

CITY OF RADCLIFF, KENTUCKY

CODE OF ORDINANCES

2015 S-3 Supplement contains:

Local legislation current through Ordinance 15-06-1171, passed 6-8-2015; and
State legislation current through 2015 KRS Pamphlet

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CODE OF ORDINANCES
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ENACTING AS AN ORDINANCE, A CODE OF ORDINANCES FOR THE CITY OF RADCLIFF, REVISING, AMENDING, RESTATING, CODIFYING, AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE CITY DEALING WITH SUBJECTS EMBRACED IN THE CODE

WHEREAS, the present general ordinances of the City of Radcliff, Kentucky are incomplete and inadequate and the manner of arrangement, classification and indexing thereof is insufficient to meet the immediate needs of the City; and

WHEREAS, the Acts of the Legislature of the Commonwealth of Kentucky empower and authorize the Legislative Body of this City to revise, amend, restate, codify and to compile any existing ordinance or ordinances and all new ordinances not heretofore adopted or published and to incorporate the ordinances into one ordinance in book form; and

WHEREAS, the Legislative Body of the City of Radcliff has authorized a general compilation, revision and codification of the ordinances of the City of a general and permanent nature and publication of such ordinances in book form;

NOW, THEREFORE, BE IT ORDAINED by the Legislative Body of the City of Radcliff that:

Section 1. The general ordinances of the City of Radcliff as herein revised, amended, restated, codified, and compiled in book form are adopted as and shall constitute the “Code of Ordinances of the City of Radcliff.”

Section 2. The Code as adopted in Section 1 shall consist of the following titles:

1. General Provisions
2. Administration
- 2.1 Hardin County Code of Ethics
- 2.5 Alarm Systems
3. Animals and Fowl
4. Building, Fire, Housing and Safety Standards
5. Civil Defense and Civil Emergencies
6. Detective and Security Agencies
7. Explosives and Blasting
- 7.5 Flood Damage Prevention
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9. Health Clubs, Massage Salons and the Like
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15. Reserved
16. Police Department
17. Sewers and Sewage Disposal
- 17.5 Storm Water Utility and Management
18. Streets and Sidewalks
19. Subdivisions
20. Adult Entertainment Activities

Section 3. All prior ordinances pertaining to the subjects treated in the Code shall be deemed repealed from and after the effective date of the Code, except as they are included and reordained in whole or in part in the Code; provided that such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of the Code, nor shall such repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements or plats, accepting dedications of land to public use, vacating or setting the boundaries of streets or other public places; nor shall such repeal affect any other ordinance of a temporary or special nature or pertaining to subject not contained in or covered by the Code.

Section 4. The Code shall be deemed published as of the day of its adoption and approval by the City Legislative Body and the Clerk of the City of Radcliff is hereby authorized and ordered to file a copy of the Code in the Office of the City Clerk.

Section 5. The Code shall be in full force and effect from and after its date of passage, approval and publication as required by law. The Code shall be presumptive evidence in all courts and places of the ordinance and all provisions, sections, penalties and regulations therein contained, and the date of passage, and that the same is properly signed, attested, recorded and approved, and that any public hearings and notices thereof as required by law have been given.

Read at a meeting of the Radcliff City Council on the 8th day of June, 2009; a second reading was held on the 16th day of June, 2009; said Ordinance was READ, PASSED and APPROVED on the 16th day of June, 2009.

Sheila C. Enyart /s/
Sheila C. Enyart
Mayor, City of Radcliff

ATTEST:

Barbara A. Wilkins, City Clerk /s/
Barbara A. Wilkins, City Clerk

**AN ORDINANCE ENACTING AND ADOPTING REPLACEMENT PAGES
TO THE CODE OF ORDINANCES OF THE CITY OF RADCLIFF, KENTUCKY**

WHEREAS, American Legal Publishing Corporation of Cincinnati, Ohio has completed the 2010 First Edition Replacement Pages to the Code of Ordinances of the City of Radcliff, Kentucky, which contains numerous revisions and ordinances of a general nature enacted since the Code of Ordinances of this municipality; and

WHEREAS, American Legal Publishing Corporation has recommended the revision or addition of certain sections of the Code of Ordinances which are based on or make references to sections of the Kentucky Revised Statutes;

WHEREAS, it is the intent of Council to accept these updated sections in accordance with the changes of the law of the Commonwealth of Kentucky;

NOW, THEREFORE, BE IT ORDAINED by the City of Radcliff:

SECTION 1. That the 2010 First Edition Replacement Pages to the Code of Ordinances of the City of Radcliff, Kentucky, as submitted by American Legal Publishing Corporation of Cincinnati, and as attached hereto, are hereby adopted by reference as if set out in entirety.

SECTION 2. That this ordinance shall take effect and be in force from and after its date of passage, approval and publication as required by law.

Read at a meeting of the Radcliff City Council on the 16th day of March, 2010; a second reading was held on the 12th day of April, 2010; said Ordinance was READ and APPROVED on the 12th day of April, 2010.

Sheila C. Enyart /s/
Sheila C. Enyart
Mayor, City of Radcliff

ATTEST:

Barbara A. Wilkins, City Clerk /s/
Barbara A. Wilkins, City Clerk

**AN ORDINANCE ENACTING AND ADOPTING
REPLACEMENT PAGES TO THE CODE OF ORDINANCES
OF THE CITY OF RADCLIFF, KENTUCKY**

WHEREAS, American Legal Publishing Corporation of Cincinnati, Ohio has completed the 2012 and 2013 First Edition Replacement Pages to the Code of Ordinances of the City of Radcliff, Kentucky, which contain numerous revisions and ordinances of a general nature enacted since the Code of Ordinances of this municipality; and

WHEREAS, American Legal Publishing Corporation has recommended the revision or addition of certain sections of the Code of Ordinances which are based on or make references to sections of the Kentucky Revised Statutes;

WHEREAS, it is the intent of Council to accept these updated sections in accordance with the changes of the law of the Commonwealth of Kentucky;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF RADCLIFF, KENTUCKY:

SECTION 1. That the 2012 and 2013 First Edition Replacement Pages to the Code of Ordinances of the City of Radcliff, Kentucky, as submitted by American Legal Publishing Corporation of Cincinnati, and as attached hereto, are hereby adopted by reference as if set out in entirety.

SECTION 2. That this ordinance shall take effect and be in force from and after its date of passage, approval and publication as required by law.

Read at a meeting of the Radcliff City Council on the 19th day of May, 2015; a second reading was held on the 8th day of June, 2015; said Ordinance was READ and APPROVED on the 8th day of June, 2015.

J. Michael Weaver /s/
J. MICHAEL WEAVER
MAYOR, CITY OF RADCLIFF

ATTEST:

Julie Aldridge /s/
Julie Aldridge, City Clerk

CHAPTER 1: GENERAL PROVISIONS

CHAPTER 1: GENERAL PROVISIONS

Section

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- 1-2. Definitions; rules of construction
- 1-3. Headings and notes
- 1-4. Effect of repeal of an ordinance
- 1-5. Severability
- 1-6. Amendments to code; effect of new ordinances; amendatory language
- 1-7. Altering code
- 1-8. General penalty; continuing violations
- 1-9. Officers and employees not punishable for failure to perform duty

● 1-1 HOW CODE DESIGNATED AND CITED.

The ordinances embraced in the following chapters and sections shall constitute and be designated as the ■Code of Ordinances of the City of Radcliff, Kentucky●, and may be so cited.

● 1-2 DEFINITIONS; RULES OF CONSTRUCTION.

(A) *Generally.*

(1) This code and all ordinances of the city shall be liberally construed with a view to promote their objects and carry out the intent of the Council.

(2) In the interpretation and application of any provision of this code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

(3) Where any provision of the code imposes greater restrictions upon the subject matter than the general provisions imposed by the code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Radcliff - General Provisions

(B) *Definitions.* 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 that meaning.

CITY. The City of Radcliff, Kentucky.

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(2))

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

COUNCIL or **CITY COUNCIL.** The City Council of Radcliff, Kentucky.

COUNTY. The County of Hardin, Kentucky.

DELEGATION OF AUTHORITY. Whenever a provision appears requiring an officer or head of a department of the city to do some act or make certain inspections, it is to be construed to authorize the officer or head of the department to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.

GENDER. A word importing the masculine gender only may extend and be applied to females as well as males.
(KRS 446.020)

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

LAND or REAL ESTATE. Includes lands, tenements and hereditaments and all rights thereto and interest therein, other than chattel interest.
(KRS 446.010(24))

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

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

NAME OR TITLE OF OFFICER, BOARD, COMMISSION OR AGENCY. The name or title of any officer, board, commission or agency, when appearing alone herein, shall be construed as if the words of Radcliff, Kentucky, followed it.

NUMBER. 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)

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

OWNER. Applied to personal or real property, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of the property.

PERSON. 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 money, goods, chattels, things in action and evidence of debt.

PROPERTY. Includes both real and personal property.

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PUBLIC PLACE. Any public way, park, cemetery, school yard or open space adjacent thereto; any public lake or stream and any place or business open to the use of the public in general.

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

SIGNATURE or **SUBSCRIPTION.** Includes a mark, the name being written or near the mark and witnessed.

STATE. The Commonwealth of Kentucky.

STREET. Any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and the approaches thereto within the city.

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

TENANT and **OCCUPANT.** Applied to a building or land, includes any person who occupies the whole or a part of the building or land, whether alone or with others.

TENSE. Words used in the past or present tense include the future as well as the past and present.

WRITING and **WRITTEN.** Includes printing, typewriting, engraving, lithography and any other mode of representing words and letters.

YEAR. Calendar year.

● **1-3 HEADINGS AND NOTES.**

Chapter headings, article, division and section heads or titles, and explanatory notes and state law or cross-references, in this code do not constitute any part of the law, except as otherwise expressly provided.

Statutory reference:

Similar provisions, see KRS 446.140

● **1-4 EFFECT OF REPEAL OF AN ORDINANCE.**

(A) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(B) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Statutory reference:

Similar provisions, see KRS 446.100

• 1-5 SEVERABILITY.

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

Statutory reference:

Similar provisions, see KRS 446.090

• 1-6 AMENDMENTS TO CODE; EFFECT OF NEW ORDINANCES; AMENDATORY LANGUAGE.

(A) All ordinances passed subsequent to this code which amend, repeal or in any way affect this code, may be numbered in accordance with the numbering system of this code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, the repealed portions may be excluded from the code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this code and subsequent ordinances numbered or omitted are re-adopted as a new code by the City Council.

(B) Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section number of this code in the following language:

■That section _____ of the Code of Ordinances of the City of Radcliff, Kentucky, is hereby amended to read as follows: ...• The provisions shall be set out in full as desired.

(C) In the event a new section not heretofore existing in the code, is to be added, the following language may be used:

■That the Code of Ordinances, of the City of Radcliff, Kentucky, is hereby amended by adding a section, to be numbered _____, which said section reads as follows: ...• The new section shall then be set out in full as desired.

(D) All sections, articles, chapters or provisions desired to be repealed shall be specifically repealed by section, article or chapter number, as the case may be.

• 1-7 ALTERING CODE.

It shall be unlawful for any person in the city to change or amend by additions or deletions, any part or portion of this code, or to insert or delete pages, or portions thereof, or to alter or tamper with such code in any manner whatsoever, except by ordinance or resolution or other official act of the City Council, which will cause the law of the city to be misrepresented thereby. Any person violating this section shall be punished as provided in • 1-8 hereof.

• 1-8 GENERAL PENALTY; CONTINUING VIOLATIONS.

Unless some other penalty is expressly provided, whenever in this code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or whenever, in the code or ordinance, the doing of an act is required or the failure to do any act is declared to be unlawful or a misdemeanor, the violation of any such provision of this code or any such ordinance shall be punished by a fine of not more than \$500 or by confinement in the county jail for not more than one year or by both the fine and confinement, at the discretion of the court. A separate offense shall be deemed committed on each day during or on which a violation of the ordinance occurs or continues.

• 1-9 OFFICERS AND EMPLOYEES NOT PUNISHABLE FOR FAILURE TO PERFORM DUTY.

Except as otherwise specifically provided, no city officer or employee shall be subject to fine or punishment under the provisions of • 1-8 of this code for failure to do or perform any required official act.

CHAPTER 2: ADMINISTRATION

CHAPTER 2: ADMINISTRATION

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ARTICLE I. IN GENERAL

§ 2-1 RETENTION OF THE CURRENT ORGANIZATION AND STRUCTURE OF CITY GOVERNMENT; CONTINUING CURRENT ORDINANCES AND RESOLUTIONS; EFFECTIVE DATE.

(A) Pursuant to SB 41, being KRS 82.020 and SB 26, being KRS 83A.020, of the 1980 Regular Session of the General Assembly of the commonwealth, the city hereby elects to retain the organization and structure of its city government existing on 7-14-1980, immediately before the effective date of non-emergency legislation enacted by the 1980 Regular Session of the General Assembly.

(B) For the purpose of the organization and structure of the government of the city, those sections of the Kentucky Revised Statutes pursuant to which city government operated on 7-14-1980, which sections have been repealed effective 7-15-1980, shall continue as directing and controlling the organization and structure of city government, notwithstanding their respective repeal.

(C) Ordinances and resolutions of the city are hereby declared to remain in force and effect, and any such ordinance citing or relying on a section of Kentucky Revised Statutes repealed by the 1980 Regular Session of the General Assembly shall be deemed to refer to the repealed statute for purposes of structure, procedure and operation only, and not for the grant of any power or authority found in the section.

(E) This section shall become effective on its passage and approval, and publication as required by law, but the organization and structure of city government, and ordinances and resolutions of the city, shall not change before the effective date of this section.

(Ord. passed 8-20-1980)

Cross-reference:

Disaster and emergency response organization, see §§ 5-24 through 5-26

Police Department, see Chapter 16

Radcliff Convention and Tourism Commission established, see § 10-95

Editor's note:

Ord. passed 8-20-1980, §§ 1 through 5, and Ord. passed 2-17-1981, enacted the provisions codified as §§ 2-1 and 2-2 as set out herein. Since the ordinances did not expressly amend this code, the manner of codification has been at the editor's discretion.

Statutory reference:

Cities of fourth class, see KRS Ch. 83A

§ 2-2 CITY TO CONDUCT NONPARTISAN ELECTIONS.

The city shall conduct nonpartisan elections for city officers in accordance with KRS 83A.170.

(Ord. passed 2-17-1981)

Editor's note:

See the editor's note to § 2-1.

§ 2-3 METHOD OF SELECTION OF COUNCIL MEMBERS TO PRESIDE AT MEETINGS IN ABSENCE OF MAYOR.

(A) At any meeting of the City Council held in the absence of the Mayor or in the event there is a vacancy in the office of the Mayor, the Council person who received the most votes in the last general election shall have the right to preside over the meeting as Mayor Pro-Tem.

(B) At his or her option, the Council person who received the most votes may elect not to serve as Mayor Pro-Tem; in which instance, the right passes to the Council person receiving the second highest number of votes and so forth.

(C) The Council person serving as Mayor Pro-Tem may participate in Council proceedings and may vote as a member of the Council, but cannot vote again as Mayor in case of a tie.

(Ord. passed 11-16-1982; Ord. passed 1-19-1990; Ord. 15-03-1169, passed 3-26-2015)

§ 2-4 GRIEVANCE PROCEDURE FOR SUSPECTED OR ALLEGED DISCRIMINATION ON BASIS OF HANDICAPPED STATUS.

(A) *Purpose.*

(1) The Federal Revenue Sharing Program regulations and § 504 of the Rehabilitation Act of 1973, being 29 U.S.C. § 794, prohibits discrimination on the basis of handicapped status in programs of federal financial assistance.

(2) It is the policy of the city to promote equal opportunity with respect to its programs funded with federal funds, and the city does not discriminate on the basis of handicapped status in admission or access to, or treatment or employment in, its programs or activities as defined in the Federal Revenue Sharing Program regulations (51.51,1).

(B) *Incorporation of grievance procedures.* The attached procedures shall be the “grievance procedures” for anyone who believes he or she has been discriminated against by the city based on handicapped status with respect to federally-funded programs.

(C) *Administration.* The administration of these procedures and related federal and state regulations shall be the responsibility of the executive authority of the city.

(D) *Amendment.* These procedures may be amended by ordinance to comply with court directives or additional federal and state regulations.

(Ord. passed 7-17-1984)

Editor’s note:

Ord. passed 7-17-1984, not specifically amendatory of the code has been included herein at the discretion of the editor as § 2-4. The grievance procedures established and referred to in this section are not set out at length herein, but are on file and available for inspection in the office of the City Clerk. The introductory language of the ordinance of 7-17-1984, has been incorporated into division (A) hereof; §§ 1 through 3 have been included as divisions (B) through (D).

ARTICLE II. CITY COUNCIL

§ 2-16 COMPOSITION.

The City Council shall be composed of six Council members.

Statutory reference:

City Council to designate its size by ordinance, see KRS 83A.030

§ 2-17 REGULAR MEETINGS.

The City Council shall regularly meet on the third Tuesday of each month at 6:30 p.m. at the City Hall.

(Ord. passed 8-17-1971; Ord. passed 12-19-2000)

Statutory reference:

Council to fix meetings by ordinance, see KRS 83A.130(11)

ARTICLE III. OFFICERS AND EMPLOYEES**DIVISION 1. GENERALLY****§ 2-29 RESERVED.****§ 2-30 SURRENDER OF EFFECTS OF OFFICE.**

Every city officer and employee shall, upon the termination of his or her status as such, surrender to his or her successor in office or his or her supervisor all of the effects of his or her office or position.

§ 2-31 CITY ATTORNEY; CITY CLERK; CHIEF OF POLICE; FIRE CHIEF; ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR; CHIEF ADMINISTRATIVE OFFICER; DEPARTMENT MANAGERS.**(A) City Attorney.**

(1) The Mayor shall appoint and the City Council shall approve the Office of City Attorney.

(2) The duties of the City Attorney shall be to represent the city in all legal matters.

(3) The City Attorney shall be paid in accordance with the contract entered into by and between the city and the City Attorney.

(4) The City Attorney shall take an appropriate oath of office.

(B) *City Clerk.*

(1) The Mayor shall appoint and the City Council shall approve the Office of City Clerk.

(2) The duties of the City Clerk shall be as those outlined in the appropriate KRS statutes, including but not limited to KRS Chapter 61 as the official custodian of records pursuant to KRS 83A.085.

(3) The City Clerk shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(4) The City Clerk shall take an appropriate oath of office.

(C) *Chief of Police.*

(1) The Mayor shall appoint and the City Council shall approve the Office of Chief of Police.

(2) The duties of the Chief of Police shall be those as outlined in the appropriate KRS statutes.

(3) The Chief of Police shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(4) The Chief of Police shall take an appropriate oath of office.

(D) *Fire Chief.*

(1) The Mayor shall appoint and the City Council shall approve the Office of Fire Chief.

(2) The duties of the Fire Chief shall be those as outlined in the appropriate KRS statutes.

(3) The Fire Chief shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(4) The Fire Chief shall take an appropriate oath of office.

(E) *Alcoholic Beverage Control Administrator.*

(1) The Mayor shall appoint and the City Council shall approve the Office of Alcoholic Beverage Control Administrator.

(2) The duties of the Alcoholic Beverage Control Administrator shall be those as outlined in the appropriate KRS statutes.

(3) The Alcoholic Beverage Control Administrator shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(4) The Alcoholic Beverage Control Administrator shall take an appropriate oath of office.

(F) Chief Administrative Officer.

(1) The Mayor shall appoint and the City Council shall approve the Office of the Chief Administrative Officer.

(2) The duties of the Chief Administrative Officer shall be those as outlined in KRS 83A.090.

(3) The Chief Administrative Officer shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(4) The Chief Administrative Officer shall take an appropriate oath of office.

(G) Department managers.

(1) The Mayor shall appoint the department managers for Public Works, Planning, Administration and any other department managers of any newly established departments in the future.

(2) The duties of these respective department managers shall be outlined in each of their appropriate job descriptions.

(3) The department managers shall be paid in accordance with the appropriate pay and classification ordinance for the city and as from time to time amended.

(Ord. passed 7-10-1973; Ord. passed 5-24-1989; Ord. passed 1-9-1990; Ord. passed 1-9-1996; Ord. passed 8-17-2000; Ord. passed 1-19-2001; Ord. passed 2-7-2005; Ord. 08-08-1048, passed 8-19-2008)

Cross-reference:

City officers and employees relieved of criminal responsibility for failure to perform official acts under code, see § 1-9

Interference with city officers or employees, see § 14-4

Statutory reference:

City Clerk specifically, see KRS.83A.085

City Council generally, see KRS Ch. 83A

Non-elected officers generally, see KRS 83A.080

§ 2-32 CLASSIFICATION AND COMPENSATION PLANS.**(A) Implementation.** Be it ordained by the City Council:

(1) The classification plan and compensation plan attached hereto shall be the

system of personnel administration for the city; and/or

(2) The classification plan and compensation plan may not be repealed, but may be waived, altered or suspended only by a change of ordinance.

(B) *Summary; employee.* The employee classification plan and compensation plan provides:

(1) A designated grade for each employment position currently established by the City Council;

(2) A salary pay equalization and adjustment schedule beginning 7-1-2000, shall be in effect until and unless changed or modified by the City Council by ordinance; and

(3) The plan also includes specifications concerning the beginning level for each established employment position; provides for the procedure to be followed concerning promotions.

(C) *Summary; Mayor and City Council.* Compensation Plan for the Mayor and City Council.

(1) The legislative body of the city shall set the compensation of the officer in accordance with KRS 83A.070 at a rate no greater than that stipulated by the finance and administration cabinet.

(2) The annual salary of the Mayor and City Council shall be increased each year by an equivalent increase in the national consumer price index cost of living.

(Ord. passed 6-19-1984; Ord. passed 5-30-1996; Ord. passed 6-23-2000; Ord. passed 6-23-2001)

Editor's note:

The classification and compensation plans, policies and procedures implemented in § 2-32 above have not been included herein, but are on file for public inspection in the office of the City Clerk.

Statutory reference:

Similar provisions, see KRS 83A.070, 83A.075

§ 2-33 DEFENSE AND PAYMENT OF JUDGMENTS FOR OFFICERS AND EMPLOYEES WHILE IN THE SCOPE OF THEIR EMPLOYMENT.

(A) For purposes of this section, the following definitions shall apply unless the context clearly requires a different meaning.

ACTION IN TORT. Any claim for monetary damages based upon negligence, nuisance, products liability and strict liability and shall also include any wrongful death or survival-type action.

EMPLOYEE. All full and part-time employees of the city, but shall not include any independent contractor of any employee, or agent, supplier or subcontractor of any independent

contractor.

OFFICER. Any elected official of the city, or other minor officers, including those listed in KRS 83A.085(d)(1)(a-h).

(B) Except as provided in division (E) below, the city shall, without cost to the officer or employee, provide for the legal defense of any officer or employee in any action in tort arising out of an act or omission occurring within the scope of the officer's or employee's employment or public duties of the city.

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(C) The city may provide for the defense of any officer or employee through its own legal counsel or by employing independent legal counsel or by purchasing insurance which requires the insurer to defend. If the city defends through its own legal counsel and as legal counsel determines that the interests of the officer or employee and the city conflict, the city shall obtain the written consent of the employee for the representation or shall provide independent representation. An employee may have his or her own legal counsel to assist in the defense at the expense of the employee.

(D) Upon receiving service of a summons and complaint in any action in tort brought against him or her, an officer or employee shall, within ten days of his or her receipt of service, give written notice of the claim and make a request that the city provide a defense to the action. The notice of claim and request for defense shall be filed with the Mayor.

(E) The city may refuse to provide for the defense of any action in tort brought against an officer or employee of the city if it determines and notifies the employee in writing that:

- (1) The act or omission was not within the actual or apparent scope of the employee's employment;
- (2) The employee acted or failed to act because of fraud, malice or corruption or an intentional tort; and
- (3) A timely request to defend was not made in accordance with division (D) above.

