provisions of KRS 65.8801 to 65.8839 may be cited as the "Local Government Code Enforcement Board Act."

Effective: July 15, 1996

History: Created 1996 Ky. Acts ch. 177, sec. 13, effective July 15, 1996.

65.8840 Abatement of nuisance -- Exceptions -- Enforcement ordinance -- Lien -- Personal liability of property owner -- Right to farm exception.

- (1) As used in this section:
 - (a) "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 public health, safety, and welfare in accordance with any local government ordinance;
 - (b) "Automobile collector" means a person who collects and restores motor vehicles;
 - (c) "Code enforcement board" means an administrative body created and acting under the authority of KRS 65.8801 to 65.8839;
 - (d) "Code enforcement officer" means 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;
 - (e) "Imminent danger" means a condition which is likely to cause serious or life-threatening injury or death at any time;
 - (f) "Local government" means any county, consolidated local government, urban-county government, charter county government, unified local government, or city of any class;
 - (g) "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 a local government which embodies all or part of an ordinance;
 - (h) "Ordinary public view" means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property;
 - (i) "Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property;
 - (j) "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
 - (k) "Premises" means a lot, plot, or parcel of land, including any structures upon it.
- (2)
 - (a) The provisions of this section may be enforced through a code enforcement board pursuant to KRS 65.8801 to 65.8839, or by any other means authorized by law, including but not limited to direct enforcement through the enactment of an ordinance as provided in subsection (6) of this section.
 - (b) If the provisions of this section are enforced through a code enforcement board pursuant to KRS 65.8801 to 65.8839, the provisions of subsections (7), (8), and (9) of this section shall not apply, and KRS 65.8801 to 65.8839 shall

supersede any conflicting provisions of this section.

- (3) Except as provided in subsection (4) of this section, it shall be unlawful for the owner, occupant, or person having control or management of any premises within a local government 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 inoperative and which are not inhabited;
 - (c) Rubbish; or
 - (d) The excessive growth of weeds or grass.
- (4) The provisions of subsection (3)(a) of this section shall not apply to:
 - (a) Junked, wrecked, or inoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a:
 1. Licensed automotive recycling dealer as described in KRS 190.010(8);
 2. Used motor vehicle dealer as defined in KRS 190.010(6); or
 3. Motor vehicle auction dealer as defined in KRS 190.010(11);
 - (b) Junked, wrecked, or inoperative motor vehicles, including parts cars, stored on private premises 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 281.010 that is owned, controlled, operated, managed, or leased by a motor carrier.
- (5) An owner shall not permit any structure upon his or her premises to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist on the structure or premises 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 local government.
- (6) Any local government 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. Any ordinance establishing these procedures may be enforced by any means authorized by law. Proper notice shall be given to 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 owner.
- (7) Unless imminent danger exists on the subject premises that necessitates immediate action, the local government shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the owner, a copy of the determination to any lien holder of record of the subject premises 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 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, as permitted by subsection (8) of this section.

- (8) A local government shall have a lien against the property for all civil fines assessed for the violation and for all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs. The 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 this section, 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 liens, except state, county, school board, and city taxes, except as provided in subsection (9) of this section. The local government shall possess the lien for ten (10) years following the date of the final, nonappealable order of a code enforcement board or final judgment of the court. The lien may be enforced by judicial proceeding.
- (9) The lien provided in subsection (8) of this section shall not take precedence or priority over a previously recorded lien if:
 - (a) The local government failed to provide the lien holder a copy of the determination in accordance with subsection (7) of this section; or
 - (b) The lien holder received a copy of the determination as required by subsection (7) of this section, and the lien holder corrected the violations 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.
- (10) In addition to the remedy prescribed in subsection (6) of this section or any other remedy authorized by law, the owner of a premises upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all civil fines assessed for the violation and all charges, fees, and abatement costs incurred by the local government in connection with the enforcement of the ordinance. The local government 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 local government to comply with subsection (7) of this section, and the failure of a lien to take precedence over previously filed liens as provided in subsection (9) of this section, shall not limit or restrict any remedies that the local government has against the owner of the premises.
- (11) The provisions of subsections (6), (8), and (10) 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 premises.
- (12) The provisions of this section shall not be enforced by a county government 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.

Effective: July 15, 2016

History: Created 2016 Ky. Acts ch. 86, sec. 13, effective July 15, 2016.

413.072 Relationship of agricultural and silvicultural operations to law of nuisance and trespass -- Preemption of local ordinances -- Sustainable agriculture and best management practices.

- (1) It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land and silvicultural land for the production of food, timber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural and silvicultural areas, agricultural and silvicultural operations often become the subject of nuisance suits or legal actions restricting agricultural or silvicultural operations. As a result, agricultural and silvicultural operations are sometimes either curtailed or forced to cease operations. Investments in farm and timber improvements may be discouraged. It is the purpose of this section to reduce the loss to the state of its agricultural and silvicultural resources by clarifying the circumstances under which agricultural and silvicultural operations may be deemed to be a nuisance or interfered with by local ordinances or legal actions.
- (2) No agricultural or silvicultural operation or any of its appurtenances shall be or become a nuisance or trespass, private or public, or be in violation of any zoning ordinance, or be subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began. The provisions of this subsection shall not apply whenever a nuisance, trespass, or zoning violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.
- (3)
 - (a) For the purposes of this section, "agricultural operation" includes, but is not limited to, any facility for the production of crops, livestock, equine, poultry, livestock products, poultry products, horticultural products, and any generally accepted, reasonable, and prudent method for the operation of a farm to obtain a monetary profit that complies with applicable laws and administrative regulations, and is performed in a reasonable and prudent manner customary among farm operators. Agricultural practices protected by this section shall include, but not be limited to, fertilizer application, the application of pesticides or herbicides that have been approved by public authority, planting, cultivating, mowing, harvesting, land clearing, and constructing farm buildings, roads, lakes, and ponds associated with a farming operation.
 - (b)
 1. An agricultural operation may include the practice of sustainable agriculture.
 2. For purposes of this section, "sustainable agriculture" includes science-based practices that:
 - a. Are supported by research and the use of technology;
 - b. Are demonstrated to lead to broad outcomes-based performance improvements that meet the needs of the present; and
 - c. Improve the ability of future generations to meet their needs while

advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.

3. Sustainable agriculture may use continuous improvement principles, with goals that include:
 - a. Increasing agricultural productivity;
 - b. Improving human health through access to safe, nutritious, and affordable food; and
 - c. Enhancing agricultural and surrounding environments, including water, soil, and air quality, biodiversity, and habitat preservation.
- (4) For the purposes of this section, "silvicultural operation" includes timber harvest, site preparation, slash disposal including controlled burning, tree planting, precommercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.
- (5) An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than five (5) years or one (1) year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation, unless the operation is substantially changed.
- (6) The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.
- (7) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the negligent operation of any such agricultural operation or any of its appurtenances.
- (8) Any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner shall be based on the principles outlined in this section and shall allow the use of best management practices developed under KRS 224.71-100 to 224.71-140.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 100, sec. 1, effective July 15, 2010. -- Amended

1996 Ky. Acts ch. 91, sec. 1, effective July 15, 1996. -- Created 1980 Ky. Acts ch. 214, sec. 1, effective July 15, 1980.

Legislative Research Commission Note (7/15/2010). Under the authority of KRS 7.136(1), the Reviser of Statutes has inserted subparagraph and subdivision designations into subsection (3)(b) of this statute during codification. The meaning of the text was not changed.