(F) If the city refuses to provide an officer or employee with a defense and the officer or employee provides his or her own defense, the officer or employee shall be entitled to recover all necessary and reasonable costs of the defense from the city if the act or omission is judicially determined to have arisen out of the actual or apparent scope of the employee's employment and the employee is found to have acted without fraud, malice or corruption.

(G) Subject to the limitations set forth in division (H) below and provided that the city shall not pay any award of punitive or exemplary damages, the city shall pay any judgment rendered against an officer or employee in any action in tort, or any compromise or settlement of the action.

(H) The city may refuse to pay any judgment, compromise or settlement in any action in tort against an officer or employee, or if the city pays any judgment, compromise or settlement, it may recover from the officer or employee the amount of the payment and the costs to defend, if:

- (1) The officer or employee acted or failed to act because of fraud, malice, corruption or intentional tort;

(2) The action was outside the actual or apparent scope of the employee's employment;

(3) The employee willfully failed or refused to assist in the defense of the action; or

(4) The employee compromised or settled the claim without the consent of the legislators of the city.

(I) An officer or employee who is being provided a defense in an action in tort by the city shall not enter into any compromise or settlement of the action without the approval of the legislative body of the city.

(J) Nothing in this section shall be construed as a waiver of any defense which the city may assert in any action in tort brought against it or any officer or employee of the city.

(Ord. passed 5-20-1986)

Editor's note:

Codification of §§ 1 through 10 of an ordinance adopted 5-20-1986 as § 2-33 was at the discretion of the editor.

§ 2-34 PROTECTION OF PUBLIC EMPLOYEES FROM REPRISAL FOR DISCLOSURE OF INFORMATION RELATED TO SUSPECTED MISMANAGEMENT, WASTE, FRAUD OR ENDANGERMENT OF PUBLIC HEALTH OR SAFETY.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMPLOYEE. A person in the service of the city, who is under contract of hire, express or implied, oral or written, where the city has the power or right to control and direct the material details of work performance.

EMPLOYER. The City of Radcliff, Kentucky. ***EMPLOYER*** also includes any person authorized to act on behalf of the city with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees.

OFFICIAL REQUEST. A request from members of the City Council and its employees; members of the City Council committee and employees; the Mayor and employees of the Mayor's office.

(B) *Construction of statute.* Reprisal against public employees for disclosure of violations of law is prohibited in the following instances.

(1) No employer shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence, in any manner whatsoever, which tends to discourage, restrain, repress, dissuade, prevent, interfere with, coerce, or discriminate against any employee who in good

faith reports, discloses, divulges, or otherwise brings to the attention of the Mayor, employees of the Mayor's office, City Attorney, city accountants, members of the City Council or any of its committees or its commissions, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, or any other appropriate body or authority, any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule or ordinance of the city, the commonwealth or any of its political subdivisions, or the United States,

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or any facts or information relative to actual or suspected mismanagement, waste, fraud or endangerment of public health or safety. No employer shall require any employee to give notice prior to making such a report, disclosure or divulgence.

(2) This section shall not be construed as:

(a) Prohibiting an employer from requiring that an employee inform him or her of an official request made to a department for information, or the substance of testimony made, or to be made, by the employee to the members of the City Council on behalf of a department;

(b) Permitting the employee to leave his or her assigned work area during normal work hours without following applicable laws, administrative regulations, rules or policies pertaining to leave, unless the employee is requested by a Council member to appear before a committee;

(c) Authorizing an employee to represent his or her personal opinions as the opinions of his or her employer; or

(d) Prohibiting disciplinary or punitive action if an employee discloses information which he or she knows:

1. To be false or which he discloses with reckless disregard for its truth or falsity;
2. To be exempt from required disclosure under the provisions of KRS 61.870 to 61.884; or
3. Is confidential under any other provision of law.

(C) *Notice to employees.* All employees shall be notified of the passage of the ordinance from which this section is derived, and it shall be displayed by all departments in a conspicuous place for all employees to see.

(Ord. passed 10-23-1990)

Editor's note:

Ord. passed 10-23-1990, did not expressly amend this code; hence, inclusion of its provisions as § 2-34 was at the discretion of the editor.

§ 2-35 CITY CITATION OFFICER.

(A) There is hereby created the position of City Citation Officer. The City Citation Officer shall be appointed by the Mayor. This shall be a full-time, paid position of the city, but may be performed along with other duties within the city. The City Citation Officer shall receive such salary as is from time to time established by the City Council. The City Citation Officer shall be at least 21 years of age and a citizen of the United States. The Mayor may appoint more than one City Citation Officer.

(B) The City Citation Officer shall enforce all ordinances for the city and have the authority to issue citations. In addition, the City Citation Officer shall have all authority as outlined in KRS 83A.087. The City Citation Officer shall not have the power to carry a deadly weapon or make arrests.

(C) The City Citation Officer shall take steps to cause a correction of any violation of any ordinance in the city. These steps may include warnings, a written direction to correct the matter, filing of criminal charges and/or civil violations, or filing, with the assistance of the City Attorney, other court actions to enforce city ordinances.

(Ord. passed 10-20-1992)

DIVISION 2. EMPLOYEES RETIREMENT SYSTEM

§ 2-36 COVERAGE OF NEW EMPLOYEES.

All new employees for the city, from 6-1-1986 forward, will mandatorily be covered by the county employees retirement system under the Kentucky retirement systems as outlined in KRS Chapter 61.

(Ord. passed 5-20-1986; Ord. passed 12-23-1996)

§ 2-37 CURRENT EMPLOYEES' PARTICIPATION.

All present employees of the city, as of 5-31-1986, will have the option to come under the county employees retirement system or to elect to stay with the city's present retirement plan, a defined contribution plan.

(Ord. passed 5-20-1986; Ord. passed 12-17-1996)

Editor's note:

Ord. of 5-20-1986, §§ 1 through 6, not specifically amendatory of the code, included as Division 2, §§ 2-36 through 2-41, at the discretion of the editor.

§ 2-38 TRANSFERRAL TO COUNTY EMPLOYEES RETIREMENT SYSTEM - TERMINATION OF PENSION PLAN.

The employees of the city, as of 5-31-1986, that elect to join the county employees retirement system shall have their pension plan that is presently in effect with the city terminated.

(Ord. passed 5-20-1986)

§ 2-39 SAME - ACCUMULATED REVENUE.

All city employees, as of 5-31-1986, electing to be covered by the county employees retirement system and therefore terminating their present retirement plan, shall be given credit for all of their past

service with the city and the city hereby agrees to purchase all of the employees' prior time that the employee has with the city by using any and all money available from the present retirement system for those employees who are terminating their present retirement system and electing to be covered under the county employees retirement system and any and all other sources of revenue which is authorized by the Kentucky Revised Statutes for the city to extend for this purpose.

(Ord. passed 5-20-1986)

§ 2-40 CLASSIFICATIONS IN COUNTY SYSTEM.

All new employees, as of 6-1-1986, and all present employees as of 5-31-1986, that wish to come under the county employees retirement system, shall be added to the county employees retirement system either hazardous or nonhazardous employees, depending on their work related activities as defined by the county employees retirement system.

(Ord. passed 5-20-1986)

§ 2-41 CONTINUATION OF CITY'S PRESENT RETIREMENT SYSTEM.

The city's present retirement system will stay in effect if there are any employees who elect to stay with the present retirement system and as long as there are employees with the city that are still members of the present retirement system.

(Ord. passed 5-20-1986)

ARTICLE IV. BOARD OF ADJUSTMENT

§ 2-43 ESTABLISHED.

A City Board of Adjustment of the city is hereby established. A more complete statement of purposes and authority of this Board is set out herein.

(Ord. passed 2-15-1983)

§ 2-44 NUMBER AND APPOINTMENT OF MEMBERS.

The Board of Adjustment shall consist of five members, all of whom must be citizen members, and not more than two of whom may be citizen members of the Planning Commission. The Mayor

shall appoint the members of the Board of Adjustment with the approval of the City Council.
(Ord. passed 2-15-1983)

§ 2-45 TERM OF OFFICE.

The term of office of all members of the Board of Adjustment shall be four years.
(Ord. passed 2-15-1983)

§ 2-46 REIMBURSEMENT FOR EXPENSE.

The City Council may authorize reimbursement for expenses or compensation, or both, for members of the Board of Adjustment.
(Ord. passed 2-15-1983)

§ 2-47 VACANCIES.

Vacancies on the Board of Adjustment shall be filled within 60 days by the Mayor. If the Mayor fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.
(Ord. passed 2-15-1983)

Cross-reference:

Planning Commission, see §§ 14.1-11 through 14.1-19

Editor's note:

Ord. of 2-15-1983, §§ I through XIV, was not enacted as a specific amendment or addition to the code, but is included herein as Art. IV, §§ 2-43 through 2-53, at the discretion of the editor.

§ 2-48 REMOVAL.

Any member of the Board of Adjustment may be removed by the Mayor for inefficiency, neglect of duty, malfeasance or conflict of interest. The removal shall be in accordance with the procedure set out in KRS 100.217(8) and in accordance with all applicable law.
(Ord. passed 2-15-1983)

§ 2-49 OFFICERS.

The Board of Adjustment shall elect annually a Chairperson, Vice-Chairperson and Secretary and any other officers it deems necessary. Any officers shall be eligible for re-election at the expiration

of his, her or any term.
(Ord. passed 2-15-1983)

§ 2-50 ADOPTION OF BYLAWS; RECORDS.

The Board of Adjustment shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings and determinations, and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating that fact, all of which shall, immediately after adoption, be filed in the office of the Board.

(Ord. passed 2-15-1983)

§ 2-51 MEETINGS.

All meetings of the Board of Adjustment shall be public, except when they involve matters which are exempt from the Kentucky Open Meetings Law.

(Ord. passed 2-15-1983)

§ 2-52 DUTIES, JURISDICTION AND AUTHORITY.

The Board of Adjustment shall, in addition to its other duties, have the following jurisdiction and authority:

(A) To hear and decide on applications for dimensional variances in accordance with the provisions of KRS 100.241;

(B) To hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone, provided the conditions of KRS 100.237 are met;

(C) To decide whether or not to allow the continuation of a lawful use of a building or premises existing at the time of the adoption of any zoning regulations effecting it, but which does not conform to the provisions of the regulations, pursuant to the provisions of KRS 100.253;

(D) To hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant or refusal made by an administrative official in the enforcement of the zoning regulation; provided, the appeal is made within 60 days; and

(E) To do any and all acts which are authorized by the Kentucky Revised Statutes.

(Ord. passed 2-15-1983)

§ 2-53 FEES FOR PERMITS, VARIANCES AND APPEALS.

(A) The Board of Adjustment shall collect a fee of \$50 for each application for conditional use permits, dimensional variances or appeals of administrative decisions in the enforcement of the zoning

regulations. The fee shall be used to partially defray the administrative costs incurred by the Board and shall be collected at the time of the application and shall be non-refundable.

(B) The \$50 filing fee referred to in division (A) above shall not apply to appeals concerning fences.

(Ord. passed 2-15-1983; Ord. passed 6-26-1984)

ARTICLE V. CODE ENFORCEMENT BOARD

§ 2-54 ESTABLISHED.

(A) There is hereby created a Code Enforcement Board as per KRS 65.8801 through KRS 65.8839.

(B) The Code Enforcement Board is established 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 ordinance enforced in local governments.

(C) The definitions used in this article and by the Code Enforcement Board which is hereby created shall be the same as in KRS 65.8805.

(1) *Creation.* The Code Enforcement Board for the city is hereby created with the powers as outlined in KRS 65.8808 to enforce the city ordinances as a civil offense. The ordinances that shall be enforced are those ordinances which specifically state that a violation of the ordinance is a civil offense. Nothing in this ordinance shall authorize a Code Enforcement Board to create a civil offense if the violation would also constitute an offense under any provision of the Kentucky Revised Statutes, including specifically, and without limitation, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

(2) *Penalty.* The maximum civil fine that may be imposed for each violation shall be as stated in each respective ordinance that has been violated. The specific civil fine that is less than the maximum fine that can be imposed for each offense shall also be as stated in each specific ordinance that is being violated if the person that committed the offense does not contest the citation.

(3) *Membership.* Membership of the Board, terms of the members, re-appointment,

vacancy, removal and compensation shall be in accordance with KRS 65.8811. The members of the Board shall be appointed by the Mayor subject to approval of the legislative body.

(4) *Organization.* The organization of the Board, their meeting, quorum, minutes and administrative personnel shall be in accordance with KRS 65.8815. In addition, alternate Board members

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may be appointed by the Mayor subject to the approval of the legislative body to serve on the Code Enforcement Board in the absence of regular Board members in accordance with KRS 65.8818.

(5) *Powers.* The powers of the Board shall be in accordance with KRS 65.8821.

(6) *Enforcement.* The enforcement procedures shall be in accordance with KRS 65.8825 and all of the hearings, notices, failures to appear and final order procedures shall comply with KRS 65.8828.

(7) *Appeals.* Any appeals from a final judgment shall be in accordance with KRS 65.8831. Any lien recordings, responsibility for fines, charges and fees shall be in accordance with KRS 65.8835.

(8) *Fine.* The minimum fine which may be imposed for a violation of an ordinance shall be the least amount as stated in that ordinance.

(9) *Membership.* Members of the Code Enforcement Board shall be compensated for attendance at each meeting. Compensation shall be an amount determined by the legislative body as reflected in the annual budget.

(10) *Meetings.* The Code Enforcement Board shall have regular meetings held on the second and fourth Tuesday of each month at 5:00 p.m. local time at the City Hall. Meetings other than those regularly scheduled shall be special meetings held in accordance with the requirements of the Kentucky Open Meetings Act.

(D) Nothing in this article shall prohibit the city from taking immediate action to remedy a violation of its ordinances where there is a reason to believe that the existence of 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.

(Ord. passed 3-18-1997; Ord. passed 6-18-1997)

ARTICLE VI. FORESTRY AND CONSERVATION BOARD**§ 2-55 ESTABLISHED.**

(A) There is hereby created within the city a Forestry and Conservation Board, as per Ord. 00-06-806, passed 6-23-2000. The Board shall be composed of seven members.

(B) The Forestry and Conservation Board is established to promote and improve the education and appreciation for our community's natural environment by authorizing the creation of an advisory board to oversee forestry and conservation in the city.

(Ord. passed 9-15-2004)

§ 2-56 POWERS.

(A) The Forestry and Conservation Board shall be responsible for overseeing the development of Saunders Springs Nature Preserve.

(B) The Board shall be responsible for overseeing the development of Saunders Springs Nature Preserve.

(C) The Board shall have the authority to request grant monies through the completion of grant proposals with the consent and through the office of the City Chief Administrative Officer or his or her designee. Expenditure of all forestry and conservation grant monies and private donations to the city for forestry and conservation activities shall be accomplished through a duly enacted city budget ordinance. All checking accounts shall be maintained by and in the name of the city.

(D) The Board shall be required to obtain City Council approval prior to the expenditure of any city revenue and shall also be required to obtain City Council approval prior to committing the donation of in-kind contributions from city resources.

(Ord. passed 5-21-2002)

§ 2-57 APPOINTMENT OF MEMBERS; TERM OF OFFICE; REMOVAL FROM OFFICE; AND COMPENSATION.

(A) Members of the Board shall be appointed by the Mayor of the city, subject to the approval of the City Council.

(B) All subsequent appointments shall be for a term of three years. A member may be reappointed, subject to the approval of the City Council.

(C) Any vacancy on the Board shall be filled by the Mayor, subject to the approval of the City Council within 60 days of the vacancy. If the vacancy is not filled within that time period, the remaining Board members shall fill the vacancy.

(D) A Board member may be removed from office by the Mayor for misconduct, inefficiency or

willful neglect of duty. The Mayor must submit a written statement to the member and the City Council setting forth the reasons for dismissal.

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(E) Members of the Forestry Board shall be compensated for attendance at each meeting. Compensation shall be an amount determined by the legislative body as reflected in the annual budget.

(F) The Board shall annually elect a Chair and Vice-Chair from among its members. The Chair shall be the presiding officer and a full voting members of the Board. In the absence of the Chair, the Vice-Chair shall be the presiding officer and a full voting member of the Board.

(G) Regular meeting of the Board shall be held on the third Thursday of each month at 5:00 p.m. Meetings other than those regularly scheduled shall be special meetings held in accordance with the requirements of the Kentucky Open Meetings Act.

(H) All meetings of the Board shall be held in accordance with the requirements of the Kentucky Open Meetings Act.

(I) The affirmative vote of a majority of a quorum of the Board shall be necessary for any official action to be taken.

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

(Ord. passed 5-21-2002; Ord. passed 6-15-2004)

§ 2-58 CONFLICT OF INTEREST.

Any member of the Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself or herself from voting on the matter in which he or she has an interest and shall not be counted for purposes of establishing a quorum.

(Ord. passed 6-23-2000; Ord. passed 5-21-2002)

ARTICLE VII. FINANCES**DIVISION 1. GENERALLY****§ 2-65 ADMINISTRATION AND PROCEDURE FOR AD VALOREM TAXES.**

(A) *Assessment date for city taxation.* The assessment date for city taxation shall be January 1 of each year.

(B) *Assessment list and equalization.* The assessment list shall be as provided by the Property Valuation Administrator for the county and the equalization of the assessments shall be in accordance with the Property Valuation Administrator's procedures for county and state taxes and the city will accept the assessments and equalization of the county's Property Valuation Administrator.

(C) *Time and manner of paying taxes/discounts, interest and penalties.* Taxes shall be due and payable on December 31 of each year. Any discounts, interest and penalties shall be in accordance with KRS 92.590 as it pertains to second class cities. If the tax assessments are not received from the County Property Valuation Administrator in a timely manner, then all of the times for discounts, interest and penalties shall be adjusted accordingly.

(Ord. passed 12-15-1992)

Statutory reference:

Similar provisions, see KRS 92.540, 92.590

§ 2-66 ADMINISTRATION AND PROCEDURE FOR BANK FRANCHISE AND LOCAL DEPOSIT TAXES.

(A) *Time table for collection of tax.* The city will issue tax bills to financial institutions no later than December 1 of each year. Payment of the tax shall be due with a 2% discount by December 31 of each year or without the discount by January 31 of each year.

(B) *Enforcement procedures.* The city shall have a lien for taxes on the property assessed for taxes to the extent allowed under KRS 134.420.

(C) *Penalties.* All taxes due in accordance with these sections which are not paid prior to 6-30-1997, for the tax year 1996, or which are not paid before January 31, for all subsequent tax years shall be deemed delinquent and shall be subject to a penalty of 10% and shall bear interest at the rate of 6% per annum.

(D) *Purpose.* All monies collected pursuant to these sections shall be paid into the General Fund of the city to be used for the payment of proper expenditures as determined by the City Council.

(Ord. passed 8-21-1996)

Statutory reference:

Similar provisions, see KRS Ch. 136, KRS 134.420

§ 2-67 INVESTMENT POLICY FOR THE CITY.

(A) *General policy.* It is the policy of the city to invest public funds in a manner which will

provide the highest investment return with the maximum security of principal while meeting the daily cash flow demands of the city and conforming to all state statutes and city regulations governing the investment of public funds.

(B) *Scope.*

(1) This investment policy applies to all financial assets held directly by the city. These financial assets are accounted for in the city's annual financial report and include all monies in the following funds:

- (a) General Fund;
- (b) Special Revenue Fund;
- (c) Debt Service Funds;
- (d) Capital Projects Funds;
- (e) Utility General Fund;
- (f) Utility Depreciation Fund; and
- (g) Any new fund created by the governing body.

(2) Financial assets of the city held and invested by trustees or fiscal agents are excluded from these policies; however, the assets shall be invested in accordance with state laws applicable to the investment of local government funds and in accordance with the city's primary investment objectives.

(C) *Investment objectives.*

(1) *Safety.* Safety of principal is the foremost objective of the city's investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

(2) *Liquidity.* The city's investment portfolio shall remain sufficiently liquid to enable the city to meet all operating requirements which might be reasonably anticipated.

(3) *Return on investment.* The city's investment portfolio shall be designed with the objective of attaining a market rate of return throughout the budgetary and economic cycles, taking into account the city's investment risk constraints and the cash flow characteristics of the portfolio.

(D) *Investment authority.* Management responsibility for the city's investment program is hereby

delegated to the Mayor. The Mayor shall have the authority, subject to the approval of the governing body, to establish additional specific written procedures for the operation of the investment program which are consistent with this investment policy. The procedures shall include explicit delegation of

authority, if any, to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Mayor. The Mayor shall be ultimately responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials and employees. The controls shall be designated to prevent and control losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets or imprudent actions by officers and employees. The Mayor shall maintain all records to the city's investment program.

(E) *Prudent person rule.* The actions of the Mayor in the performance of his or her duties as manager of the city's funds shall be evaluated using the "prudent person" standard. Investments shall be made with judgement and care under prevailing circumstances which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital as well as the probable income to be derived.

(F) *Authorized investments.* The funds of the city available for investment shall be invested in accordance with this policy and all applicable state statutes, and only in certificates of deposit issued by or other interest bearing accounts of any bank or savings and loan institution which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations permitted by KRS 41.240(4).

(G) *Diversification of investments.*

(1) Diversification of the city's investment portfolio by institution, type of investment instrument and term to maturity is the primary method to minimize investment risk.

(2) The city's funds shall be diversified by security type and institution. With the exception of fully insured or fully collateralized investments, and except for authorized investment pools, no more than \$100,000 secured by the FDIC, and if over \$100,000, it must be secured by a bonding agreement from the Financial Institution.

(3) To the extent possible, the city will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow need, the city's funds should not, in general, be invested in securities maturing more than one year from the date of purchase. Reserve funds may be invested in securities exceeding one year, if maturity of the investments are made to coincide as nearly as practicable with the expected use of the funds.

(H) *Authorized financial dealers and institutions.*

(1) The Mayor shall maintain a list of financial institutions. All financial institutions who

desire to provide investment services to the city shall supply the Mayor with information sufficient to adequately evaluate the institution and answer any and all inquiries posed by the Mayor or the governing body, including the following information:

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- (a) Audited financial statements;
- (b) Regulatory reports on financial condition;
- (c) Written memorandum of agreement for the deposit of public funds or trading resolution, as appropriate; and
- (d) Any additional information considered necessary to allow the Mayor to evaluate the credit worthiness of the institution.

(2) The Mayor shall evaluate the financial capacity and credit worthiness of financial institutions prior to the placement of the city. The Mayor shall conduct an annual review of the financial condition and registrations of financial institutions and, and based on the review, make any recommendations regarding investment policy or program changes determined to be necessary.

(I) *Safekeeping and custody.*

(1) To protect against potential fraud and embezzlement, investment assets shall be secured through third-party custody and safekeeping institutions. The Mayor and any other officers or employees of the city authorized to engage in investment transactions shall be bonded in an amount established by the governing body. Collateralized securities, such as repurchase agreements, shall be purchased using the delivery vs. payment procedure. Money market mutual funds used for investments must provide for independent custodians of their portfolios and delivery vs. payment on their portfolio securities.

(2) The safekeeping procedures utilized in the city's investment program shall be reviewed annually by the independent auditor.

(J) *Collateral.*

(1) It is the policy of the city to require that all cash and investments maintained in any financial institution named as a depository be collateralized. Collateral shall be limited to all types of instruments authorized as collateral for state funds in KRS 41.240.

(2) Collateral shall always be held by an independent third-party custodian with whom the city has a current custodial agreement. A clearly-marked evidence of ownership (safekeeping receipt) must be supplied to the city and retained by the Mayor. The right of collateral substitution is hereby granted.

(K) *Investment reporting.*

(1) The Mayor shall prepare and submit to the governing body a quarterly report regarding the status of the city's investment program. As to each investment, the report shall include the following information:

(a) Name of financial institution from which the investment was purchased or in which assets are deposited;

(b) Type of investment;

(c) Certificate or other reference number, if applicable;

(d) Percentage yield on an annualized basis;

(e) Purchase date, purchase price and maturity date; and

(f) Current market value of the investment.

(2) In addition, the report shall explain the quarter's total investment return and compare the return with budgetary expectation.

(3) The quarterly report shall also summarize recent market conditions, economic developments and anticipated investment conditions, and indicate any areas of policy concern and suggested revisions of investment strategies. Copies of the report shall be submitted to each member of the governing body and the chief executive officer of the city.

(L) *Audit.* In connection with the audit of city funds conducted by an independent certified public accountant, the auditor shall conduct a review of the city's investment program, including internal controls and procedures, and the results of the review, including recommended changes, shall be included in the city's audit.

(M) *Investment policy adoption.*

(1) This policy shall be reviewed annually and revised as appropriate. Any amendments to this policy must be made by order of the governing body.

(2) Any investment held on the date of initial adoption of this policy which does not meet the guidelines of this policy shall be exempt from its provisions. At maturity or liquidation, the monies so invested, if reinvested, shall be reinvested only in accordance with this policy. The Mayor may take a reasonable period of time to adjust the existing portfolio to the provisions of this policy in order to avoid the premature liquidation of any current investment.

(Ord. passed 9-26-1994)

Statutory reference:

Similar provisions, see KRS 66.480, 41.240(4)

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DIVISION 2. INDUSTRIAL REVENUE BONDS

§ 2-75 GUIDELINES ADOPTED.

The City Council does hereby approve and adopt the set of local guidelines (the "Guidelines"), entitled "Radcliff Requirements For Issuing Industrial Revenue Bonds" as hereinafter set out in § 2-76, and it is hereby ordered that each proposed building project involving a bond issue must be brought before the City Council for discussion and must comply with the guidelines, after which the City Council will pass an ordinance stating its position on the bond issue.

(Ord. passed 11-17-1981)

Editor's note:

Ord. of 11-17-1981, not specifically amendatory of the code, has been included herein as Div. 2, §§ 2-75 through 2-79 at the discretion of the editor.

§ 2-76 REQUIREMENTS FOR ISSUING INDUSTRIAL REVENUE BONDS.

(A) All applications to the city for industrial revenue bond financing or economic development revenue bond financing for projects for which the financing is authorized by KRS 103-200 shall be reviewed by the Revenue Bond Oversight Commission and then submitted to the City Council of the city, reviewed by the City Council and, if approved, recommended to the Industrial Revenue Bond Oversight Committee of the commonwealth (the "State Oversight Committee") if the project falls under KRS 103.200(2), (4), (8), (9) and (16), and off-street parking facilities, cable television and mass communication facilities as authorized by KRS 103.200(3), according to the guidelines hereinafter set out.

(B) Application to the city shall be made in writing on the same application forms as those prescribed and adopted by the state's Oversight Committee for application to the committee for review. The application forms shall be submitted in quadruplicate, and shall be filed with the City Clerk. One copy of the application shall then be given to the Chairperson of the Bond Oversight Commission. An application fee of \$150 will be required with the submission of the application.

(C) The Revenue Bond Oversight Commission shall hold meetings at the call of the Chairperson of the Commission. The applicant and the project developer shall be notified of a meeting date within 14 days of the application submission. All meetings of the Commission must be advertised in the local newspaper giving the time, place, date and purpose of each Commission meeting and the application to be considered at the meeting at least seven days in advance of any such meeting. The Commission will elect a Chairperson to preside over the meeting. The terms of the Commission shall be for one year

with no limitations on succession. The Commission shall consist of three members appointed by the Mayor and approved by the City Council. At least two members of the Commission must be present to conduct business.

(D) The Commission shall make a recommendation to the City Council concerning approval or disapproval of the application. The recommendation shall not be binding on the City Council. The recommendation from the Commission will include a written statement outlining the benefits that the project will provide the community and indicating why they believe the project should be approved by the City Council. If a project is recommended by the commission to be disapproved, then the Commission will also state their reasons for recommending disapproval. The Commission shall make such recommendations to the City Council in writing within ten days from the final meeting on the application. If the Commission believes the application is deficient in areas that can be otherwise met by the applicant, the Commission may state those conditions to be met in writing to the applicant and allow the applicant 30 days in which to try and meet those conditions. The Commission may then accept a resubmittal of the project if the applicant can alleviate the problems cited by the Commission. In determining what applications the Commission will recommend approval or disapproval, the Commission will follow the Industrial Revenue Bond Oversight Committee policy statements issued by the state's Bond Oversight Committee. The City Council will follow the same policy statements concerning its final approval or disapproval.

(E) (1) The applicant shall notify the local Chamber of Commerce and any other group which has filed a written request with the City Clerk for notification of the filing of the applications, in writing, at least seven days prior to the date in which the Revenue Bond Oversight Commission will hold its public meeting on the application and at least seven days prior to the date in which the inducement ordinance is presented to the City Council for the first time. The notice shall briefly:

- (a) Describe the project;
- (b) Give the location of the project;
- (c) State the amount of the proposed bond issue;

(d) Give the date of the Revenue Bond Oversight Commission meeting at which the application will be presented and in the case of the inducement ordinance, give the date of the City Council meeting at which the inducement ordinance will first be presented; and

(e) Inform the local Chamber of Commerce and any such other group, if any, of its opportunity to comment on the project.

(2) A copy of the notice or notices shall be filed with the City Clerk. The City Council shall consider any comments received as a result of the notice or notices prior to the second reading of the inducement ordinance. The Bond Oversight Commission shall consider any comments received as a result of the notice at its meeting on the application.

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(F) Each inducement ordinance shall receive two readings by the City Council. Not less than seven days prior to the second reading of an inducement ordinance the applicant shall advertise, in a newspaper which qualifies under KRS Chapter 424 for legal publication by the city, notice of the City Council meeting at which the inducement ordinance will be considered for second reading. The notice shall include:

- (1) A statement that the City Council will consider at the meeting authorization for industrial revenue bonds to finance the project;
- (2) The date, time and place of the meeting;
- (3) The name of the applicant;
- (4) The type and location of the project; and
- (5) A statement that members of the public will have an opportunity to comment on the project and the bond issue at the meeting.

(G) During any City Council meeting at which an inducement ordinance for a project covered by these guidelines is considered and at any meeting of the Bond Oversight Commission in which an application is considered, a reasonable opportunity shall be given for the public to provide comments concerning the proposed bond issue.

(H) For any project for which an inducement ordinance is enacted on second reading in accordance with the procedure set out in these guidelines, the city will notify the state's Oversight Committee in writing of the passage and include in the notification a statement outlining the benefits that the project will provide for the city and surrounding area and indicating why the project should be approved by the state's Oversight Committee.

(I) The meeting of the state's Oversight Committee at which a project, so recommended by the city for approval, will be considered, shall be attended by the Mayor or other official designated by the Mayor. The Mayor or such designated official shall be prepared to explain the position of the city relative to the project and the bond issue.

(J) These guidelines shall become effective upon approval of same by the state's Oversight Committee.

(Ord. passed 11-17-1981)

§ 2-77 ESTABLISHMENT OF BOND OVERSIGHT COMMISSION.

The Bond Oversight Commission is hereby established for the purpose of reviewing all applications for industrial building revenue bonds to be issued by the city. The Commission shall make recommendations to the City Council as to whether the applications should be approved or disapproved concerning the issuance of industrial building revenue bonds.

(Ord. passed 11-17-1981)

§ 2-78 APPLICATION FOR APPROVAL OF INDUSTRIAL REVENUE BOND ISSUES.

The application form (the “application”) of the state’s Oversight Committee is hereby adopted insofar as it is appropriate to be used as an application for consideration of a bond issue by the City Council, a true copy of which application is attached to the ordinance codified herein, entitled “Application for Approval of Industrial Revenue Bond Issues”.

(Ord. passed 11-17-1981)

Editor’s note:

The application form referred to in § 2-78 is not set out at length herein, but is on file and available for inspection in the offices of the city.

§ 2-79 ADDITIONAL ACTION BY CITY OFFICIALS.

The Mayor and other appropriate city officials are hereby authorized to take such further action as may be necessary to carry out the intent of this division with reference to such building projects and any other industrial building projects which may be presented or proposed to the City Council pursuant to this division.

(Ord. passed 11-17-1981)

ARTICLE VIII. SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

§ 2-90 FINDINGS AND INTENT.

(A) The Radcliff City Council finds the following.

(1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution. Breathing secondhand smoke is a cause of disease in healthy nonsmokers. These diseases

include heart disease, stroke, respiratory disease and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke:

the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10,” Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

(2) The Public Health Service’s National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), “Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens,” U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

(3) A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., “Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study,” *British Medical Journal* 328: 977-980, April 24, 2004.)

(4) Secondhand smoke is particularly hazardous to the elderly, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities and cancer. (California Environmental Protection Agency (Cal EPA), “Health effects of exposure to environmental tobacco smoke,” *Tobacco Control* 6(4): 346-353, Winter, 1997.)

(5) The Americans with Disabilities Act, which mandates access to public places and workplaces for persons with disabilities, deems impaired respiratory function to be a disability. (Daynard, R.A., “Environmental tobacco smoke and the Americans with Disabilities Act,” *Nonsmokers’ Voice* 15(1): 8-9.)

(6) The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. Public Health Service, Centers for Disease Control, 1986.)

(7) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), “Indoor air facts no. 5: environmental tobacco smoke,” Washington, D.C.: Environmental Protection Agency (EPA), June 1989.)

(8) The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear

at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal*, 328: 980-983, April 24, 2004.)

(9) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25% to 50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C; Panagiotakos, D.B.; Chrysohoou, C; Skoumas, J.; Tzioumis, K.; Stefanadis, C; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

(10) Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

(11) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A.; Smith, L., *The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales in the United States. American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," GPI Atlantic, September 2001.)

(12) Smoking is a potential cause of fires; cigarette and cigar bums (sic) and ash stains on merchandise and fixtures causes economic damage to business health 15(8), Supplement A: 6-9, August 1997.)

(13) The smoking of tobacco is a form of air pollution, a danger to health and a material public nuisance.

(B) Accordingly, the City Council adopts the foregoing as justification for this article, the purpose of which is to:

(1) Protect the public health and welfare by prohibiting smoking in public places and places

of employment; and

- (2) Guarantee the right of nonsmokers to breathe smoke-free air; and

(3) Recognize that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-91 DEFINITIONS.

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

BUSINESS. A sole proprietorship, partnership, joint venture, corporation or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered; and private clubs.

EMPLOYEE. A person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

EMPLOYER. A person, business, partnership, association, corporation, including a municipal corporation, trust or nonprofit entity that employs the services of one or more individual persons.

ENCLOSED AREA. All space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

HEALTH CARE FACILITY. An office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including treatment facilities for drug addiction, alcoholism and the like, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms and wards within health care facilities.

PLACE OF EMPLOYMENT. An area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias and hallways. A private residence is not a **PLACE OF EMPLOYMENT** unless it is used as a childcare, adult day care or health care facility.

PRIVATE CLUB. An organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes at all times, which is

operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The

affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501.

PUBLIC PLACE. An enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, polling places, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms. A private club is a ***PUBLIC PLACE*** when being used for a function to which the general public is invited. A private residence is not a ***PUBLIC PLACE*** unless it is used as a childcare, adult day care or health care facility.

RESTAURANT. An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, national and regional chains, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term ***RESTAURANT*** shall include a bar area within the restaurant.

RETAIL TOBACCO STORE. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

SERVICE LINE. An indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

SHOPPING MALL. An enclosed public walkway or hall area that serves to connect retail or professional establishments.

SMOKING. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product or any other lighted substance, whether otherwise legally possessed or consumed such as marijuana, in any manner or in any form.

SPORTS ARENA. Sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-92 APPLICATION TO CITY-OWNED FACILITIES.

Smoking policies concerning facilities owned or operated by the city shall be governed by regulations adopted in compliance with KRS 61.165. Smoking is prohibited in all enclosed public places

defined herein and in all enclosed facilities as defined herein that are owned, operated or under the jurisdiction of the City of Radcliff government.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-93 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

Smoking is prohibited in all enclosed public places as defined in § 2-91 above, within the city.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-94 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

(A) Smoking is prohibited in all enclosed facilities within places of employment. This prohibition includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs and restrooms.

(B) This prohibition on smoking shall be communicated to all existing employees by the effective date of this article [April 1, 2010] and to all prospective employees upon their application for employment.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-95 PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS.

Smoking is prohibited in the seating areas of all outdoor arenas, stadiums and amphitheaters within the city limits of Radcliff, Kentucky.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-96 REASONABLE DISTANCE.

Smoking is prohibited within a reasonable distance of at least 15 feet of the outside entrance to or open windows of any enclosed area in which smoking is prohibited by this article, and smokers shall not obstruct the entrance at any time while smoking; and smoking is also prohibited within a reasonable distance from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-97 WHERE SMOKING NOT REGULATED.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of §§ 2-93 and 2-94:

(A) Private residences, except when used as a licensed childcare, adult day care or health care facility;

(B) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20% of rooms rented to guests in a hotel or motel may be so designated, and that designated smoking rooms shall be contiguous and shall be able to be accessed by handicapped persons. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

(C) Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this article;

(D) Private clubs that have no employees; provided that when such clubs are being used for functions to which the general public is invited, the prohibitions set out in §§ 2-93 and 2-94 shall apply; and

(E) Outdoor areas of places of employment, except those covered by the provisions of §§ 2-95 and 2-96.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-98 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this article, an owner, operator, manager or other authorized person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place regardless of its designation under this article. Within such premises, as an authorized nonsmoking designation has been made and signage conforming to the specifications set out in § 2-99(A) is posted, smoking shall be prohibited as if otherwise prohibited by this article.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-99 POSTING OF SIGNS.

(A) “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this

article. The party responsible for the placement of the signage is the owner, operator, manager or other person in control of the premises.

(B) A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by the public entering and exiting public places within which smoking is prohibited by this article. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by employees entering and exiting places of employment within which smoking is prohibited by this article.

(C) All ashtrays shall be removed from any area within which this article or the owner, operator, manager or other person having control of the area prohibits smoking, except for ashtrays displayed for sale and not for use on the premises.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-100 NONRETALIATION AND NONWAIVER OF RIGHTS.

(A) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

(B) An employee who continues to work in a setting where an employer allows smoking in violation of this article does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-101 ENFORCEMENT.

(A) The city's code enforcement officer, the city police, the Fire Department, the Hardin County Health Department (subject to formal determination by the Health Board that the Hardin Health Department shall assume enforcement responsibilities) and all other city officials and employees designated by the city shall enforce this article.

(B) Notice of the provisions of this article shall be given to all applicants for a business license in the city.

(C) Any citizen who desires to register a complaint under this article may initiate enforcement with any of the authorized persons listed above.

(D) The Planning Department, Health Department, Fire Department, or their designees, while in an establishment performing otherwise legal inspections, shall inspect for compliance with this article.

(E) Owners, managers, operators or employees of establishments regulated by this article shall inform persons seen violating this article of the requirements of this article. In the event an owner, manager, operator or employee of an establishment regulated by this article observes a person or persons violating this article, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked.

(1) In the event the person or persons violating this article complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this article observes a person or persons violating this article and fails to immediately direct the person or persons in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this article shall be in violation of this article.

(2) In the event the person or persons violating this article fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person or persons violating this article shall take immediate and reasonable steps to obtain the removal of the person or persons from the premises.

(a) As an example of the reasonableness required, if there is a person violating this article whom the owner, manager, operator or employee of an establishment regulated by this article is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee may reasonably determine to allow the person violating this article to remain on the premises until appropriate arrangements may be made for the person's removal.

(b) In the event the person or persons violating this article is timely removed from the premises, no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. In no event is an owner or agent of the premises to forcibly remove the person violating this article. Compliance is achieved under this division (E)(2) if the owner or agent of the premises orders the person violating this article to leave its premises and promptly notifies the police if the person refuses.

(3) In the event the person or persons violating this article fails or refuses to comply with this directive and the owner, manager, operator or employee who observed the violation or if a different person who directed the person or persons in violation to leave the premises, fails to take immediate and reasonable steps to obtain the removal of the person or persons from the premises, the owner, manager, operator or employee failing to take appropriate steps required by this article shall be in violation of this article.

(4) In all events, the establishment in which a violation occurs shall be in violation of this

article for each violation that occurs on its premises and in connection with which the owner, manager, operator or employee fail to take appropriate steps required by this article.

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(5) An employee who observes a person or persons violating this article may immediately notify his or her owner, manager or supervisor of the violation in satisfaction of the employee's responsibility under this article. The failure of the employee's owner, manager or supervisor to take appropriate steps required by this article in response to the employee's notice shall not constitute a violation on the part of the employee.

(6) In the event all duties required under this section are satisfied yet the person violating this article persists in his or her violation and/or refuses to vacate the premises on which the violation occurred, the owner, manager, supervisor and/or employee shall immediately contact one or more of the agencies or departments authorized above to enforce this article informing the agency or department of the circumstances of the violation.

(7) The mere presence of a person smoking within premises of an establishment governed by this article does not constitute a violation on the part of the establishment. The establishment and its agents shall only be charged for a violation of this article if the responsible agent(s) of the establishment fails to timely satisfy each responsibility prescribed for them in this section.

(F) Notwithstanding any other provision of this article, the city, the Hardin County Health Department, an employee, or any person aggrieved by a failure to comply with this article, whether by commission or omission, including violations on the part of an owner, operator, manager, employee or other person(s) in control of a public place or a place of employment covered by this article, may bring legal action to enforce this article, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.
(Ord. 09-12-1079, passed 12-17-2009)

§ 2-102 VIOLATIONS AND PENALTIES.

(A) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of a violation, punishable by a fine not exceeding \$50.

(B) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of a violation, punishable by:

- (1) A fine not exceeding \$50 for a first violation within a one-year period;
- (2) A fine not exceeding \$100 for a second violation within one year; and
- (3) A fine not exceeding \$250 for each additional violation within one year.

(C) The fines set out above shall be enforced by administrative citation payable at the Finance Department of the city. Failure to pay the citation within ten days will result in appropriate action being taken in the Hardin District Court for violation of this article.

(D) In addition to the fines established by this section, violations of this article by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(E) Violation of this article is declared to be a public nuisance, which may be abated by the city or its designated agents by restraining order, preliminary and permanent injunction, or other means provided for by law. The city may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.

(F) Each day on which a violation of this article occurs shall be considered a separate and distinct violation.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-103 PUBLIC EDUCATION.

The Mayor's office shall take steps to offer a continuing program by which the purpose and requirements of this article are made clear to citizens and to the owners, operators, managers and employees required to comply with it. The program may include publication of a brochure, publication of news releases and public meetings.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-104 GOVERNMENTAL AGENCY COOPERATION.

The city requests the Hardin County Health Department for its assistance in the effective implementation of this article.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-105 OTHER APPLICABLE LAWS.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. 09-12-1079, passed 12-17-2009)

§ 2-106 CONSTRUCTION.

This article shall be construed so as to further its stated purposes.
(Ord. 09-12-1079, passed 12-17-2009)

§ 2-107 EFFECTIVE DATE.

This article shall be effective April 1, 2010.
(Ord. 09-12-1079, passed 12-17-2009)

CHAPTER 2.1: HARDIN COUNTY CODE OF ETHICS

Section

2.1-1. Adopted by reference

CHAPTER 2.1: HARDIN COUNTY CODE OF ETHICS

§ 2.1-1 ADOPTED BY REFERENCE.

The Hardin County Code of Ethics is adopted by reference and made a part of herein as if appearing in total.

CHAPTER 2.5: ALARM SYSTEMS

Section

- 2.5-1. Definition; scope of chapter
- 2.5-2. False alarms **CHAPTER 2.5: ALARM SYSTEMS**
- 2.5-3. Central offices to be staffed 24 hours a day
- 2.5-4. Requirements for attachment to city departments
- 2.5-5. Permit; required
- 2.5-6. Same; issuance
- 2.5-7. Same; revocation
- 2.5-8. Grace period for existing systems prohibited by this chapter
- 2.5-9. Penalty for violation

Editor's note:

An ordinance of 9-2-1986, not expressly amendatory of the code, has been included as Chapter 2.5, at the discretion of the editor.

§ 2.5-1 DEFINITION; SCOPE OF CHAPTER.

(A) For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

ALARM SYSTEM. An assembly of equipment and devices or a single device such as a solid state unit which uses electrical energy to signal the presence of a hazard requiring urgent attention and to which police are expected to respond. In this chapter, the term **ALARM SYSTEM** shall include, but not be limited to, the terms "automatic holdup alarm systems", "burglar alarm systems", "holdup alarm systems" and "manual holdup alarm systems". **ALARM SYSTEMS** which monitor temperature, humidity or any other condition not directly related to the detection of an unauthorized intrusion into premises or an attempted robbery at premises are specifically excluded from the provisions of this chapter.

(B) If a system employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, the system shall be within the definition of alarm system and shall be subject to this chapter.

(Ord. passed 9-2-1986)

§ 2.5-2 FALSE ALARMS.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

FALSE ALARM. The activation of an alarm system through mechanical failure, malfunction, improper installation or the negligence of the owner or lessee of an alarm system, or his or her employees or agents. In addition, the use of an alarm to summon police or the department personnel for reasons other than those listed on alarm system permits will also be considered a **FALSE ALARM**. **FALSE ALARMS** shall not include alarms caused by electrical interruptions, floods or other natural disasters.

(B) *Fee charged for false alarms.*

(1) Any person, firm or corporation having a burglar, hold-up or any type of intrusion alarm or alarm system, as defined in § 2.5-1, shall be charged a fee of \$10 for the fourth false alarm call responded to by the Police Department within a calendar year and \$25 for each false alarm thereafter.

(2) If the possessor of the alarm shows to the satisfaction of the Police Chief that the false alarm was not the result of negligence or improper maintenance, the fee may be waived.
(Ord. passed 9-2-1986)

Cross-reference:

Building, Fire, Housing and Safety Standards, see Chapter 4
Police Department, see Chapter 16

§ 2.5-3 CENTRAL OFFICES TO BE STAFFED 24 HOURS A DAY.

No person, firm or corporation shall provide a private alarm service system programmed to a central office unless it shall have the central office staffed at all times, 24 hours a day, including holidays.

(Ord. passed 9-2-1986)

§ 2.5-4 REQUIREMENTS FOR ATTACHMENT TO CITY DEPARTMENTS.

(A) No person, firm or corporation, without notice as set forth in division (B) of this section, shall use or cause to be used any telephone or electronic device or attachment that automatically selects a public primary telephone trunk line of the Police Department, Fire Department or any other department or bureau of the city, and then reproduces any prerecorded message to report any burglary or other emergency.

(B) The person, firm or corporation must notify the Chief of Police that this type of system is in operation and provide that authority with any information that it may require to effectively respond to any alarm that may be transmitted by the device.

(Ord. passed 9-2-1986)

§ 2.5-5 PERMIT; REQUIRED.

No person, firm or corporation shall cause to be connected to the Police Department a private alarm system unless the person, firm or corporation is issued an annual hold-up alarm permit by the Chief of Police.

(Ord. passed 9-2-1986)

§ 2.5-6 SAME; ISSUANCE.

(A) Alarm system permits shall be issued to those persons, firms or corporations who:

(1) Are required by federal law to maintain a hold-up alarm system;

(2) Had in existence, prior to the effective date of this chapter, a hold-up alarm system connected to the Police Department; and

(3) Have made application for the permit and have received approval by the Chief of Police.

(B) All persons to receive a license under division (A) above must also comply with the following conditions:

(1) Use alarm equipment meeting at least the minimum federal standards as set forth in the Federal Bank Protection Act of 1968 for any banking or lending institution covered under its provisions;

(2) Comply with all the applicable provisions of this chapter;

(3) Install at the permittee's expense, at the Police Department switchboard termination point, equipment which is designated by the Chief of Police;

(4) Assume all costs of installation, maintenance and monthly rental of telephone lines used by the permittee for the alarm;

(5) Sign an agreement holding the city harmless for any and all damages or losses resulting from the existence or use of the permittee's alarm system;

(6) Follow alarm testing procedures set forth by the Chief of Police and assume any expenses for testing of the alarm; and

Radcliff - Alarm Systems

(7) Assume responsibility and expense for the removal of the alarm when the service is discontinued or permit is revoked or not renewed.

(C) Any person who has been denied a permit by the Chief of Police under this section may appeal this decision to the City Council.

(Ord. passed 9-2-1986; Ord. passed 12-19-1986; Ord. passed 3-22-1989)

§ 2.5-7 SAME; REVOCATION.

The Chief of Police may revoke the permit of any permittee failing to pay any fee or charge required in this chapter, or for repeated false alarms caused by willful acts or by negligence or improper maintenance of equipment, for failure to repair or replace equipment when notified by the Police Department that the repair or replacement is required to meet the standards set out in this code or for failure to keep a hold harmless agreement in effect as required.

(Ord. passed 9-2-1986)

§ 2.5-8 GRACE PERIOD FOR EXISTING SYSTEMS PROHIBITED BY THIS CHAPTER.

Those persons, firms or corporations presently having alarm systems which are prohibited in this chapter shall be permitted to maintain the connection until 12-31-1986, after which date failure to disconnect from any department or departments of the city will be deemed a violation of this chapter.

(Ord. passed 9-2-1986; Ord. passed 12-19-1986)

§ 2.5-9 PENALTY FOR VIOLATION.

Any person, firm or corporation violating any provision of this chapter shall be fined not less than \$10, nor more than \$250, for each offense. A separate offense will be deemed committed on each day during or on which a violation occurs or continues.

(Ord. passed 9-2-1986)

CHAPTER 3: ANIMALS AND FOWL

Section

Article I. In General
CHAPTER 3: ANIMALS AND FOWL

- 3-1. Nuisances
- 3-2. Dogs running at large
- 3-3. Destruction of abandoned and suffering animal

Article II. Dogs; Vicious Dogs; Cruelty

- 3-10. Definitions
- 3-11. Alternate opinion
- 3-12. Control of dogs
- 3-13. Control of vicious dogs
- 3-14. Enforcement of restrictions on vicious dogs
- 3-15. Impoundment
- 3-16. Provision of necessities
- 3-17. Restraint by leash or chain; specifications
- 3-18. Abandonment
- 3-19. Cruelty to animals
- 3-20. Cruelty or exhibition fighting prohibited
- 3-21. Killing dogs, cats for food or fur prohibited
- 3-22. Mutilation of animals
- 3-23. Sexual acts with animals
- 3-24. Removal of animal in immediate danger
- 3-25. Confiscation of victimized animal
- 3-26. Penalties

Cross-reference:

Nuisances, see Chapter 13

Statutory reference:

Animals generally, see KRS Title XXI

Power of city with reference to animals, see KRS 258.365

*ARTICLE I. IN GENERAL***§ 3-1 NUISANCES.**

(A) It shall be unlawful for anyone to maintain or keep, within the city, a dog, cat or other animal or fowl of any kind or description whatever that is a nuisance to persons or property within the city. Any dog, cat or other animal or fowl which habitually barks, yelps, cries or howls to the great discomfort of the peace and quiet of the neighborhood, or in such a manner as to materially disturb or annoy persons in the neighborhood who are of ordinary sensibilities, or any dog, cat or any other animal or fowl whose actions annoy or disturb an individual so that he or she is fearful of injury, is hereby declared to be a public nuisance. This section shall not apply to any dog, cat or other animal or fowl located within an area zoned "agriculture" within the city.

(B) A nuisance shall be deemed to exist when actions by the dog, cat or other animal or fowl annoy or disturb an individual in possession of his or her property so that its ordinary use or occupation is rendered uncomfortable to him or her; or if the actions annoy or disturb an individual so that he or she is fearful of bodily injury to his or her person.

(C) Whenever any person shall complain to the Police Department that a dog, cat or other animal or fowl which habitually barks, howls, yelps or cries, or is annoying or disturbing an individual, is being kept by any person in the city, the Police Department shall notify the owner of the animal that a complaint has been received and that the person should take whatever steps necessary to alleviate the howling, yelping, barking or crying.

(D) If the warning given to the person alleged to be keeping a dog or cat or any other animal or fowl, as set forth above is ineffective, then a verified complaint of at least two citizens not from the same family may be presented to the Police Department alleging that an animal which habitually howls, barks, yelps or cries, or that the actions of an animal annoy or disturb an individual so that he or she is fearful of bodily injury to his or her person, is being kept by any person in the city. The verified complaint shall be deemed prima facie evidence that a nuisance exists. The Police Department shall inform the owner of the animal that the verified petition has been received and shall cite the owner of the animal for the violation alleged in the petition as a violation of this section.

(E) Any person maintaining or keeping a dog, cat or other animal or fowl that is a nuisance shall be fined in an amount not less than \$20, nor more than \$250. A separate offense shall be committed for each day a nuisance is permitted to exist. Any persons violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 3-16-1993)

§ 3-2 DOGS RUNNING AT LARGE.

(A) No owner, custodian, possessor or harbinger shall permit any dog to run at large other than on his or her own premises at any time, unless the dog is under the control of his or her owner, custodian, possessor or harbinger, as defined and set forth in § 3-12 of this code.

(B) The owner, custodian, possessor or harbinger shall be responsible for cleaning up after his or her dog on any and all property other than the owner's, custodian's, possessor's or harbinger's own property for any excretions by the dog. The owner, custodian, possessor or harbinger shall further be responsible for any damages caused by the dog upon the premises of another regardless of what those damages are.

(C) Whoever, being the owner, custodian, possessor or harbinger of any dog, violates this section shall be fined in an amount not less than \$20, nor more than \$250, for each offense. Any persons violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to insure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993)

§ 3-3 DESTRUCTION OF ABANDONED AND SUFFERING ANIMAL.

(A) Any peace officer may destroy or kill or cause to be destroyed or killed any animal found abandoned and suffering and not properly cared for, or appearing to be injured, diseased or suffering past recovery for any useful purpose.

(B) Before destroying the animal the officer shall obtain the judgment to that effect of a veterinarian or of two reputable citizens called by him or her to view the animal in his or her presence, or shall obtain consent to the destruction from the owner of the animal.

(C) (1) Any animal placed in the custody of a licensed veterinarian for treatment, boarding or other care, which shall be unclaimed by its owner or his or her agent for a period of more than ten days after written notice by registered or certified mail, return receipt requested, is given the owner or his or her agent at his or her last known address, shall be deemed to be abandoned and may be turned over to the nearest humane society, dog pound or animal shelter, or disposed of as the custodian may deem proper.

(2) The giving of notice to the owner or the agent of the owner of the animal by the licensed veterinarian, as provided herein, shall relieve the licensed veterinarian and any custodian to whom the animal may be given of any further liability for disposal.

(Ord. passed 7-19-1983)

ARTICLE II. DOGS; VICIOUS DOGS; CRUELTY**§ 3-10 DEFINITIONS.**

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

AT LARGE. Not restrained by leash, cord, chain or otherwise confined in an enclosed area.

DOG. This term shall be intended to mean both male and female.

DOG WARDEN. This term shall be interchangeable with Animal Warden and Animal Control Officer.

ENCLOSURE. An uncovered fence or structure of at least seven feet in height or a covered fence or structure of sufficient height to allow the dog to stand erect without touching the top or cover, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of the vicious dog. Further, the fence or structure shall be sufficiently embedded in the ground to prevent the dog from digging under the fence or structure. The enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the dog from escaping from the enclosure.

KEEPER. Any person to whom a vicious dog is entrusted.

OWNER. Any person or persons, firm, association or corporation owning, keeping or harboring a dog.

RESTRAINT. A vicious dog shall be deemed to be under restraint if on the premises of the owner or keeper and confined in a secure enclosure as previously defined or under the control of the owner or keeper and securely muzzled and restrained with a chain or braided leather, nylon or manilla lead or leash having a minimum tensile strength of 300 pounds and not exceeding three feet in length.

VICIOUS DOG. Includes the following:

- (1) Any dog which constitutes a physical threat to human beings or other domestic animals by virtue of a known propensity to endanger life by an unprovoked assault or bite so as to cause serious bodily harm;
- (2) Any dog which, when unprovoked, in a vicious or terrorizing manner approaches any person in an attitude of attack upon the streets, sidewalks or any public grounds or places;

(3) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to or otherwise endanger the safety of human beings or domestic animals;

(4) Any dog which bites (to the extent of puncturing or severely bruising skin), inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property;

(5) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting;

(6) Any dog which has previously attacked or bitten a human being other than under the type of circumstances that would be justifiable hereunder;

(7) Any dog which has behaved in such a manner that the owner or keeper thereof knows or should reasonably know that the dog is possessed of tendencies to attack or to bite human beings other than the type which would be justified hereunder;

(8) Any dog certified by a doctor of veterinary medicine, after observation thereof, as posing a danger to human life or property if not kept in the manner required by this article upon the basis of reasonable medical probability;

(9) Any dog which has been classified as vicious by the County Dog Warden or a peace officer;

(10) Any dog which has been trained as an attack or guard dog, except such dogs which are employed by any police department within the commonwealth; or

(11) An animal shall not be deemed vicious solely because:

(a) It bites, attacks or menaces:

1. Anyone assaulting its owner or keeper; or
2. Any person or other animal who has tormented or abused it.

(b) It is otherwise acting in the defense of any attack from a person or other animal upon its owner or any other person;

(c) It is protecting or defending its young or the young of any other animal; or

(d) Where a person has broken into or entered, without permission, the enclosure of such dog.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-11 ALTERNATE OPINION.

Should the owner or keeper of any dog which has been classified as vicious by the County Dog Warden, a peace officer, or by a doctor of veterinary medicine, and should the owner desire to challenge the classifications, then the owner/keeper may engage the services of a licensed doctor of veterinary medicine, all costs of which are to be borne by the owner/keeper of the dog in question. The alternate opinion must be acquired and completed within 48 hours of the initial classification of the dog as being vicious.

(Ord. 07-10-1022, passed 10-16-2007)

§ 3-12 CONTROL OF DOGS.

(A) It shall be unlawful for any person to keep or harbor within the city any dog that barks or yelps or otherwise makes such noise as to disturb the peace and quiet of the people in the neighborhood or area where the dog is kept. Verification of more than one person from at least two different households shall be required, before this provision takes effect.

(B) It shall be unlawful to entice a dog from a yard or enclosure of its owner or keeper or to bring any dog into the city for the purpose of impounding or disposing of the same or to remove a muzzle or license tag from any dog without the consent of the owner, keeper or custodian thereof.

(C) No owner, custodian, possessor or harbinger shall permit any dog to run at large other than on its owner's premises at any time unless under the direct control of the owner, custodian, possessor or harbinger.

(D) (1) The owner, custodian, possessor or harbinger of every dog shall, at all times, keep the dog either:

(a) Confined on the owner's premises within an enclosure which it can not escape;

(b) Firmly secured by means of a collar or chain or other device so that it can not escape and stray from the premises on which it is secured; or

(c) Under the immediate control of the person.

(2) The term ***UNDER IMMEDIATE CONTROL*** is defined as the power to manage and direct the dog and is not limited to physical control of the dog.

(Ord. 07-10-1022, passed 10-16-2007)

§ 3-13 CONTROL OF VICIOUS DOGS.

(A) (1) It shall be unlawful for any person, firm or corporation to keep or harbor within the city, a vicious dog that shall bite or fiercely attack any person or domestic animal while outside of its owner's yard or enclosure or real estate.

(2) This section shall not apply where a person shall break into or enter without the permission the premises or enclosure of the dog and be pursued therefrom and attacked or bitten by the dog.

(B) All vicious dogs shall be confined in an enclosure. It shall be unlawful for any owner or keeper to maintain a vicious dog upon any premises which does not have a locked enclosure.

(C) It shall be unlawful for any owner or keeper to allow any vicious dog to be outside of the dwelling of the owner or keeper or outside of the enclosure unless the owner or keeper has the vicious dog under proper restraint, and under the direct control and supervision of the owner or keeper of the vicious dog.

(D) The owner or keeper of a vicious dog shall display a sign on his or her premise warning that there is a vicious dog on the premises. The sign shall be visible and capable of being read from the public street. The sign shall be a minimum of two square feet in area.

(E) The owner or keeper shall immediately notify the County Dog Warden and the Police Department if a vicious dog is on the loose, is unconfined, has attacked another animal or has attacked a human being or has died.

(F) The County Dog Warden or peace officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this article, and any such County Dog Warden or peace officer is hereby empowered to seize and impound any vicious dog whose owner or keeper fails to comply with the provisions hereof, subject to the right of the owner or keeper to contest the seizure or impoundment, as provided in this article, in County District Court.

(G) In the event that the owner or keeper of the dog refuses to surrender the dog to the County Dog Warden, the County Dog Warden may obtain a search warrant from a judge of the County District Court to seize the dog upon the execution of the warrant.

(H) No person shall walk or exercise a vicious dog within 1,000 feet of a school, day care, day nursery, playground, hospital or fairground.

(I) No more than two vicious dogs may be kept at a singular site or residence. This section shall not apply to duly licensed kennels.

(J) No vicious dog may be kept on a chain tied to a fixed point outside an enclosure.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-14 ENFORCEMENT OF RESTRICTIONS ON VICIOUS DOGS.

In the event that a public law enforcement officer or the County Dog Warden has probable cause to believe that a vicious dog is being harbored in the city in violation of this article, he or she may:

(A) Order the violation immediately corrected and cite the owner or keeper to appear in court for the violation; or

(B) If the violation cannot be immediately corrected and the dog is posing an imminent serious threat to human beings or other domestic animals, the dog may be seized and impounded, in which case the owner or keeper will be cited to appear in court for the violation. At the owner's or keeper's request and expense, the impoundment may be at a veterinarian or licensed kennel of the owner's or keeper's choosing. If the court rules that the dog is not vicious as defined, it will be released to the owner or keeper upon payment to the County Dog Warden of the expense of keeping the dog, pursuant to a schedule of the costs maintained by the County Dog Warden. If the court rules that it is vicious as defined, the dog will be released to the owner or keeper only after payment of any fees and penalties, and upon presentation of proof by the owner or keeper that the dog will be kept restrained or confined as specified in this article. If, within seven days following the order regarding a vicious dog the owner or keeper of a vicious dog fails to either provide proof that the dog will be kept restrained or confined in compliance with the provisions of this article or fails to reclaim it after impoundment and pay the fees and penalties, the dog may be humanely euthanized.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-15 IMPOUNDMENT.

(A) Any dog found running at large within the city limits, unless under direct control of the owner, custodian, possessor or harbinger shall be owner, custodian, possessor or harbinger taken up by the County Dog Warden and/or other proper authority, and impounded in the shelter designated by the County Animal Shelter and there confined in a humane manner for a period of not less than five days unless sooner claimed by its owner, custodian or person entitled thereto.

(B) The County Dog Warden may humanely destroy or transfer title of all animals held after the legal detention period in division (A) above has expired and the animal has not been claimed by its owner, custodian or other person entitled to the possession thereof, provided the person to whom title is being transferred licenses the dog according to the laws of the commonwealth and supplies proof of a rabies inoculation for the dog together with the boarding charges levied by the animal shelter, and in addition thereto the pickup fee payable to the city provided below.

(C) Any owner, custodian or other person entitled to the possession of a dog impounded under division (A) above may be claimed by such owner, custodian or person entitled to possession thereof upon proof that the dog has been or is licensed, according to the laws of the commonwealth; proof that

the dog has been inoculated against rabies; payment of boarding charges levied by the county; and payment to the county of any fine due.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-16 PROVISION OF NECESSITIES.

No owner shall fail to provide his or her animal with good wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering and humane care and treatment. Any owner of animals shall maintain a clean and healthful shelter and living area for any animal being kept, which area shall be free of accumulated waste and debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris. All such shelters or living areas must be cleaned and maintained regularly so as to promote proper health for the animals being kept. All living areas shall be constructed and maintained to promote proper drainage of rainwater to prevent the accumulation of mud and/or water. Shelters shall be constructed to protect the animal from precipitation and of a material which provides insulation from temperature extremes. In addition to the shelter, a shaded area shall also be provided by means of other structures, tree(s) or awning(s). The shelter shall have a floor augmented with resting boards; insulating bedding materials shall be provided during inclement weather extremes.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-17 RESTRAINT BY LEASH OR CHAIN; SPECIFICATIONS.

If any animal is restricted by a chain, leash or similar restraint, it shall be designed and placed as defined under restraint in this article.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-18 ABANDONMENT.

No person shall abandon any animal, abandonment consisting of: leaving an animal for a period in excess of 24 hours, without providing for someone to feed, water and check on the animal's condition; or leaving an animal by the roadside or other area; or leaving an animal on either public or private property without the property owner's consent. In the event that an animal is found so abandoned, the animal may be taken by a County Dog Warden or peace officer and impounded in a shelter, and there confined in a humane manner. The animal, if taken from private property, shall be kept for not less than the prescribed period in accordance with the procedures set forth in § 3-15. In the event that an animal is so abandoned, the owner or keeper, if any, whom he or she has charged with the animal's care, shall be subject to a citation for violation of this section.
(Ord. 07-10-1022, passed 10-16-2007)

Statutory reference:

Destruction of suffering, abandoned or hopelessly diseased animal, see KRS 257.100(4)

§ 3-19 CRUELTY TO ANIMALS.

It shall be unlawful for any person to willingly or maliciously inflict unnecessary or needless cruelty, torture, abuse or cruelly beat, strike or abuse any animal, or by an act, omission or neglect, cause or inflict any unnecessary or unjustifiable pain, suffering, injury or death to any animal, except as otherwise provided in this chapter, whether the animal belongs to such person or to another, except that reasonable force may be employed to drive away vicious animals or trespassing animals.

(Ord. 07-10-1022, passed 10-16-2007)

Statutory reference:

Cruelty to animals, see KRS 525.130

Torture of dog or cat, see KRS 525.135

§ 3-20 CRUELTY OR EXHIBITION FIGHTING PROHIBITED.

(A) No person shall cause or allow cruelty to be inflicted on an animal.

(B) No person shall cause or permit any dogfight or other combat between animals. For the purpose of this division, neglect, cruel, ill treatment and torment of an animal shall be defined as a failure by a person to adhere to the requirements and provisions of enforcement. In the event there is a reasonable cause to suspect that an animal is being beaten, cruelly ill-treated, neglected or tormented or involved in dog fight or other combat custody of such an animal may be taken by a Hardin County Dog Warden, peace officer or humane officer and impounded in a shelter or other facility maintained by a humane society. The animal shall be held as evidence, and confined in such facility in a humane manner. Upon finding by a court that the animal has been neglected, beaten, cruelly ill treated or tormented or involved in a dogfight or other combat between animals, the animal shall become the property of the county.

(C) No person shall own, possess, keep or train any dog with the intent that the dog shall be engaged in exhibition of fighting. In the event that a person shall own, possess, keep or train any animal with the intent that the animal shall be engaged in an exhibition of fighting, he or she shall be liable for citation for violation of this article and subject to the penalties under § 3-14.

(D) No person shall be present at any dogfight or combat between animals. In the event that a person is present at a dogfight or combat between animals, he or she shall be liable for citation for violation of this article and subject to the penalties provided in § 3-14.

(E) Any person who is found present at a dog fight or combat between animals, and who is charged with being a spectator in violation of this article, and who is in possession of and/or is the owner of an animal of the same species as that involved in the animal fight, shall be charged with intent to engage in an exhibition of fighting in violation of this article. The animal shall be confiscated if found on the premises or in the immediate area of the dogfight or combat between animals.

(Ord. 07-10-1022, passed 10-16-2007)

§ 3-21 KILLING DOGS, CATS FOR FOOD OR FUR PROHIBITED.

No person shall raise or kill a dog or cat for food or the skin or fur.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-22 MUTILATION OF ANIMALS.

No person shall mutilate any animal whether dead or alive. This provision does not apply to accepted livestock practices concerning humane slaughter.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-23 SEXUAL ACTS WITH ANIMALS.

No person shall engage in or cause or allow any other person to engage in a sexual act with any animal.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-24 REMOVAL OF ANIMAL IN IMMEDIATE DANGER.

Any animal observed by a peace officer or County Dog Warden to be in immediate danger may be removed from such situation by the quickest and most reasonable means available.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-25 CONFISCATION OF VICTIMIZED ANIMAL.

(A) Any animal found involved in a violation of any portion of this article may be confiscated by any County Dog Warden or peace officer and held in a humane manner. Upon conviction of this charge by a court of law, all animals so confiscated shall become the property of the county, and the owner of the animals shall pay to or reimburse the county all veterinary fees associated with medical treatment provided the animals while it was in custody.

(B) A County Dog Warden or peace officer shall be allowed reasonable access to inspect the property of anyone found guilty of violation of any of the provisions under this article.
(Ord. 07-10-1022, passed 10-16-2007)

§ 3-26 PENALTIES.

(A) Any person violating any provision of this article shall be deemed guilty of a Class A misdemeanor and shall be punished by a fine not to exceed \$500 or be imprisoned for a period not to exceed 12 months in jail, or both so fined and imprisoned. Each day a violation continues shall constitute a separate offense.

(B) Any person found guilty of owning a vicious dog, in addition to the penalties imposed, may be required by a District Court Judge to have the dog humanely euthanized if, in the opinion of that Judge, the severity of the attack warrants the action.

(C) Any person found guilty of owning a potentially vicious dog or vicious dog shall be fined not less than \$250 and shall have the dog spayed or neutered within seven days of that finding. Proof of the surgery must be provided to the citing agency within 24 hours of its performance.

(D) Any person found guilty of owning a potentially vicious dog or a vicious dog, in addition to any other penalties or stipulations imposed, shall within seven days of that finding also have the dog implanted with a microchip identification. Within seven days of that implantation, the owner shall present the animal to the Division for scanning and verification of the microchip and identification number.

(E) In addition to any penalties and/or stipulations imposed, anyone convicted of violations of §§ 3-19 and 3-20 may also be required to relinquish ownership of the animal(s) to the County Dog Warden immediately upon conviction and the animal may be humanely euthanized according to the standard of procedures followed by the County Dog Warden.
(Ord. 07-10-1022, passed 10-16-2007)

TITLE 4: BUILDING, FIRE, HOUSING AND SAFETY STANDARDS

CHAPTER 4: BUILDING, FIRE, HOUSING AND SAFETY STANDARDS

Section

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*ARTICLE I. IN GENERAL***§ 4-1 CODES ADOPTED.**

(A) The following codes and standards are hereby adopted by reference:

- (1) The Kentucky Building Code (current edition, as amended, updated or replaced);
- (2) The Kentucky Residential Code (current edition, as amended, updated or replaced);
- (3) The Kentucky State Plumbing Code (current edition, as amended, updated or replaced);
- (4) IBC National Property Maintenance Code (current edition, as amended, updated or replaced); and

(5) Those codes and standards identified in 815 KAR 10:060 (current form, as amended), Kentucky standards of safety, namely:

- (a) NFPA 1, Uniform Fire Code, current edition;
- (b) NFPA 101, Life Safety Code, current edition;
- (c) NFPA 70, National Electrical Code, current edition;
- (d) FPS 33-01, Application for Fire Alarm Systems Certification, current version; and
- (e) FPS 33-02, Renewal Application for Fire Alarm Systems Certification, current version.

(B) The codes and standards are hereby made a part of the public records of the city. (Ord. passed 3-19-1957; Ord. passed 8-22-1969; Ord. passed 9-15-1992; Ord. passed 1-19-2001; Ord. 07-08-1017, passed 8-21-2007; Ord. 10-03-1083, passed 3-8-2010; Ord. 12-08-1134, passed 8-13-2012; Ord. 14-09-1160, passed 9-8-2015)

Statutory reference:

Power of city to adopt by reference, see KRS 83A.060(5)

Similar provisions, see 815 KAR 7:120 and 815 KAR 7:125

§ 4-1.1 ESTABLISHED.

There is hereby established a Planning and Development Department to be governed and staffed as provided by KRS Chapter 100 and applicable state law.

§ 4-1.2 PLANNING DIRECTOR.

(A) There is hereby created the Office of Planning Director of the city.

(B) The Planning Director shall:

(1) Perform tasks in all phases of the administration of the Planning and Development Department and the enforcement and maintenance of the city's zoning and land use ordinances;

(2) Serve as an advisor to the Planning Commission, Board of Adjustments, and Code Enforcement Board; and review and respond to submitted site use plans and development packages;

(3) Enforce approved site plans;

(4) Be responsible for preparation, presentation and review of zone studies;

(5) Update and maintain official city maps and the city's comprehensive plan;

(6) Be responsible for the preparation, maintenance and review of required departmental reports and records;

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- (7) Oversee financial records required in the management of the departmental budget;
 - (8) Supervise, direct, evaluate and assign departmental personnel; and
 - (9) Assist in the performance of other departmental duties as required.
- (C) The Planning Director shall report directly to the Mayor.

§ 4-1.3 BUILDING OFFICIAL.

The Building Official shall:

- (A) Be responsible for the enforcement of state and local building codes and other codes and ordinances as described in this Chapter 4;
- (B) Assist in the enforcement and administration of the city's zoning ordinances and subdivision regulations;
- (C) Clear building, occupancy, and other related permits according to state and local regulations;
- (D) Perform inspections on buildings, nuisances, subdivisions, drainage problems, sewer taps and related properties and projects as required;
- (E) Review building plans and assist in review of site plans;
- (F) Provide for the collection and accountability of all permit and review fees for the department;
- (G) Prepare required departmental reports and records;
- (H) Make deliveries of departmental documents and notices as required; and
- (I) Assist in the performance of other tasks related to departmental operations as needed.

§ 4-2 VIOLATIONS.

It shall be unlawful for any person to erect, repair, construct or maintain any building or structure in violation of any of the provisions of this chapter or of any of the standards adopted herein. Any person who shall violate this section shall be fined not less than \$20, nor more than \$500, and/or 12 months' imprisonment. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil

action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to insure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993)

Statutory reference:

Power of city to regulate buildings, see KRS 198B.060

§ 4-3 BUILDING PERMIT - REQUIRED.

(A) It shall be unlawful for any person to construct, build, remodel, alter, renovate or otherwise change any building without a building permit.

(B) Any person violating any provision of this section shall be fined not less than \$20, nor more than \$250, for each offense. Each day's violation constitutes a separate offense. Any persons violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 9-21-1993)

Cross-reference:

Restrictions on building permit issuance, see § 18-19

§ 4-4 BUILDING PERMIT AND PLAN REVIEW SCHEDULE.

(A) A person desiring a building permit or requesting a plat review or other related fee based services shall pay such fee as is established by the Mayor and City Council herein. No permit shall issue until the proper fee is paid and there shall be no partial payment of the fee:

<i>Construction Cost Fee Schedule Residential and Commercial</i>	
State jurisdiction projects	\$50
\$0 - \$3,999	\$0
\$4,000 - \$9,999	\$25
\$10,000 - \$14,999	\$50
\$15,000 - \$19,999	\$75
\$20,000 - \$29,999	\$100

<i>Construction Cost Fee Schedule Residential and Commercial</i>	
\$30,000 - \$39,999	\$125
\$40,000 - \$49,999	\$150
\$50,000 - \$59,999	\$175
\$60,000 - \$69,999	\$200
\$70,000 - \$79,999	\$225
\$80 000 - \$89,999	\$250
\$90,000 - \$99,999	\$300
\$100,000 - \$149,999	\$400
\$150,000 - \$199,999	\$500
\$200,000 - \$299,999	\$600
\$300,000 - \$399,999	\$700
\$400,000 - \$499,999	\$800
\$500 000 - \$999 999	\$1,000
\$1,000,000 and over	\$1,500 for the first \$1,000,000; \$1.50 for each additional \$1,000 or fraction thereof

<i>Planning and Development Department</i>	
REVIEW FEES	
Preliminary plat	\$500
Record plat	\$175
Amended record plat	\$175
Development plan	\$20
Zone map amendment	\$350
Dimensional variance	\$150
Conditional use	\$150
Administrative appeal	\$150
Cell tower application fee	\$2,500

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<i>Planning and Development Department</i>	
PERMIT FEES	
Sign permits	
First sign	\$25
Additional signs	\$5
Temporary signs	\$5
Plan review fee (current KBC fee schedule)	(\$50 min)
Plan review fee for tents and temporary structures, or permanent buildings used for the retail sale of fireworks	
Tents and temporary structures	\$125
Permanent buildings	\$250
Single-family - up to 1,999 sq. ft.	\$100
Single-family - 2,000 sq. ft. and over)	\$150
Demolition permit	
Residential	\$50
Commercial	\$100
DOCUMENT FEES	
Comprehensive plan	\$25
Zoning ordinance	\$20
Subdivision regulations	\$20
RECORDING FEES	
Land use restrictions	\$11.50
Record plat	\$15
Engineering copy	\$4
MAPPING FEES	
Digital vector map (dwg) 500 ft. x 500 ft. grid	\$27
Minimum fee (8 grids)	\$216
Digital imagery map (tiff)	\$425
Hard copy map (500 ft. x 500 ft.) topographic data w/contours (P grid)	\$9

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<i>Planning and Development Department</i>	
MAPPING FEES (continued)	
Topographic data w/o contours (P grid)	\$5
Aerial imagery (per grid)	\$6
Labor charge (hard copy maps)	
Per hour	\$24
Per hour minimum (30 minutes)	\$12

(B) Any person, when called upon to do so by the Planning or Building Officials, shall report by sworn statement to the Planning or Building Officials any and all information necessary for him or her to ascertain the amount of fee due; the failure to do so shall constitute valid and legal grounds for the withholding or refusal of the building permit.

(C) All monies obtained from the payment of the fees provided for in this section shall be paid into and become part of the General Fund of the city.

(D) (1) Any person violating any of the provisions of this section shall be fined not less than \$20, nor more than \$250, for each offense. Each day's violation shall constitute a separate offense. Any person violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city.

(2) If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction.

(3) The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 1-23-1968; Ord. passed 1-21-1975; Ord. passed 3-16-1993; Ord. passed 9-21-1993; Ord. 07-08-1017, passed 8-21-2007; Ord. 15-05-1170, passed 5-11-2015)

§ 4-5 APPEALS.

(A) Any person aggrieved by the Planning or Building Officials in the refusal to issue a building permit or any dispute that arises in connection with the appraised value of the contemplated completed structure shall have recourse to the Board of Adjustment.

(B) The appeal shall be taken under the provisions of KRS 100.257, 100.161 and 100.263. (Ord. passed 1-23-1968; Ord. 07-08-1017, passed 8-21-2007)

§ 4-6 ELECTRICAL INSPECTIONS.

(A) The city shall administer the electrical codes in accordance with the Kentucky Revised Statutes, including all electrical inspection services, and the city shall be entitled to charge fees not to be changed for a period of one year for services as set by the city. The city shall, in conjunction with its Planning and Zoning office, provide a place where the public may commence the electrical inspection process, fill out the necessary forms and pay the necessary fees.

(B) The city shall contract with a certified electrical inspector who shall be responsible for enforcing the Uniform State Building Code and requiring reasonable standards for the construction, alteration and

repair of any electrical wiring in the city and the inspector shall follow the minimum standard requirements of the National Electrical Code in making his or her inspections.

(C) The city shall fix the compensation of the city's electrical inspector and fix, by ordinance, all reasonable fees that shall be paid for permits that are required of all persons in the city before commencing construction, alteration or repairs of any electrical wiring. The fees as outlined in Appendix A attached to the ordinance codified herein shall be effective beginning 9-1-1990.

(D) (1) The electrical inspector shall have the right during reasonable hours to enter any building in the city in the discharge of his or her official duties or for the purpose of making an inspection or test of the electrical wiring therein; and he or she shall have the duty, and authority to enforce all the ordinances, local, state and national laws and building codes.

(2) He or she shall have the power to cause the current in any wire conduit to be turned off whenever this is necessary in an emergency for the protection of life or property.

(E) He or she shall make all inspections necessary for the enforcement of the proper Building Code and National Electrical Code, and no electrical wiring shall be covered until it has been inspected and approved.

(F) The electrical inspector shall give a certificate of approval to the owner or person in charge of the premises which he or she has inspected where he or she finds that the electrical apparatus and wiring therein fully comply with the proper ordinances, local state and national laws and Building Codes.

(G) (1) Any person violating or failing to comply with this section shall be fined not less than \$20, nor more than \$250, for each offense. Each day's violation or non-compliance shall constitute a separate offense.

(2) Any persons violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction.

(3) The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 6-19-1990; Ord. passed 9-21-1993)

Editor's note:

Nonamendatory Ord. passed 6-19-1990, §§ 1 through 6, has been codified herein by the editor as § 4-6; the fee schedule of App. A, as referred to in division (C) above, has not been included herein, but is on file and available for inspection in the City Clerk's office.

Statutory reference:

Power of city to enforce electrical building codes, see KRS 198B.060

Power of city to require permits, inspections before commencing electrical alteration, construction; to fix fees and require certification of electrical inspectors, see KRS 227.480

ARTICLE II. SMOKE DETECTORS

§ 4-26 SMOKE DETECTORS.

Smoke detectors shall be installed and maintained in accordance with the codes adopted in § 4-1. (Ord. passed 1-19-2001)

ARTICLE III. RAPID ACCESS SYSTEMS

§ 4-35 DEFINITIONS.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIRE DISTRICT. The normal incorporated fire protection district covered by the City of Radcliff Fire Department.

FIRE OFFICIAL. The City of Radcliff Fire Chief or his or her designee, who is responsible for enforcing the requirements of a fire code or standard, or for approving equipment, materials, installation, or a procedure.

KEY BOX. A UL “listed” box, of size and style approved by the Fire Official that meets the requirements and uses the same security key code adopted by the Fire Department.

RESPONSIBLE PARTY. The person(s) charged with the responsibility for the occupancy and maintenance of the building, and includes equally any and all tenant(s), landlords, and building or business owners.

SECURITY CAP. A Fire Department connection (FDC) plug and cap approved for use in the city by the Fire Official utilizing two and one-half inch National Standard thread pattern. (Ord. 10-06-1091, passed 6-7-2010)

§ 4-36 APPLICATION.

(A) *Automatic gates.* When a property is accessed through a gate or cross arm that impedes ingress through required fire lanes by means of a key or swipe card, it shall be equipped with a key switch to be installed at a location approved by the Fire Official.

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(B) *Security of Fire Department connections.* When a building is protected by an automatic sprinkler and/or standpipe system and the Fire Department connection is exposed to vandalism, the Fire Official may require that a security cap be installed.

(C) *Non-applicability to particular dwellings.* This article shall not apply to owner-occupied one and two family dwellings.

(D) *Key box contents.* The key boxes shall contain at a minimum, the following items and any other items as designated by the Fire Official:

- (1) Labeled keys to locked points of egress, whether in interior or exterior of such buildings.
- (2) Labeled keys to the locked mechanical rooms.
- (3) Labeled keys to any fenced or secured areas not covered in divisions (A) or (B) above.
- (4) Labeled keys to any other areas that may be required by the Fire Official.
- (5) A card containing the emergency contact people and phone numbers for each occupancy.

(6) Floor plans of the rooms within the building may also be required, showing locations of shut-offs noted.

(E) *Alert decals.* Alert decals, approved by the Fire Official, to alert fire companies of the presence of security features covered by this article, will be displayed on any outside doors or windows as designated by the Fire Official.

(F) *Compliance.*

(1) The following buildings with fire suppression, sprinkler, or fire alarm systems installed in them shall comply with this article:

(a) Buildings in existence as of June 7, 2010 that are newly constructed but not yet occupied;

(b) Buildings currently under construction;

(c) Buildings applying for a certificate of occupancy;

(d) Any existing buildings when they are renovated or that have their primary usage changed after June 7, 2010;

(e) Any existing buildings when new fire suppression, sprinkler, or fire alarm systems are installed.

(2) Compliance shall be accomplished by installing key boxes, key switches or security caps as applicable. The cost of purchasing and installing, along with any cost associated with implementation of the program at a specific property, will be borne by the responsible party.

(G) *Non-compliance.* Any person, firm, corporation, company, association or partnership found guilty of violating any part of the foregoing sections of this article shall be subject to a fine of \$100 for each violation thereof. Each day shall be considered a separate and distinct violation of this article.

(Ord. 10-06-1091, passed 6-7-2010)

CHAPTER 4.1: ALCOHOLIC BEVERAGES

Section

- 4.1-1. Purpose
- 4.1-2. Title; definitions **CHAPTER 4.1: ALCOHOLIC BEVERAGES**
- 4.1-3. Scope
- 4.1-4. Adoption of State Alcoholic Beverage Control Law
- 4.1-5 through 4.1-19. Reserved
- 4.1-20. Definitions
- 4.1-21. Hours of operation
- 4.1-22. Use of revenue
- 4.1-23. City Administrator
- 4.1-24. Clubs, lodges, and fraternal orders
- 4.1-25. Licensing and hearings
- 4.1-26. Wholesale distribution and sales
- 4.1-27. Supplemental retail drink liquor licenses
- 4.1-28. Package retail liquor outlet
- 4.1-29. Reserved
- 4.1-30. Brew-on-premises license
- 4.1-31. Special Sunday retail drink license
- 4.1-32. Mandatory alcoholic beverage service training
- 4.1-33. Nude performances prohibited
- 4.1-34. Solicitation for the purchase of alcoholic beverages prohibited
- 4.1-35. Closed doors during hours of operation
- 4.1-36. Alcohol warning signs; drinking alcohol during pregnancy

- 4.1-99. Penalty

§ 4.1-1 PURPOSE.

The purpose of this chapter is:

(A) To set forth uniform regulations and requirements for the licensing and operations of establishments for the sale of alcoholic beverages within the city; and

(B) To establish the authority and duties of the city's Alcoholic Beverage Control Officer.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-2 TITLE; DEFINITIONS.

(A) *Short title.* This chapter shall be known and may be cited as the "Alcoholic Beverage Control Ordinance" of the city.

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(B) *Definitions.* Words used throughout this chapter, unless the context requires otherwise, shall have the same definitions as set out in the state's Alcoholic Beverage Control Law (KRS Chapters 241, 242, 243, and 244) of the Commonwealth, and all amendments and supplements thereto. (Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-3 SCOPE.

(A) Irrespective of title or headings, the sections of this chapter shall be construed to apply to the traffic in both malt beverages and distilled spirits and wines where the context permits the application.

(B) Nothing in this chapter shall excuse or relieve a licensee or the agent or employee of any licensee in the city, from the restrictions, requirements and penalties of any other ordinance or ordinances of the city or of any statutes or administrative regulations of the Commonwealth relating to violations pertaining to alcoholic beverages. (Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-4 ADOPTION OF STATE ALCOHOLIC BEVERAGE CONTROL LAW.

The provisions of the Alcoholic Beverage Control Law of the Commonwealth (KRS Chapters 241, 242, 243 and 244), and all amendments and supplements and administrative regulations thereto, are adopted so far as applicable to this chapter, except as otherwise lawfully provided herein. (Ord. 11-11-1122, passed 11-29-2011)

§§ 4.1-5 THROUGH 4.1-19 RESERVED.

§ 4.1-20 DEFINITIONS.

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

ALCOHOLIC BEVERAGES. Every liquid or solid, whether patented or not, containing alcohol, in an amount in excess of more than 1% of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold under any name, commonly used for alcoholic beverages, excepting the products excluded therefrom by the provisions of the Alcoholic Beverage Control Act of this state.

BREW-ON-PREMISES ESTABLISHMENT. Any establishment that has been granted a license pursuant to the provisions of § 4.1-30 to provide ingredients, equipment, and assistance permitted by § 4.1-30 to a customer to brew malt beverages on the premises of the establishment.

BREWER. Any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery either by himself, herself or by his or her agent.

BREWERY. Any place or premises where malt beverages are manufactured for sale and include all offices, granaries, mash rooms, cooling rooms, vaults, yards and store rooms, connected with the premises, or where any part of the process of the manufacture of malt beverage is carried on or where any apparatus connected with the manufacture is kept or used, or where any of the products of brewing or fermentation are stored or kept.

BUILDING CONTAINING LICENSED PREMISES. The licensed premises themselves and includes any part of any building in which the premises are contained and any part of any other building connected with the building by direct access or by a common entrance.

CITY ADMINISTRATOR. The City Alcoholic Beverage Control Administrator.

CUSTOMER. Any person at least 21 years old.

DISTILLERY. Any place or premises where distilled spirits are manufactured for sale and which are registered in the office of any collector of internal revenue for the United States and it includes any United States government bonded warehouse.

DISTRIBUTOR. Any person who distributes malt beverages for the purpose of being sold at retail.

MALT BEVERAGES. Any fermented, undistilled alcoholic beverage of any kind or description, manufactured from malt, wholly or in part, or from any substitute for malt having an alcoholic content greater than that permitted under KRS Chapter 242. (3.2% of alcohol by weight)

NONPROFIT. These organizations that qualify for charitable contributions under Federal Internal Revenue Service Code, Section 501(c)(3).

RESTAURANT. A premises that can demonstrate to the City Administrator that gross sales of the restaurant from the sale of food for consumption on the premises is to be not less than 50% of the total gross sales of the licensee restaurant for the annual license period, and the restaurant must have bona fide dining facilities with a seating capacity of at least 100 persons inside its building.

RETAILER. Any person who sells at retail any alcoholic beverage for the sale of which a license is required.

SALE. Any transfer, gift, exchange, or barter and includes all sales made by any person, whether proprietor, agent, servant, or employee of any alcoholic beverage.
(Ord. 11-11-1122, passed 11-29-2011; Ord. 13-08-1146, passed 8-12-2013)

Statutory reference:

Alcoholic beverages, see KRS Chapters 242 - 244.

§ 4.1-21 HOURS OF OPERATION.

(A) A licensed premises shall be permitted to remain open for any purpose between the hours of 6:00 a.m. and 1:00 a.m. the following day, Monday through Saturday, and no person shall be permitted to remain within the licensed premises between the hours of 1:00 a.m. and 6:00 a.m., the following day, Monday through Saturday, except for bar owners, employees or subcontractors while performing work on the licensed premises, including but not limited to plumbing, cleaning, or electrical repair, who shall be allowed on the premises at any time.

(B) On Sunday, malt beverages shall be sold between the hours of 1:00 p.m. and 1:00 a.m., Monday.

(C) On Sunday, distilled spirits and wine by the package shall be sold between the hours of 1:00 p.m., Sunday, and 1:00 a.m., Monday.

(D) Exceptions. Those premises which have obtained a special Sunday retail drink license may remain open between the hours of 1:00 p.m., Sunday, and 1:00 a.m., Monday, and may sell distilled liquor by the drink or wine by the drink.
(Ord. 11-11-1122, passed 11-29-2011)

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§ 4.1-22 USE OF REVENUE.

All moneys derived from the collection of license taxes provided for herein shall be paid into and become a part of the general fund of the city.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-23 CITY ADMINISTRATOR.

(A) *Establishment.* There is created the office or position of City Administrator, pursuant to and under the authority of the Act of the General Assembly of the State, known as the Alcoholic Beverage Control Law.

(B) *Compensation.* The compensation to be paid the City Administrator shall be established by the city's annual salary ordinance.

(C) *Bond.* The bond for the City Administrator shall be in the same form and amount as required under KRS 241.180.

(D) *City Administrator enforcement of section, duties, and rule-making powers.*

(1) The City Administrator shall be charged with the enforcement of the state Alcoholic Beverage Control Law, and all other laws and ordinances, rules, and regulations providing for the regulation of the manufacture and traffic in alcoholic beverages.

(2) The City Administrator shall enter in a file, kept for that purpose, all orders, certificates, and approvals of applications issued by him or her concerning the privilege of the manufacture and traffic in alcoholic beverages. The City Administrator shall be empowered to do all and sundry of those things required of him or her, pursuant to the Alcoholic Beverage Control Law and existing ordinances, rules, and regulations of the city and such other laws and ordinances as may from time to time become effective.

(3) The City Administrator shall be empowered to make such rules and regulations as are necessary to properly enforce the above laws and not in conflict herewith.

(E) *Appointment; oath; bond.* The City Administrator shall take office on his or her appointment and on taking the oath and on the execution of the bond for the faithful performance of his or her duties as required by law.

(F) *Functions of City Administrator.* The functions of the City Administrator shall be in accord with the provisions of the laws of the state pertaining to alcoholic beverages, their administration and control.

(G) *Action on license application; appeals.*

(1) When an application is filed with the City Administrator for a license to do business in accord with the provisions of this chapter, the City Administrator shall either approve or disapprove the application, transmitting the application, together with his or her recommendations thereon, and the reasons therefore, to the State Department of Alcoholic Beverage Control.

(2) Appeals from order of the City Administrator shall be prosecuted in accord with the provisions of the laws of the state.

(Ord. 11-11-1122, passed 11-29-2011)

Statutory reference:

Alcoholic beverages, see KRS Chapters 242 et seq.

City Administrator, see KRS 241.160

§ 4.1-24 CLUBS, LODGES, AND FRATERNAL ORDERS.

(A) *Definitions.* For the purpose of this section, **CLUB, LODGE, or FRATERNAL ORDER** shall mean and include any non-profit social, fraternal, military, or political organization or club, lodge, or order whose organization shall have been completed at least one year prior to the date an application for a license is made for selling, offering for sale, or keeping, with the intention of selling at retail, for consumption on the premises, to members only or the invited guests of members of such club, lodge, organization, or fraternal order.

(B) *License required; nonresidential building.*

(1) No club, lodge, or fraternal order shall engage in the business of manufacturing, storing, purchasing, transporting, trafficking, or selling for consumption on the premises, any cereal, malted, or vinous beverages without having first obtained a license for each stand, place, room, or enclosure, or for each suite of rooms or enclosures.

(2) No license shall be issued to any club, lodge, organization, or fraternal order for the purpose of selling any cereal, malted, or vinous beverages in any dwelling house, flat, or apartment house used for residential purposes.

(C) *License application; issuance.*

(1) Whenever any club, lodge, organization, or fraternal order shall desire to engage in the business of selling by retail any cereal, malted, or vinous intoxicating beverages in the clubhouse of such organization in the city for consumption on the premises, it shall first apply to the City Administrator by a written application for a license. Such application shall set forth:

(a) The name and location of such club, lodge, organization, or fraternal order;

(b) The names and addresses of the officers thereof;

(c) The date and character of its organization; and

(d) The approximate number of members in good standing, and shall, in addition there to be signed by the owner, or his or her agent, of the premises wherein the sales are to be made, signifying consent.

(2) If the City Administrator is satisfied that the license shall be granted, he or she shall pass an order to that effect and thereupon the Finance Department shall issue to the applicant a license to sell at retail such beverages, after a license has been issued by the State Alcoholic Beverage Control Department.

(D) *License fee; proration refunds.*

(1) Every applicant who shall be granted a license by the City Administrator and before the license is issued by the Finance Department shall pay to the city for the license, the sum of \$150 per year.

(2) When the license is issued after August 1 of any year, the licensee shall be required only to pay a proportionate part of the license tax required therefor from the first day of the month in which the licensee commences to carry on the business until April 30 next; provided, however, that no license shall be issued for less than 50% of the annual license fee.

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(3) No part of any money paid into the city treasury for any license provided herein shall be refunded to the licensee.

(E) *Display of license.* When a license shall have been granted issued under this section, the club, lodge, organization, or fraternal order to whom the license is granted and issued shall cause the license, or in case of loss or destruction, a copy thereof to be kept or placed in some conspicuous place in the room where the alcoholic beverages are sold, in such manner as to enable the license to be conveniently read. The license shall remain on display during the period for which the license shall be granted.

(F) *Forfeiture or revocation of license; hearing on charge.* If any club, lodge, organization, or fraternal order to whom a license is granted under this section is convicted in the district court of violating any of the provisions of this section or conducting a disorderly house, such conviction shall operate as a forfeiture of its license. If the City Administrator finds that the club, lodge, or fraternal order to whom a license is granted is violating any of the provisions of this section, conducts a disorderly house on the premises, or permits any lewd, riotous, or disorderly conduct on the premises, the City Administrator may hold a hearing to determine whether the license should be suspended or revoked. The decision of the City Administrator may be appealed within ten days to the State Department of Alcoholic Beverage Control.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-25 LICENSING AND HEARINGS.

(A) *License required.*

(1) No person shall sell, vend, deliver, or traffic in spirituous, vinous, or malt liquors within the city without first having procured a license so to do, nor without having first complied with all the provisions of the statutes of the state and the laws of the United States applicable thereto.

(2) No license for the sale or manufacture of alcoholic beverages shall be granted or renewed for the operation on any premises, or to any person, firm, partnership, or corporation, on or against which taxes, assessments, or other financial claims of the city are delinquent or unpaid.

(B) *License application; contents.* Any person desiring to engage in the business of distilling or wholesaling spirituous, vinous, or malt liquor, or to engage in the retail sale of same by package or drink shall, before so doing, file with the City Administrator an application on forms provided by the city, which shall be verified and contain the following information:

(1) The name, age, address, and residence of each applicant and if there is more than one and they are partners, the partnership, names, and their addresses; and if the applicant is a corporation, the application shall contain the name and address of the corporate officers, the board of directors, any stockholder that owns more than 50% of the stock and the name and address of the agent for service of process;

(2) Whether or not the applicant is a citizen and resident of the state and for what period of time;

(3) The name and address of each person interested or to become interested in the business for which the license is being sought, together with the nature of that interest, and if the applicant is a corporation; the names, addresses, and agents of each officer, director, and managerial employee and the name of the state under the law of which such corporate applicant is incorporated;

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(4) The street and number of the premises to be licensed, whether or not applicant is the owner of such premises or what interest he or she has therein and the name and address of any other person, either as principal or associate, who is interested with applicant either in the premises or in the business to be licensed;

(5) A statement that the applicant will, in good faith, abide by every statute, federal or state, and the ordinances of the city relating to the manufacture, sale, and transportation of alcoholic beverages that may or shall be in force pertaining thereto;

(6) A statement that neither the applicant nor any person interested or to become interested therein has been convicted of any felony at any time or convicted of any misdemeanor or violation directly or indirectly attributable to the use, manufacture, sale or traffic in alcoholic beverages within two years preceding the date of application and that he or she has not had any license that has been issued to him or her for such purposes, suspended or revoked for cause within two years prior to the date of such application; and

(7) If the City Administrator is satisfied that the license should be granted, an order shall be passed to that effect and thereupon a license shall be issued to the applicant.

(C) *Certified check required; refund on rejection.* All applications filed for a license pursuant to this section shall be accompanied by a certified check in the amount of the cost of the license applied therefor. If the application for the license shall be rejected, the check shall be immediately returned to the applicant.

(D) *Change in fact situation after issuance of license; supplemental statements.* If, after a license has been issued, there is a change in any of the facts required to be set forth under this section, a verified supplemental statement, in writing, giving notice of such change shall be filed with the City Administrator within ten days after such change occurs.

(E) *Conditions of premises.*

(1) No license for the sale of alcoholic beverages at retail shall be issued for any premises, unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease for a term not less than the license period.

(2) No premises shall be licensed for the sale of alcoholic beverages at retail, except where the licensee's premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.

(F) *Reserved.*

(G) *Qualification of licensee.* No person shall become a licensee under the provisions of this section who:

(1) Has been convicted of any misdemeanor or felony directly or indirectly attributable to the use of alcoholic beverages within two years preceding the application;

(2) Is under the age of 21 years; or

(3) Is not an actual bona fide resident of the state, or of the United States.

(H) *Licenses; expiration date.* All licenses issued under or pursuant to the provisions of this section shall expire on June 30 of each year.

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(I) *Prorate license fees.*

(1) When any person applies for a new or transfer of an existing license authorized to be issued pursuant to the provisions of this section after October 1 of any year, he or she shall be charged, if the license is issued, an amount equal to as many twelfths of the annual license fee as there are calendar months, including the month in which the license is granted, until the following June 30; provided, however, that no license shall be issued for less than 50% of the annual license fee.

(2) No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

(J) *License fees.* The licensee engaged in the sale, possession, or distribution of spirituous, vinous, or malt liquors, or operating a brew-on-premises establishment, shall pay the following fees:

(1) *Malt beverages.*

<i>Type of license</i>	<i>Fee</i>	<i>Statutory reference</i>
Brewer's license, per annum	\$500	KRS 243.070(13)(a)
Microbrewery license, per annum	\$500	KRS 243.070(13)(b)
Distributor's license, per annum	\$400	KRS 243.070(13)(c)
Nonquota retail malt beverage package license, per annum	\$200	KRS 243.070(13)(d)
Nonquota Type 4 retail malt beverage drink license, per annum	\$200	KRS 243.070(13)(e)
Brew-on premises license, per annum	\$100	KRS 243.070(13)(f)

(2) (a) *Distilled spirits and wine.*

<i>Type of license</i>	<i>Fee</i>	<i>Statutory reference</i>
Distiller's license, per annum	\$500	KRS 243.070(2)(a)
Rectifier's license, per annum	\$3,000	KRS 243.070(2)(b)
Wholesaler's license, per annum	\$3,000	KRS 243.070(2)(c)
Quota retail package license, per annum	\$1,000	KRS 243.070(2)(d).2
Quota retail drink license, per annum	\$1,000	KRS 243.070(3)(b)
Special temporary license, per event	\$166.66	KRS 243.070(4)(b)
Nonquota Type 1 retail drink license (includes distilled spirits, wine, and malt beverages), per annum	\$2,000	KRS 243.070(5)

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<i>Type of license</i>	<i>Fee</i>	<i>Statutory reference</i>
Nonquota Type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum	\$1,000	KRS 243.070(6)(b)
Nonquota Type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum	\$300	KRS 243.070(7)
Distilled spirits and wine special temporary auction license, per event	\$200	KRS 243.070(8)
Special Sunday retail drink license, per annum	\$300	KRS 243.070(9)
Extended hours supplemental license, per annum	\$2,000	KRS 243.070(10)
Caterer’s license, per annum	\$800	KRS 243.070(11)
Bottling house or bottling house storage license, per annum	\$1,000	KRS 243.070(12)

(b) The city may, as the occasion arises, issue any licenses and collect fees permitted by law for the privilege, manufacturing and trafficking in alcoholic beverages, as designated in KRS 243.070, as amended.

Statutory reference:

City license fees, see KRS 243.070

(K) *Reserved.*

(L) *Contents of license.* All licenses issued pursuant to § 4.1-22 shall contain the following information:

- (1) The name and address of the licensee;
- (2) The number of the license;
- (3) The type of license;
- (4) A description by street and number of the licensed premises;
- (5) The name and address of the owner of the building in which the licensed premises are located;
- (6) The expiration date of the license; and
- (7) A statement in substance that the license shall not be a property or vested right and that it may be revoked or suspended at any time pursuant to law.

(M) *Display of license; duplicate licenses.*

(1) Before commencing or doing any business for the time for which a license has been issued, the license shall be posted and at all times displayed in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license.

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(2) Whenever a license is lost or destroyed without the fault of the licensee or his or her agent or employee, a duplicate license shall be issued on proof of loss satisfactory to the City Administrator and upon the payment of a fee of \$5.

(N) *License revocation or suspension.*

(1) Any license issued pursuant to §§ 4.1-21 *et seq.* may be revoked or suspended by the City Administrator, after complying with the hearing requirements below, for the following causes:

(a) Conviction of the licensee or his or her agent or employee of selling any illegal beverages on the premises licensed;

(b) If the licensee makes any false material statements in an application for a license;

(c) If the licensee violates any provisions of the laws of the state, the United States government, or the ordinances of the city, pertaining to alcoholic beverages, their regulation and control;

(d) Conviction of the licensee of any felony;

(e) Conviction of the licensee, or his or her agent who controls or operates the licensee's premises, of any offense pertaining to prostitution, illegal gambling, knowingly possessing or receiving stolen property, sale or use of illegal drugs, or the illegal sale or use of controlled substances or prescription drugs;

(f) If the licensee allows the premises to be used as the site for any criminal activity as defined by city ordinance or regulation, state or federal law or regulation;

(g) If the licensee allows the premises to be used as the site for any public nuisance as defined in § 13.1 of the city code;

(h) If licensee allows the premises to be used as the site for an unlicensed sexually oriented business; or

(i) If the licensee is delinquent or in default of an obligation to pay a loan, fine, lien or other financial obligation to the city, then license is subject to suspension until the obligation is satisfied.

(2) The existence of any delinquent or unpaid city taxes, assessments, or other financial claims against or on any person, firm, partnership, corporation, or premises, licensed for the sale or manufacture of alcoholic beverage shall be cause for revocation of the license of the person, firm, partnership, or corporation, or for the premises.

(O) *Suspension of license.* The City Administrator may, after a hearing, order a suspension of the license for up to 180 days for any cause which he or she may, but is not required to, revoke under the provisions of the Alcoholic Beverage Control Act of the state and the ordinances of the city. The suspended licensee may pay a fine of \$50 per day in lieu of the suspension, subject to the approval of the City Administrator. The City Administrator shall issue a written order of such suspension via regular United States mail to the licensee's address indicated on the license.

(P) *Issuance of license after revocation.* Any person, partnership, LLC, or other corporate entity who has suffered, or any of its members or partners have suffered, a revocation of a license to do business under the provisions of §§ 4.1-22 *et seq.* shall not again be licensed for that purpose within a period of two years after the date of revocation.

(Q) *Conditions of accepting license.* All licenses issued pursuant to §§ 4.1-22 *et seq.* shall be accepted by the applicant subject to the following conditions.

(1) That the premises so licensed shall be subject to the entry of police, the City Administrator or other duly authorized representatives of the city, at all reasonable hours for the purpose of inspection and search, and for the removal from the premises of all things and articles contained on the premises in violation of the ordinances of the city and the laws of the state.

(2) The licensee holding a license pursuant to this chapter shall not sell any spirituous, vinous, or malt liquor behind blinds or screens, but such sales shall be conducted openly and without any attempt to hide or screen the sales from the public view, in conformity with state law.

(3) No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly. The license of any establishment deemed to be a disorderly premises may be subject to revocation or suspension. Acts which constitute disorderly premises consist of permitting patrons to cause public inconvenience, annoyance, or alarm, or wantonly creating a risk through:

(a) Engaging in, or allowing customers to engage in, lighting or in violent, tumultuous, or threatening behavior;

(b) Making unreasonable noise;

(c) Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency; or

(d) Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(4) Treating, or giving away alcoholic beverages at no cost to the customer, in violation of KRS 244.050, as amended, shall be unlawful and is forbidden.

(5) No spirituous, vinous, or malt liquors shall be sold or dispensed to any minor nor shall the licensee sell, give away, furnish, or permit to be consumed on the premises any spirituous or vinous liquors or mixtures thereof during hours when the sale of alcoholic beverages is prohibited. In the event a licensee hereunder is also engaged in the business of operating a delicatessen, grocery, restaurant or other such establishment, he or she may keep his or her place of business open during the prohibited hours heretofore set out. The licensee must cover all malt beverages or conspicuously post a sign which indicates that the malt beverage is not available for sale or make the malt beverage completely inaccessible to the public. Failure to so comply shall be deemed a violation of this section.

(R) *Registration, photographing, and fingerprinting of employees.*

(1) Any person employed in any capacity in any establishment or place of business, except as herein provided, where liquor is sold by the drink as defined in the Kentucky Revised Statutes, shall register in a book of registration to be kept by the Police Department and is required to be fingerprinted and photographed by the Police Department within five days from the time of his or her employment. No person shall fail to register or be fingerprinted and photographed. Should the City Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, has a criminal record, he or she shall have the authority to require the person to appear in person at the City Police Department for the purpose of having his or her fingerprints taken.

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(2) No employer, whether a person, firm, or corporation, shall allow any person to remain in employment longer than five days unless within the five-day period the employee shall have registered and shall have been fingerprinted and photographed.

(3) The registrants are required to have in their possession the identification cards issued by the Police Department on their persons at all times during their hours of employment in establishments selling or dispensing liquor by the drink.

(4) The city shall require a payment of \$5 of each person registered, which charge shall be sufficient to cover the cost involved in the procedure, including the cost of the identification card furnished to the registrant. Any person who fails to appear at the designated date and time of appointment to be registered, photographed, and fingerprinted, shall be charged an additional \$5 for each and every missed appointment unless that person had previously contacted the Police Department at least one hour in advance of that person's scheduled appointment to cancel said appointment.

(5) In those businesses having a liquor by the drink license where another business is the principal user of the location, including but not limited to restaurants and hotels, only those persons who are directly engaged in that portion of the business which sells liquor by the drink are subject to this section.

(6) This registration procedure shall not apply to waiters and waitresses whose primary function is the service of food.

(7) Any establishment having a liquor by the drink license that employs a contract cleaning service or other maintenance service to work in their establishment after closing hours shall require those persons so employed by the contractor to wear an ID card which shall only list the person's name, address, and date of birth.

(S) *Placing of license in dormancy.* Any alcoholic beverage license holder who places his or her license in dormancy in accordance with the regulations of the State Department of Alcoholic Beverage Control or pursuant to state statute shall also automatically, without further action or approval, have placed his or her city alcoholic beverage license in dormancy. The obligation to pay license fees to the city shall continue while any alcoholic beverage license is in dormancy.

(T) *Hearings.* Revocation or suspension proceedings shall be governed as follows.

(1) *Notice of hearings.* The City Administrator shall provide written notice, via regular United States mail or hand delivery to the licensee, notice of any hearing related to the possible suspension or revocation of the licensee's alcoholic beverage license. The address provided by the licensee to the city on its license application shall be deemed the address for notice of hearing. The licensee shall notify the city of any change of address subsequent to the submission of an application for license. Notice to the licensee must be postmarked at least seven days prior to the hearing. Notice of any hearing shall be publicly posted a City Hall at least 24 hours prior to the hearing.

(2) *Procedure.*

(a) The City Administrator shall be the hearing officer for any proceedings related to the possible suspension or revocation of any city alcoholic beverage license.

(b) Any hearing before the City Administrator shall be a public hearing and conducted in accordance with the procedural guidelines indicated in KRS 13B.080 and KRS 13B.090.

(c) The City Attorney, or his or her designee, shall represent the city at the hearing. The

licensee has a right to retain counsel for representation at the hearing.

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(d) The City Administrator shall issue a written decision, including findings of fact and conclusions of law, within seven days of the conclusion of the hearing.

(3) *Appeals.* Any order of suspension or revocation issued by the City Administrator may be appealed to the State Alcoholic Beverage Control Board within 30 days of the date of the order. (Ord. 11-11-1122, passed 11-29-2011; Ord. 13-08-1148, passed 8-12-2013)

§ 4.1-26 WHOLESALE DISTRIBUTION AND SALES.

(A) *Definition.* As used in this section, ***DISTRIBUTION OR SALE BY WHOLESALE OF CEREAL, MALTED, OR VINOUS BEVERAGES*** shall be held to include any person maintaining a place of business or warehouse, agent, distributor, broker, or jobber from which orders are received or beverages are distributed, either in bottles or other containers for resale.

(B) *Nonalcoholic beverages exempted.* This section shall not apply to the sale of lemonade, soda water, mineral water, ginger ale, pop, or other soft drink containing no percent of alcohol.

(C) *License required.* No person shall engage in the business of distribution or sale by wholesale of any cereal, malt, or vinous beverage, without first having obtained a license therefor.

(D) *License fee; separate places; expiration date.*

(1) Any person desiring to engage in the distribution or sale by wholesale of any cereal, malt, or vinous beverage shall first obtain from the Finance Department a license therefor, for which he or she shall pay the license fees as provided in this chapter.

(2) If any person maintains more than one place of business or warehouse, agent, distributor, broker, or jobber from which orders are received or beverages are distributed, then the person shall pay an additional fee per year for each separate place of business or warehouse, agent, distributor, broker, or jobber. The fees to be paid are in the amounts as provided in this chapter.

(3) All licenses provided for herein shall commence as of July 1 and expire on June 30 next, after the date of issue. When a license is issued after October 1 of any year, the licensee shall be required only to pay a proportionate part of the license tax required therefor from the first day of the month in which the licensee commences to carry on said business until June 30 next. However, no license shall be issued for less than 50% of the annual license fee.

(E) *Hours of operation restricted.*

(1) The distribution, sale by wholesale and delivery of any cereal, malt, or vinous beverages shall occur between the hours of 6:00 a.m. and midnight, Monday through Saturday only.

(2) No person shall distribute and sell by wholesale any such beverages at any time during the 24 hours of a Sunday.

(F) *Distributor's license.*

(1) A distributor's license shall authorize the licensee to purchase, import, or store malt beverages and to sell them only in the licensed premises to other distributors, to retailers, or to consumers for personal use and not for resale. A distributor may transport malt beverages subject to the same requirements provided by Kentucky Revised Statutes.

(2) A distributor's license must be obtained for each separate warehouse, agent, distributor, broker, jobber, or place of business from which orders are received or beverages are distributed unless it is a licensed brewery.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-27 SUPPLEMENTAL RETAIL DRINK LIQUOR LICENSES.

(A) A supplemental bar license may be issued to a holder of a retail drink liquor license upon a showing to the City Alcoholic Beverage Control Administrator of good cause and need for the supplemental license, and upon payment of a fee equivalent to the amount of the annual license fee paid by the licensee. This supplemental license may only be issued for use on the premises for which the applicant's existing retail drink liquor license was issued.

(B) Retail drink liquor license - supplemental shall not be considered in determining the quota of the city for regular retail drink liquor licenses.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-28 PACKAGE RETAIL LIQUOR OUTLET.

(A) No person shall drink any alcoholic beverages in any public place or in any motor vehicle on any parking lot area or other facility used by any package liquor license holder in connection with his or her business in any manner.

(B) All persons, firms, corporations, partnerships, joint ventures, or sole proprietorships shall be required to post a sign or signs on all parking lots adjacent, adjoining, or connected with or used by a package liquor retail sales outlet. The licensee shall provide the City Administrator with a drawing of his or her normal entrances, driveways, or other access onto the parking lot and all customer or patron driveway entrances to and exits from the building from which the package alcoholic beverage is dispensed. The licensee shall post lighted signs at normal vehicle or pedestrian exterior entrances via driveways or other access to the parking lot. The licensee shall post signs of identical wording, readable from 50 feet, at customer or patron driveway entrances to and exits from the building from which the package alcoholic beverage is dispensed. Wording of all such signs shall be: NO DRINKING ON PARKING LOT. VIOLATORS WILL BE PROSECUTED! MINIMUM FINE \$100.00, MAXIMUM FINE \$500.00 (CITY ORDINANCE).

(C) Any person, firm, corporation, partnership, or joint venture which fails to prohibit the drinking of any alcoholic beverages on a parking lot adjacent, adjoining, or connected with a package liquor retail sales outlet shall be deemed in violation hereof. Any person, firm, corporation, partnership, or joint venture which has erected and properly maintained and lighted a sign, as required by division (B) above, shall be exempt from the provisions hereof.
(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-29 RESERVED.

§ 4.1-30 BREW-ON-PREMISES LICENSE.

(A) No person shall operate or maintain a brew-on-premises establishment without first obtaining a license to do so from the Finance Department. A license shall be granted if an applicant meets the provisions of this section.

(B) A brew-on-premises license may be authorized to provide:

(1) Instruction, advice, expertise, space, equipment, ingredients, and bottling supplies for a customer in brewing malt beverages at the license's premises;

(2) Assistance to customers, including:

(a) Moving containers of beer between storage areas;

(b) Cleaning, maintaining, and repairing brewing and bottling equipment;

(c) Maintaining climate and temperature control;

(d) Disposing of spent grains and waste; and

(e) Quality control, including laboratory analysis of malt beverages;

(3) Filtering and carbonation of malt beverages.

(C) A licensee and his or her employees shall not provide physical assistance to, or on behalf of, the customer in the production or bottling of malt beverages, except as otherwise permitted by statute or administrative regulation.

(D) Malt beverages produced under this license shall:

(1) Be removed from the premises by the customer upon completion of bottling for personal or family use, including use in organized fairs, exhibitions, or competitions; and

(2) Not be sold or offered for sale by the customer.

(E) A customer may produce malt beverages for personal or household use on the premises of the brew-on-premises license. The production of malt beverages per household shall not exceed:

(1) One hundred gallons per year for a household with one adult at least 21 years of age in permanent residence; or

(2) Two hundred gallons per year for a household with two or more adults at least 21 years of age in permanent residence.

(F) A license issued pursuant to this section shall not be:

(1) A quota license as defined in 804 KAR 9:010; and

(2) Transferable to another premises.

(G) The brew-on-premises licensee shall maintain records on customers and gallons brewed for at least two years. Records shall be kept on the premises of the licensed establishment and shall be subject to inspection by the City Administrator for compliance with provisions of this section.

(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-31 SPECIAL SUNDAY RETAIL DRINK LICENSE.

(A) *Establishment.* There is hereby established a city special Sunday retail drink license, pursuant to the authority granted by KRS 243.070.

(B) *Restrictions.* The holder of the special Sunday package and retail drink license shall be governed by the restrictions contained in KRS 244.290 and the regulations of the City Alcoholic Beverage Administrator. The hours of operation for holders of package and retail licenses shall be governed by § 4.1-21 that outlines the hours of operation allowed for licensed premises.

(C) *Fee.* The fee for the special Sunday retail drink license shall be as established by this chapter and shall become due and payable on June 1 of each year. When a license is issued after October 1 of any year, the licensee shall be required only to pay a proportionate part of the license tax required therefor from the first day of the month in which the licensee commences to carry on the business until June 30 next. However, no license shall be issued for less than 50% of the annual license fee. (Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-32 MANDATORY ALCOHOLIC BEVERAGE SERVICE TRAINING.

(A) All persons employed in the selling and serving of alcoholic beverages shall participate in and complete a city-approved responsible beverage service training program that effectively trains its participants in the identification of false age documents and recognition of characteristics of intoxication, such as the Server Training in Alcohol Regulations (S.T.A.R.) program offered by the Education Branch of the State Department of Alcoholic Beverage Control, or an equivalent program, to provide consistency in the training under Kentucky law.

(B) All persons required to complete training under division (A) above shall complete that training within 60 days of the date on which the person first becomes subject to the training requirements or in the first available approved program following employment if no program is available within 60 days. All persons completing the training required by the section shall be re-certified in responsible alcoholic beverage service training from a program approved by the city not less than once every three years thereafter.

(C) The owner of any license serving alcoholic beverages shall be responsible for compliance with the training requirements and shall maintain for inspection by the City ABC Administrator a record or file on each employee that shall contain the name, job description, date of employment and proof of certification of each server regulated by this section. This information shall be available at any reasonable time to any alcoholic beverage control officer or any police officer. (Ord. 11-11-1122, passed 11-29-2011; Ord. 13-05-1141, passed 5-30-2013)

§ 4.1-33 NUDE PERFORMANCES PROHIBITED.

(A) For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT ENTERTAINMENT ESTABLISHMENT. A business within the city as defined in § 20-2.

LICENSE. A retail drink liquor license or a retail malt beverage liquor license issued by the city.

LICENSEE. Any person to whom a retail drink liquor license or a retail malt beverage liquor license has been issued by the city, including the officers and agents of the licensee.

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LIQUOR ADMINISTRATOR. The duly appointed Alcoholic Beverage Control Administrator of the city.

NUDITY or STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

PERSON. A human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental authority.

PREMISES. The land and building in and upon which any business establishment is regulated by alcoholic beverage statutes.

SEMI-NUDE OR STATE OF SEMI-NUDITY. A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed in whole or in part.

(B) It shall be unlawful for and a person is guilty of performing in a state of nudity or a semi-nude activity when that person appears in a state of nudity or performing a semi-nude activity on a licensee's establishment's premises.

(C) A licensee or retail licensee is guilty of permitting nudity or semi-nude activity when, having control of the licensee's establishment's premises, he or she permits said premises:

(1) To be used by any person on the premises in such a manner or attire as to expose to view a person's nudity or semi-nudity; or

(2) To be used by any female to appear on the premises in such manner or attire as to expose to view any portion of the breast referred to as the areola, nipple, or any simulation thereof

(D) An adult entertainment establishment shall not make application for and shall not be granted any license to sell alcoholic beverages otherwise issued pursuant to Chapter 4-1 or any other applicable ordinance, statute, or regulation. The sale, use, or consumption of alcoholic beverages on the premises of an adult entertainment establishment is prohibited.

(E) In the event a violation of this section occurs, the City Liquor Administrator shall forthwith conduct a hearing pursuant to KRS 243.520 (in conjunction with KRS 241.160 and KRS 241.190) to determine whether the license at whose business establishment the activity prohibited by this section occurred, shall have his or her license suspended or revoked.
(Ord. 11-11-1122, passed 11-29-2011) Penalty, see § 4.1-99

§ 4.1-34 SOLICITATION FOR THE PURCHASE OF ALCOHOLIC BEVERAGES PROHIBITED.

(A) No employee or independent contractor of a licensed liquor establishment shall solicit patrons of said establishment to purchase any alcoholic beverage for consumption by any employee or independent contractor of the licensed liquor establishment.

(B) No employee or independent contractor of a licensed liquor establishment shall be

compensated in any manner that is measured by a percentage or fraction of beer or liquor retail sales. (Ord. 11-11-1122, passed 11-29-2011)

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§ 4.1-35 CLOSED DOORS DURING HOURS OF OPERATION.

Establishments in the city licensed to sell or dispense alcoholic beverages by the drink shall be prohibited from allowing doors leading from the licensed premises to the public street to remain in the open position for any time period longer than is reasonably necessary to allow persons to enter or leave said establishment at all times during normal hours of operation, except between the hours of 9:00 a.m. and 9:00 p.m. However, the 9:00 a.m. to 9:00 p.m. exception shall not apply to places of entertainment where alcoholic beverages are sold including nightclubs, theaters, pool halls, billiard parlors and similar enterprises. The doors of these places of entertainment shall not remain in the open position throughout their hours of operation.

(Ord. 11-11-1122, passed 11-29-2011) Penalty, see § 4.1-99

§ 4.1-36 ALCOHOL WARNING SIGNS; DRINKING ALCOHOL DURING PREGNANCY.

All licensed retail vendors of alcoholic beverages shall post in a prominent place a printed sign at least 11 inches by 14 inches in size, with letters at least one-inch high, which shall warn that drinking alcoholic beverages during pregnancy can cause birth defects.

(Ord. 11-11-1122, passed 11-29-2011)

§ 4.1-99 PENALTY.

(A) Any person found guilty of violating any provision of §§ 4.1-21, 4.1-24 through 4.1-28, 4.1-30, or 4.1-31, except § 4.1-25(R), shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for not more than 90 days, or both fine and imprisonment in the discretion of the court. This penalty may be imposed in addition to any administrative penalty imposed by the City Alcoholic Beverage Control Administrator or the State Alcoholic Beverage Control Board.

(B) Any person, firm, or corporation convicted of violating § 4.1-25(R) shall be deemed guilty of a misdemeanor and shall be fined not less than \$25 nor more than \$500 in the discretion of the District Court.

(C) Any person, firm, corporation, whether for profit or not for profit, or any officer or individual or agent or employee of the corporation who violates any of the provisions of § 4.1-29 shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500 in the District Court or any other court of appropriate jurisdiction, in the discretion of the court.

(D) Any person found to be in violation of the provisions of § 4.1-33 shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than \$500 or six months in jail, or both so fined and imprisoned, at the discretion of a court of appropriate jurisdiction.

(E) Any person found to be in violation of § 4.1-34 shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than \$500 or imprisoned for not more than six months in jail, or both so fined and imprisoned at the discretion of the court of appropriate jurisdiction.

(F) Any person found to be in violation of the provisions of § 4.1-35 shall be deemed guilty of a violation and shall be subject to a fine of \$25 for each violation.

(G) Any person found to be in violation of the provisions of § 4.1-36 shall be deemed guilty of a violation and shall, upon conviction thereof, be fined not less than \$10 nor more than \$100 for each

offense.
(Ord. 11-11-1122, passed 11-29-2011)

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CHAPTER 5: CIVIL DEFENSE AND CIVIL EMERGENCIES

CHAPTER 5: CIVIL DEFENSE AND CIVIL EMERGENCIES

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ARTICLE I. IN GENERAL

● **5-1 RESERVED.**

ARTICLE II. DISASTER AND EMERGENCY RESPONSE**DIVISION 1. GENERALLY****• 5-16 DEFINITION.**

For the purpose of this article, the following definition shall apply unless the context clearly indicates or requires a different meaning.

DISASTER AND EMERGENCY RESPONSE. The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from fire, flood, tornado, other natural or human-caused disasters, riot, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies or other causes, and the threatened or impending happenings of any of the above, and in order to insure that preparations and response for this state will be adequate to deal with disaster or emergencies or the threat of same. These functions include, without limitation, fire fighting services, police service, medical and health services, ambulance service, rescue, search and rescue, engineering, warning services, communications, radiological, chemical and other monitoring, decontamination and neutralization, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to effective reaction to a disaster or emergency situation, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(Ord. passed 4-11-1968)

Statutory reference:

Similar provisions, see KRS Ch. 39B

DIVISION 2. ORGANIZATION**• 5-24 ESTABLISHED.**

There is hereby established the city's Organization for Disaster and Emergency Response.
(Ord. passed 4-11-1968)

Statutory reference:

Local organization for disaster and emergency response required, see KRS 39B.010

● **5-25 COMPOSITION.**

The Organization for Disaster and Emergency Response of the city will consist of the officers and employees of the city plus the volunteer forces as are enrolled to aid them during an emergency and all groups, organizations and persons who by agreement in accordance with applicable law are charged with duties necessary for the protection of life and property in the city.

(Ord. passed 4-11-1968)

● **5-26 CIVIL DEFENSE DIRECTOR GENERALLY.**

(A) The Office of Director of the city's Organization for Disaster and Emergency Response is hereby created. The Director shall be appointed by the Mayor, with the approval of the City Council.

(B) The Director shall:

(1) Represent the Mayor on all matters pertaining to civil defense planning and organization;

(2) Develop a comprehensive city civil defense plan. This plan shall provide for the effective mobilization of necessary public resources of the city, integration of resources provided by state or federal governments and a special procedure for utilization of private property when this becomes necessary and is authorized;

(3) Coordinate the preparation and implementation of civil defense plans with appropriate city employees and city officials as applicable; and

(4) Be directly responsible to the Mayor during periods of emergency for the direction and supervision of all city civil defense forces.

(C) During periods of emergency, the Director shall, with authorization by the Mayor, obtain vital supplies and equipment which are not otherwise available from city resources, but are needed for the protection of life and property. With the Mayor's authorization, the Director may obligate the city to pay for the supplies and equipment.

(Ord. passed 4-11-1968)

Statutory reference:

Similar provisions, see KRS 39B.010

ARTICLE III. CIVIL EMERGENCIES**• 5-38 DEFINITIONS.**

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

CIVIL EMERGENCY. A riot or unlawful assembly characterized by the use of actual force or violence, or any threat to use force if accompanied by immediate power to execute it by three or more persons acting together without authority of law.

CURFEW. A prohibition against any person walking, running, loitering, standing or motoring upon any alley, street, highway, sidewalk, public property or vacant premises, except officers or persons designated as not subject to the **CURFEW**.
(Ord. passed 4-11-1968)

• 5-39 AUTHORITY OF MAYOR TO PROCLAIM CIVIL EMERGENCY.

When, in the judgment of the Mayor, or acting Mayor, a civil emergency is deemed to exist, he or she shall forthwith proclaim, in writing, its existence.
(Ord. passed 4-11-1968)

• 5-40 POWER OF MAYOR TO DECLARE CURFEW.

After proclamation of a civil emergency by the Mayor, or acting Mayor, he or she may order a general curfew applicable to the geographical areas deemed advisable and applicable during such hours of the day or night as deemed necessary in the interest of the public safety and welfare.
(Ord. passed 4-11-1968)

• 5-41 OTHER POWERS OF MAYOR.

After the proclamation of a civil emergency, the Mayor, or acting Mayor, may also, in the interest of public safety and welfare:

(A) Order the discontinuance of the sale, distribution or giving away of gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle;

(B) Order the closing of gasoline stations and other establishments, the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products; and

(C) Issue such other orders as are eminently necessary for the protection of life and property.
(Ord. passed 4-11-1968; Ord. 13-05-1137, passed 5-21-2013)

● **5-42 LENGTH OF CURFEW OR OTHER ORDERS OF MAYOR.**

The curfew or orders authorized in this article shall remain in effect until rescinded by the Mayor, or acting Mayor, but for a period not to exceed 72 hours from the time they became effective unless approved by the City Council.
(Ord. passed 4-11-1968)

● **5-43 NOTICE OF PROCLAMATION.**

After proclamation of a civil emergency, the Mayor or acting Mayor shall forthwith provide for notice thereof to be given to members of the City Council, and to the public by the best available means; provided, however, that the proclamation shall still be effective immediately.
(Ord. passed 4-11-1968)

● **5-44 OBEDIENCE TO ORDERS OF MAYOR REQUIRED.**

It shall be unlawful for any person to fail to obey any curfew proclaimed by the Mayor or acting Mayor or any other order promulgated pursuant to this article.
(Ord. passed 4-11-1968)

CHAPTER 6: RESERVED

CHAPTER 7: EXPLOSIVES AND BLASTING

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ARTICLE I. IN GENERAL

§ 7-1 SCOPE.

This chapter shall apply to the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents.

§ 7-2 EXEMPTION.

This chapter shall not apply to:

(A) Explosives or blasting agents while in the course of transportation via railroad, water, highway or air when the explosives or blasting agents are moving under the jurisdiction of and in conformity with, regulations adopted by any federal or state department or agency;

(B) The transportation and use of explosives or blasting agents in the normal and emergency operation of state or federal agencies nor to municipal Fire and Police Departments; providing, they are acting in their official capacity and in the proper performance of their duties;

(C) Small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (18 U.S.C. § 44) and regulations promulgated thereunder;

(D) Blasting standards, KRS 351.310 through 351.380 and 805 KAR 4:010 through 4:060; and/or

(E) Explosives or blasting agents being used on the site of federal or state projects.

Cross-reference:

Excavations, see §§ 18-28 through 18-34

Licenses and Taxation, see Chapter 10

Nuisances, see Chapter 13

§ 7-3 STORAGE, TRANSPORTATION AND USE GENERALLY.

All activities within the scope of this chapter shall conform to the regulations of the state's Division of Explosives and Blasting (805 KAR 4:005 through 4:165).

§ 7-4 PERMIT TO MANUFACTURE OR SELL.

(A) No person or corporation shall operate a business establishment where explosives are maintained for the sale, or manufacture for sale, of explosives in the city without first obtaining a permit from the City Clerk.

(B) The fee for this permit shall be as established by the Mayor and Council.

ARTICLE II. BLASTING PERMIT

§ 7-16 REQUIRED.

No person shall conduct a blasting operation within the city without first obtaining a permit from the City Clerk.

§ 7-17 FEE.

The fee for a blasting permit or permit renewal shall be as established by the Mayor and Council.

§ 7-18 RENEWAL.

In the event that a project is not completed, blasting permits must be renewed annually upon the applicant's payment of the renewal fee.

§ 7-19 STATE LICENSE REQUIRED.

(A) No person shall be issued a permit to blast on public property unless the person to be in charge of the blasting holds a valid state blaster's license.

(B) No person shall be issued a permit to blast on private property with more than five pounds of explosives unless the person in charge of the blasting holds a valid state blaster's license.

§ 7-20 LOCATION TO BE SPECIFIED.

The blasting permits shall specify the location of the blasting to be permitted.

§ 7-21 WHEN EFFECTIVE.

(A) A permit allowing blasting shall be issued upon application but, on public property, shall not become valid until seven days after its issuance.

(B) If unanticipated blasting is required, the permit may become valid as soon as the City Clerk notifies all required agencies.

§ 7-22 EFFECT OF FALSE STATEMENTS.

False statements, made for the purpose of obtaining a permit, shall render the permit null and void from the time of issuance.

§ 7-23 DISTRIBUTION OF COPIES.

Copies of the blasting permit shall be distributed by the City Clerk to the Police Department, County Water District, Mayor, City Sewer Superintendent, City Inspector and all public utilities.

§ 7-24 CONTRACTS.

On any contract issued by an agency of the city, blasting permits shall be issued by the City Clerk unless otherwise specified in the contract.

§ 7-25 PENALTY.

Any person who shall violate this chapter shall be fined not less than \$20, nor more than \$500, and/or imprisonment for 12 months for each offense. Each day's violation shall constitute a separate offense. Any persons violating this chapter may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this chapter or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993)

CHAPTER 7.5: FLOOD DAMAGE PREVENTION

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CHAPTER 7.5: FLOOD DAMAGE PREVENTION

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ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

§ 7.5-1 STATUTORY AUTHORIZATION.

(A) The Legislature of the commonwealth has, in KRS 82.082, delegated to local government units the authority to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(B) Therefore, the City Council hereby adopts the following floodplain management ordinance, as follows.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-2 FINDINGS OF FACT.

(A) The flood hazard areas of the city are subject to periodic inundation which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all which adversely affect the public health, safety and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increased flood height and velocity, and by the location in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed or otherwise protected from flood damage.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-3 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private loss due to flooding by provisions designed to:

(A) Restrict or prohibit uses which are dangerous to health, safety and property due to water erosion hazards, or which result in damaging increases in erosion or in flood height or velocity;

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels and natural protective barriers which accommodate or channel flood waters;

(D) Control filling, grading, dredging and other development which may increase erosion or flood damage; and

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other areas.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-4 OBJECTIVES.

The objectives of this chapter are to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines; streets and bridges located in areas of special flood hazard;

(F) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard or other flood-prone areas in such a manner as to minimize future flood blighted areas caused by flooding;

(G) Ensure that potential homebuyers are on notice that property is in a special flood hazard area; and

(H) Ensure that those who occupy a special flood hazard area assume responsibility for their actions.

(Ord. 07-05-1005, passed 5-7-2007)

ARTICLE II. DEFINITIONS

§ 7.5-5 DEFINITIONS.

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

100-YEAR FLOOD. (See **BASE FLOOD**.) The flood that has a 1% or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the **100-YEAR FLOOD**. Over the life of a 30-year loan, there is a 26% chance of experiencing such a flood with the SFHA.

500-YEAR FLOOD. The flood that has a 0.2% chance of being equaled or exceeded in any year. Areas subject to the **500-YEAR FLOOD** have a moderate to low risk of flooding.

A ZONE. Portions of the special flood hazard area (SFHA) in which the principal source of flooding is runoff from rainfall, snowmelt or a combination of both. In **A ZONES**, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to structures. Areas of 100-year flood, base flood elevations and flood hazard factors are not determined.

A99 ZONE. The part of the SFHA inundated by the 100-year flood which is to be protected from the 100-year flood by a federal flood protection system under construction. No base flood elevations are determined.

ACCESSORY STRUCTURE (APPURTENANT STRUCTURE). A structure located on the same parcel of property as the principle structure, the use of which is incidental to the use of the principal structure. **ACCESSORY STRUCTURES** should constitute a minimal initial investment, may not be used for human habitation, and should be designed to have minimal flood damage potential. Examples of **ACCESSORY STRUCTURES** are detached garages, carports, storage sheds, pole barns and hay sheds.

ACCESSORY USE. A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

ADDITION (TO AN EXISTING STRUCTURE). Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

AH ZONE. An area of 100-year shallow flooding where depths are between one and three feet (usually shallow ponding). Base flood elevations are shown.

A1-30 and AE ZONES. Special flood hazard areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are determined.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or from the Floodplain Administrator's ruling on a request for a variance.

AO ZONE. An area of 100-year shallow flooding where water depth is between one and three feet (usually sheet flow on sloping terrain). Flood depths are shown.

AR/AL – A30, AR/AE, AR/AH, AR/AO and AR/A ZONES. Special flood hazard areas (SFHAs) that result from the de-certification of a previously accredited flood protection system that is in the process of being restored to provide a 100-year or greater level of flood protection. After restoration is complete, these areas will still experience residual flooding from other flooding sources.

AREA OF SHALLOW FLOODING. A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) where the base flood depths range from one to three feet, there is no clearly defined channel, the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. The flooding is characterized by ponding or sheet flow.

B and X ZONES (SHADED). Areas of the 0.2% annual chance (500-year) flood, areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile, and areas protected by levees from the base flood.

BASE FLOOD. A flood which has a 1% chance of being equaled or exceeded in any given year (also called the **100-YEAR FLOOD**). **BASE FLOOD** is the term used throughout this chapter.

BASE FLOOD ELEVATION (BFE). The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH and AR/AO that indicates the water surface elevation resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year.

BASEMENT. The portion of a structure having its floor subgrade (below ground level) on all four sides.

BUILDING. A walled and roofed structure that is principally aboveground; including a manufactured home, gas or liquid storage tank or other human-made facility or infrastructure. See definition for **STRUCTURE**.

C and X (UNSHADED) ZONES. Areas determined to be outside the 500-year floodplain.

COMMUNITY. A political entity having the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

COMMUNITY RATING SYSTEM (CRS). A program developed by the Federal Insurance Administration to provide incentives to those communities in the regular program to go beyond the minimum floodplain management requirements to develop extra measures for protection from flooding.

COMMUNITY FLOOD HAZARD AREA (CFHA). An area that has been determined by the Floodplain Administrator (or other delegated, designated or qualified community official) from available technical studies, historical information and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare. Included are areas downstream from dams.

CRITICAL FACILITY. Any property that, if flooded, would result in severe consequences to public health and safety or a facility which, if unusable or unreachable because of flooding, would seriously and adversely affect the health and safety of the public. **CRITICAL FACILITIES** include, but are not limited to: housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; schools, nursing homes, hospitals, police, fire and emergency response installations, vehicle and equipment storage facilities, emergency operations centers likely to be called upon before, during and after a flood, public and private utility facilities important to maintaining or restoring normal services before, during and after a flood, and those facilities or installations which produce, use or store volatile, flammable, explosive, toxic and/or water-reactive materials, hazardous materials or hazardous waste.

D ZONE. An area in which the flood hazard is undetermined.

DEVELOPMENT. Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations or permanent storage of materials or equipment.

ELEVATED STRUCTURE. A non-basement structure built to have the lowest floor elevated above ground level by means of fill, solid foundation perimeter walls, piling, columns (post and piers), shear walls or breakaway walls. (See freeboard requirements for residential and non-residential structures.)

ELEVATION CERTIFICATE. A statement certified by a registered professional engineer or surveyor on the FEMA-approved form in effect at the time of certification that verifies a structure's elevation and other related information to verify compliance with this chapter.

EMERGENCY PROGRAM. The initial phase under which a community participates in the NFIP, intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

ENCLOSURE. The portion of a structure below the base flood elevation (BFE) used solely for parking of vehicles, limited storage or access to the structure.

ENCROACHMENT. The physical advance or infringement of uses, plant growth, fill, excavation, structures, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

EXISTING CONSTRUCTION. Any structure for which the “start of construction” commenced before the effective date of the FIRM or before 1-1-1975, for FIRMs effective before that date. **EXISTING CONSTRUCTION** may also be referred to as **EXISTING STRUCTURES**.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management ordinance adopted by the city based on specific technical base flood elevation data which established the area of special flood hazards.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD, FLOODING or FLOOD WATER.

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e. mudflows). See **MUDSLIDES**.

(2) The condition resulting from flood-related erosion. See **FLOOD-RELATED EROSION**.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM). A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and the regulatory floodway.

FLOOD HAZARD BOUNDARY MAP (FHBM). A map on which the boundaries of the flood, mudslide (i.e. mudflow), and flood-related erosion areas having special hazards have been designated as Zones A, M and/or E by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (HA).

FLOOD INSURANCE RATE MAP (FIRM). A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated special flood hazard areas and risk premium zones.

FLOOD INSURANCE STUDY. The report provided by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) containing flood profiles, the Flood Insurance Rate Map (FIRM) and/or the Flood Boundary Floodway Map (FBFM) and the water surface elevation of the base flood.

FLOOD-PROOFING. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOOD-PROOFING CERTIFICATE. A certification by a registered professional engineer or architect, on a FEMA-approved form in effect at the time of certification stating that a non-residential structure, together with attendant utilities and sanitary facilities is watertight to a specified design elevation with walls that are substantially impermeable to the passage of water and all structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy and anticipated debris impact forces.

FLOODPLAIN or **FLOOD-PRONE AREA.** Any land area susceptible to being inundated by flood waters from any source.

FLOODPLAIN ADMINISTRATOR. The individual appointed by a NFIP participating community to administer and enforce the floodplain management ordinances.

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management ordinances and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS. This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other applications of police power, which control development in flood-prone areas. This term describes federal, state and/or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the **REGULATORY FLOODWAY**.

FLOODWAY FRINGE. The area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

FREEBOARD. A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood. **FREEBOARD** must

be applied not just to the elevation of the lowest floor or flood-proofing level, but also to the level of protection provided to all components of the structure, such as building utilities, HVAC components and the like.

FRAUD AND VICTIMIZATION. As related in Article VI, Appeals and Variance Procedures, of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed structure adds to government responsibilities and remains a part of the community for 50 to 100 years. Structures that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger and suffering that those increased flood damages may incur. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

FUNCTIONALLY DEPENDENT USE FACILITY. A facility, structure or other development, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair or seafood processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.

GOVERNING BODY. The local governing unit (i.e., county or municipality) that is empowered to adopt and implement ordinances to provide for the public health, safety and general welfare of its citizenry.

HAZARD POTENTIAL. The possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or misoperation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way the current condition of a dam and its appurtenant structures (e.g., safety, structural integrity, flood routing capacity).

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

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(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (a) By an approved state program as determined by the Secretary of the Interior; or
- (b) Directly by the Secretary of the Interior in states without approved programs.

INCREASED COST OF COMPLIANCE (ICC). Increased cost of compliance coverage provides for the payment of a claim for the cost to comply with state or community floodplain management laws or ordinances after a direct physical loss by flood. When a building covered by a standard flood insurance policy under the NFIP sustains a loss and the state or community declares the building to be substantially or repetitively damaged, ***ICC*** will help pay up to \$30,000 for the cost to elevate, flood-proof, demolish or remove the building. ***ICC COVERAGE*** is available on residential and non-residential buildings (this category includes public or government buildings, such as schools, libraries and municipal buildings) insured under the NFIP.

KRS 151.250. Plans for dams, levees and the like to be approved and permit issued by cabinet (Environmental and Public Protection Cabinet).

(1) Notwithstanding any other provision of law, no person and no city, county or other political subdivision of the state, including levee districts, drainage districts, flood control districts or systems or similar bodies, shall commence the construction, reconstruction, relocation or improvement of any dam, embankment, levee, dike, bridge, fill or other obstruction (except those constructed by the Department of Highways) across or along any stream, or in the floodway of any stream, unless the plans and specifications for the work have been submitted by the person or political subdivision responsible for the construction, reconstruction or improvement and the plans and specifications have been approved in writing by the cabinet and a permit issued. However, the cabinet by regulation may exempt those dams, embankments or other obstructions, which are not of a size or type as to require approval by the cabinet in the interest of safety or retention of water supply.

(2) No person, city, county or other political subdivision of the state shall commence the filing of any area with earth, debris or any other material, or raise the level of any area in any manner, or place a building, barrier or obstruction of any sort on any area located adjacent to a river or stream or in the floodway of the stream so that the filling, raising or obstruction will in any way affect the flow of water in the channel or in the floodway of the stream unless plans and specifications for the work have been submitted to and approved by the cabinet and a permit issued as required in division (1) of this definition above.

(3) Nothing in this section is intended to give the cabinet any jurisdiction or control over the construction, reconstruction, improvement, enlargement, maintenance or operation of any drainage district, ditch or system established for agricultural purposes, or to require approval of the same except where such obstruction of the stream or floodway is determined by the cabinet to be a detriment or hindrance to the beneficial use of water resources in the area, and the person or political subdivision in

control thereof so notified. The Department for Natural Resources through KRS Chapter 350 shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees, embankments, dikes, bridges, fills or other obstructions across or along any stream or in the floodway of any stream which structures are permitted under KRS Chapter 350 for surface coal mining operations.

LETTER OF MAP CHANGE (LOMC). An official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps and Flood Insurance Studies. **LOMCs** include the following categories:

(1) **LETTER OF MAP AMENDMENT (LOMA).** A revision based on technical data showing that a property was incorrectly included in a designated SFHA. A **LOMA** amends the current effective FIRM and establishes that a specific property is not located in a SFHA.

(2) **LETTER OF MAP REVISION (LOMR).** A revision based on technical data that, usually due to human-made changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations and planimetric features.

(3) **LETTER OF MAP REVISION – FILL (LOMR F).** A determination that a structure or parcel has been elevated by properly placed engineered fill above the BFE and is, therefore, excluded from the SHFA.

LEVEE. A human-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM. A flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices. For a **LEVEE SYSTEM** to be recognized, the following criteria must be met.

(1) All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual (a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or revised).

(2) All operations must be under the jurisdiction of a federal or state agency, an agency created by federal or state law, or an agency of a community participating in the NFIP.

LIMITED STORAGE. An area used for storage and intended to be limited to incidental items which can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant material, void of utilities except for essential lighting, and cannot be temperature controlled.

LOWEST ADJACENT GRADE. The elevation of the sidewalk, patio, deck support or basement entryway immediately next to the structure and after the completion of construction. It does not include earth that is emplaced for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a structure's foundation system.

LOWEST FLOOR. The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access or storage in an area other than a basement area is not considered a structure's lowest floor; provided that, the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected or attached to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term **MANUFACTURED HOME** does not include a "recreational vehicle". (See **RECREATIONAL VEHICLE**.)

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MAP. The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).

MAP PANEL NUMBER. The four-digit number on a flood map, followed by a letter suffix, assigned by FEMA. The first four digits represent the map panel. The letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

MARKET VALUE. The structure value, excluding the land (as agreed between a willing buyer and seller), as established by what the local real estate market will bear. **MARKET VALUE** can be established by independent certified appraisal, replacement cost depreciated by age of structure (actual cash value) or adjusted assessed values.

MEAN SEA LEVEL (MSL). The average height of the sea for all stages of the tide. For the purposes of the National Flood Insurance Program, the MSL is used as a reference for establishing various elevations within the floodplain as shown on a community's FIRM. For purposes of this chapter, the term is synonymous with either National Geodetic Vertical Datum (NGVD) 1929 or North American Vertical Datum (NAVD) 1988.

MITIGATION. Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of **MITIGATION** is twofold: To protect people and structures and to minimize the costs of disaster response and recovery.

MUDSLIDE (i.e. MUDFLOW). Describes a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain. A **MUDSLIDE (i.e. MUDFLOW)** may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Floodplain Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

MUDSLIDE (i.e. MUDFLOW) AREA MANAGEMENT. The operation of and overall program of corrective and preventative measures for reducing mudslide (i.e. mudflow) damage, including, but not limited to, emergency preparedness plans, mudslide control works and floodplain management regulations.

MUDSLIDE (i.e. MUDFLOW) PRONE AREA. An area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP). The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

NATIONAL GEODETIC VERTICAL DATUM (NGVD). As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used as the vertical datum on the older FIRMs. Refer to FIRM legend panel for correct datum.)

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the city's floodplain management regulations and includes any subsequent improvements to the structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the city's adopted floodplain management ordinances.

NON-RESIDENTIAL. Structures that are not designed for human habitation, including but is not limited to: small business concerns, churches, schools, farm structures (including grain bins and silos), pool houses, clubhouses, recreational structures, mercantile structures, agricultural and industrial structures, warehouses and hotels or motels with normal room rentals for less than six months' duration.

NORTH AMERICAN VERTICAL DATUM (NAVD). As corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used on the newer FIRMs and Digitally Referenced FIRMs (DFIRMs.) (Refer to FIRM or DFIRM legend panel for correct datum.)

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OBSTRUCTION. Includes, but is not limited to, any dam, wall, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, structure, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

PARTICIPATING COMMUNITY. A community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

PRE-FIRM CONSTRUCTION. Construction or substantial improvement, which started on or before 12-31-1974, or before the effective date of the initial FIRM of the community, whichever is later.

POST-FIRM CONSTRUCTION. Construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after 12-31-1974, whichever is later.

PROBATION. A means of formally notifying participating NFIP communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations. During periods of probation, each insurance policy is subject to a \$50 surcharge.

PROGRAM DEFICIENCY. A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards or of the standards of 44 C.F.R. §§ 60.3, 60.4, 60.5 and/or 60.6.

PUBLIC SAFETY AND NUISANCE. Anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin.

RECREATIONAL VEHICLE. A vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable to a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULAR PROGRAM. The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See **BASE FLOOD**.

REMEDY A VIOLATION. The process by which a community brings a structure or other development into compliance with state or local floodplain management regulations or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development.

REPAIR. The reconstruction or renewal of any part of an existing structure.

REPETITIVE LOSS. Flood-related damages sustained by a structure on two or more separate occasions during a ten-year period where the value of damages equals or exceeds an average of 50% of the current value of the structure, beginning on the date when the damage first occurred, or, four or more flood losses of \$1,000 or more over the life of the structure, or, three or more flood losses over the life of the structure that are equal to or greater than the current value of the structure.

RIVERINE. Relating to, formed by or resembling a river (including tributaries), stream, brook and the like.

SEC. 1316. The section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

SHEET FLOW AREA. See **AREA OF SHALLOW FLOODING**.

SPECIAL FLOOD HAZARD AREA (SFHA). The portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AR, A1-30, AH, AO or AR.

START OF CONSTRUCTION. (Includes substantial improvement and other proposed new development.) The date a building permit is issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement is within 180 days of the permit date. The actual **START** means the first placement of permanent construction of a structure (including manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; the

installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the structure.

STRUCTURE. A walled and roofed building that is principally above ground; including manufactured homes, gas or liquid storage tanks or other human-made facilities or infrastructures. See **BUILDING**.

SUBDIVISION. Any division, for the purposes of sale, lease or development, either on the installment plan or upon any and all other plans, terms and conditions, of any tract or parcel of land into two or more lots or parcels.

SUBROGATION. An action brought by FEMA to recover insurance money paid out where all or part of the damage can be attributed to acts or omissions by a community or other third party.

SUBSTANTIAL DAMAGE. Any damage to a building for which the cost of repairs equals or exceeds 50% of the market value of the building prior to the damage occurring. This term includes structures that are categorized as repetitive loss. For the purposes of this definition, “repair” is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences. The term does not apply to:

- (1) Any project for improvement of a building required to comply with existing health, sanitary or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

SUBSTANTIAL IMPROVEMENT. Any combination of reconstruction, alteration or improvement to a building, taking place during a one-year period in which the cumulative percentage of improvement equals or exceeds 50% of the current market value of the building. For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not apply to:

- (1) Any project for improvement of a building required to comply with existing health, sanitary or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions;
- (2) Any alteration of a “historic structure”; provided that, the alteration will not preclude the structure’s continued designation as a “historic structure”; or
- (3) Any building that has been damaged from any source or is categorized as repetitive loss.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARKS OR SUBDIVISIONS. Repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equaling or exceeding 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

SUSPENSION. Removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP. New or renewal flood insurance policies are no longer available in suspended communities.

UTILITIES. Includes electrical, heating, ventilation, plumbing and air conditioning equipment.

VARIANCE. Relief from some or all of the requirements of this chapter.

VIOLATION. Failure of a structure or other development to fully comply with this chapter. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

WATERCOURSE. A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.

WATERSHED. All the area within a geographic boundary from which water, sediments, dissolved materials and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake or underlying aquifer.

X ZONE. The area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMS (B zones on older FIRMS) designate areas subject to inundation by the flood with a 0.2% probability of being equaled or exceeded (the 500-year flood) in any year. Unshaded X zones (C zones on older FIRMS) designate areas where the annual exceedance probability of flooding is less than 0.2%.

ZONE. A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
(Ord. 07-05-1005, passed 5-7-2007)

ARTICLE III. GENERAL PROVISIONS**§ 7.5-6 LANDS TO WHICH THIS CHAPTER APPLIES.**

This chapter shall apply to all special flood hazard areas (SFHA), areas applicable to KRS 151.250 and, as determined by the Floodplain Administrator or other delegated, designated or qualified community official as determined by the City Council from available technical studies, historical information, and other available and reliable sources, areas within the jurisdiction of the City Council which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare of the citizens of the city.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-7 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for the county, dated 8-16-2007, with the accompanying Flood Insurance Rate Maps (FIRMS), other supporting data and any subsequent amendments thereto, are hereby adopted by reference and declared to be a part of these regulations by the city, and for those land areas acquired by the city through annexation. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the City Council by the Floodplain Administrator and are enacted by City Council pursuant to statutes governing land use management regulations. The FIS and/or FIRM are permanent records of the city and are on file and available for review by the public during regular business hours at the city's Planning Department located at 411 West Lincoln Trail Blvd, Radcliff KY.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-8 ESTABLISHMENT OF DEVELOPMENT PERMIT.

(A) A development permit shall be required in conformance with the provision of this chapter prior to the commencement of any development activities in the special flood hazard areas (SFHA). See Article IV, § 7.5-22, for instructions and explanation.

(B) Application for a development permit shall be made on forms furnished by the Floodplain Administrator.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-9 COMPLIANCE.

No structure or land shall hereafter be constructed, located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable state regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation. (Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-11 INTERPRETATION.

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by human-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within the areas will be free from flooding or flood damage. This chapter shall not create liability on the part of the City Council, any officer or employee, the commonwealth, the Federal Insurance Administration or the Federal Emergency Management Agency, thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-13 ENFORCEMENT, VIOLATION NOTICE AND PENALTIES.

(A) *Civil offense.* If, at any time, development occurs which is not in accordance with the provisions of this chapter including obtaining or complying with the terms and conditions of a floodplain construction permit and any approved modifications, the development shall constitute a civil offense.

(B) *Notice of violation.* If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this chapter including obtaining or complying with the terms and conditions of a floodplain construction permit and any approved modifications thereof, a duly-authorized employee of the Floodplain Administrator shall issue a notice to the person responsible for the violation and/or the property owner, stating the facts of the offense or violation, the section of this chapter and/or of the permit violated, when it occurred, how the violation is to be remedied to bring the development into conformity with this chapter or with the approved permit, and within what period of time the remedy is to occur, which period of time shall be reasonable and shall be determined by the nature of the violation and whether or not it creates a nuisance or hazard. The remedy may include an order to stop work on the development. The notice shall also state that a citation may be forthcoming in the event that the requested remedies and corrective actions are not taken, which citation will request a civil monetary fine and shall state the maximum fine which could be imposed. See below.

(C) *Notice of citation.* If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this chapter- including obtaining or complying with the terms and conditions of a floodplain construction permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator may issue a citation to the offender stating the violation, prior notices of violation issued, how the violation is to be remedied to bring the development into conformity with this chapter or with the approved permit, and within what period of time the remedy is to occur, and what penalty or penalties are recommended. When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven days of the date the citation is issued by either carrying out the remedies and corrections set forth in the citation, paying the civil fine set forth in the citation or requesting a hearing before the governing body. If the person to whom the citation is issued does not respond to the citation within seven days, that person shall be deemed to have waived the right to a hearing and the determination that a violation occurred shall be considered final.

(D) *Penalties.* Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with granting of a variance or special exceptions, shall constitute a misdemeanor civil offense. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no less than \$500 or imprisoned for not more than 365 days, or both, and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. 07-05-1005, passed 5-7-2007)

ARTICLE IV. ADMINISTRATION

§ 7.5-21 DESIGNATION OF LOCAL ADMINISTRATOR.

The City Council hereby appoints the City Planner to administer, implement and enforce the provisions of this chapter by granting or denying development permits in accordance with its provisions and is herein referred to as the Floodplain Administrator.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-22 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A development permit shall be obtained before any construction or other development begins within any special flood hazard area established in Article III, § 7.5-7. Application for a development permit shall be made on forms furnished by Floodplain Administrator prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Endorsement of local Administrator is required before a state floodplain construction permit can be processed. Specifically, the following information is required.

(A) Application stage.

(1) Proposed elevation in relation to mean sea level (MSL) of the proposed lowest floor (including basement) of all structures in Zone A and elevation of highest adjacent grade;

(2) Proposed elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;

(3) All appropriate certifications from a registered professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing criteria in Article V, §§ 7.5-32(B) and 7.5-34(B); and

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(B) Construction stage.

(1) Upon placement of the lowest floor, and before construction continues, or flood proofing by whatever construction means, it shall be the duty of the permit holder to submit to the Floodplain Administrator and to the state a certification of the elevation of the lowest floor or flood-proofed

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elevation, as built, in relation to mean sea level. In AE, AI-30, AH, and A zones where the Community has adopted a regulatory base flood elevation, the certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

(2) When flood proofing is utilized for a particular structure, the certification shall be prepared by or under the direct supervision of a certified professional engineer or architect. Any continued work undertaken prior to the submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood proofing elevation survey data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required hereby, shall be cause to issue a stop-work order for the project.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-23 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR.

(A) The Floodplain Administrator and/or staff is hereby appointed, authorized and directed to administer, implement and enforce the provisions of this chapter. The Floodplain Administrator is further authorized to render interpretations of this chapter, which are consistent with its spirit and purpose by granting or denying development permits in accordance with its provisions.

(B) The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following.

(1) *Permit review.* Review all development permits to ensure that:

(a) Permit requirements of this chapter have been satisfied;

(b) All other required state and federal permits have been obtained: Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of the permits be provided and maintained on file with the development permit;

(c) Flood damages will be reduced in the best possible manner; and

(d) The proposed development does not adversely affect the carrying capacity of affected watercourses. For purposes of this chapter, **ADVERSELY AFFECTS** means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

(2) *Review and use of any other base flood data.* When base flood elevation data has not been provided in accordance with Article III, § 7.5-7, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer Article V. Any such information shall be submitted to the City Council for adoption.

(3) *Notification of other agencies.*

(a) Notify adjacent communities, the state's Division of Water and any other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of the watercourse;

(b) Submit evidence of the notification to the Federal Insurance Administration, Federal Emergency Management Agency (FEMA); and

(c) Assure that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained.

(4) *Documentation of floodplain development.* Obtain and maintain for public inspection and make available as needed the following:

(a) Certification required by Article V, § 7.5-32(A) (lowest floor elevations) as shown on a completed and certified elevation certificate. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article IV, § 7.5-22(B);

(b) Certification required by Article V, § 7.5-32(B) (elevation or flood-proofing of non-residential structures) as shown on a completed and certified flood-proofing certificate. Verify and record the actual elevation (in relation to mean sea level) to which the new or- substantially improved structures have been flood-proofed, in accordance with Article IV, § 7.5-22(B);

(c) Certification required by Article V, § 7.5-32(C) (elevated structures);

(d) Certification of elevation required by Article V, § 7.5-35(A) (subdivision standards);

(e) Certification required by Article V, § 7.5-32(E) (floodway encroachments);

(f) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;

(g) Review certified plans and specifications for compliance; and

(h) Remedial Action. Take action to remedy violations of this chapter as specified in Article III, § 7.5-13.

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(5) *Map determinations.* Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas, for example, where there appears to be a conflict between a mapped boundary and actual field conditions.

(a) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article VI;

(b) When base flood elevation data or floodway data have not been provided in accordance with Article III, § 7.5-7, then the Floodplain Administrator shall obtain, review and reasonable utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Article V;

(c) When flood-proofing is utilized for a particular structure, the Floodplain Administrator shall obtain certification from a registered professional engineer or architect, in accordance with Article V, § 7.5-32(B) a flood-proofing certificate; and

(d) All records pertaining to the provisions of this chapter shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.

(6) *Right of entry.*

(a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Administrator has reasonable cause to believe that there exists in any structure or upon any premises any condition or ordinance violation which makes the building, structure or premises unsafe, dangerous or hazardous, the Administrator may enter the building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the Administrator by this chapter.

(b) If the structure or premises are occupied, he or she shall first present proper credentials and request entry. If the building, structure or premises are unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the request entry.

(c) If entry is refused, the Administrator shall have recourse to every remedy provided by law to secure entry.

(d) When the Administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Administrator for the purpose of inspection and examination pursuant to this chapter.

(7) *Stop work orders.* Upon notice from the Administrator, work on any building, structure or premises that is being done contrary to the provisions of this chapter shall immediately cease. The notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(8) *Revocation of permits.*

(a) The Administrator may revoke a permit or approval, issued under the provisions of this chapter, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

(b) The Administrator may revoke a permit upon determination by the Administrator that the construction, erection, alteration, repair, moving, demolition, installation or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this chapter.

(9) *Liability.* Any officer, employee or member of the Floodplain Administrator's staff, charged with the enforcement of this chapter, acting for the applicable governing authority in the discharge of his or her duties, shall not thereby render himself or herself personally liable, and is hereby relieved from all personal liability, for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his or her duties. Any suit brought against any officer, employee or member because of the act performed by him or her in the enforcement of any provision of this chapter shall be defended by the Department of Law until the final termination of the proceedings.

(10) *Expiration of floodplain construction permit.* A floodplain construction permit, and all provisions contained therein, shall expire if the holder of a floodplain construction permit has not commenced construction within 180- calendar days from the date of its issuance by the Floodplain Administrator.

(Ord. 07-05-1005, passed 5-7-2007)

ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 7.5-31 GENERAL CONSTRUCTION STANDARDS.

In all special flood hazard areas, the following provisions are required.

(A) All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

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(B) Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(C) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(D) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(E) Electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(F) Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(G) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(H) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(I) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(J) Any alteration, repair, reconstruction or improvements to a structure, which is not in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter.

(K) Any alteration, repair, reconstruction or improvements to a structure, which is not in compliance with the provisions of this chapter, shall be undertaken only if the non-conformity is not furthered, extended or replaced.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-32 SPECIFIC STANDARDS.

In all special flood hazard areas where base flood elevation data have been provided, as set forth in Article III, § 7.5-7, the following provisions are required.

(A) *Residential construction.* New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor, including basement, mechanical equipment and ductwork elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of Article V, § 7.5-32(C).

(1) In an AO zone, elevated above the highest adjacent grade to a height equal to or exceeding the depth number specified in feet on the FIRM, or elevated at least two feet above the highest adjacent grade if no depth number is specified.

(2) In an A zone, where no technical data has been produced by the Federal Emergency Management Agency, elevated one foot above the base flood elevation, as determined by this community. The Floodplain Administrator will determine the method by which base flood elevations are determined. Methods include, but are not limited to, detailed hydrologic and hydraulic analyses, use of existing data available from other sources, use of historical data, best supportable and reasonable judgment in the event no data can be produced. Title 401 KAR (Kentucky Administrative Regulations) Chapter 4, Regulation 060, § 5(5)a, states as a part of the technical requirements for a state floodplain permit: the applicant shall provide cross sections for determining floodway boundaries (and thereby base flood elevations) at any proposed construction site where FEMA maps are not available. All cross sections shall be referenced to mean sea level and shall have vertical error tolerances of no more than + five-tenths foot. Cross sections elevations shall be taken at those points which represent significant breaks in slope and at points where hydraulic characteristics of the base floodplain change. Each cross section shall extend across the entire base floodplain and shall be in the number and at the locations specified by the cabinet. If necessary to ensure that significant flood damage will not occur, the cabinet may require additional cross sections or specific site elevations which extend beyond those needed for making routine regulatory floodway boundary calculations.

(3) In all other zones, elevated one foot above the base flood elevation. Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor- and verified by the community building inspection department to be properly elevated. The certification and verification shall be provided to the Floodplain Administrator.

(B) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial or non-residential structure (including manufactured homes used for non-residential purposes) shall be elevated to conform with Article V, § 7.5-32(A) or together with attendant utility and sanitary facilities:

(1) Be flood-proofed below an elevation one foot above the level of the base flood elevation so that the structure is watertight with walls substantially impermeable to the passage of water;

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(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(3) Have the lowest floor, including basement, mechanical equipment, and ductwork, elevated no lower than one foot above the level of the base flood elevation;

(4) A registered professional engineer or architect shall certify that the standards of this division are satisfied. The certification shall be provided to the official as set forth in Article IV, § 7.5-22(A)(3); and

(5) Manufactured homes shall meet the standards in Article V, § 7.5-32(D).

(a) All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage and which are subject to flooding, shall be constructed of flood resistant materials below an elevation one foot above the base flood elevation, and, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater.

(b) Opening sizes (FEMA Technical Bulletin 1-93) for meeting this requirement must meet or exceed the following minimum criteria:

1. Be certified by a registered professional engineer or architect; or

2. Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(C) *Elevated structures.* New construction or substantial improvements of elevated structures on columns, posts or pilings (e.g.) that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Opening sizes for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade); and

(c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and

(3) The interior portion of the enclosed areas shall not be partitioned or finished into separate rooms.

(D) Standards for manufactured homes and recreational vehicles.

(1) (a) All new or substantially improved manufactured homes placed on sites located within A, A1-30, AO, AH and AE on the community's Flood Insurance Rate Map (FIRM) must meet all the requirements for new construction, including elevation and anchoring. Locations include:

1. On individual lots or parcels;
2. In expansions to existing manufactured home parks or subdivisions;
3. In new manufactured home parks or subdivisions;
4. In substantially improved manufactured home parks or subdivisions;
5. Outside of a manufactured home park or subdivision; or
6. In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood.

(b) All manufactured homes must be:

1. Elevated on a permanent foundation;
2. Have its lowest floor elevated no lower than one foot above the level of the base flood elevation; and
3. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

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(2) Except manufactured homes that have incurred substantial damage as a result of a flood, all manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that the manufactured home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement, so that either the:

(a) The lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation; or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the highest adjacent grade.

(3) (a) All recreational vehicles placed on sites located within A, A1-30, AO, AH and AE on the community's Flood Insurance Rate Map (FIRM) must either:

1. Be on the site for fewer than 180 consecutive days;

2. Be fully licensed and ready for highway use; or

3. Meet the permit requirements for new construction of this chapter, including anchoring and elevation requirements for "manufactured homes".

(b) A recreational vehicle is ready for highway use if it is licensed and insured in accordance with the state's motor vehicle regulations, is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(E) *Floodways*. Located within areas of special flood hazard established in Article III, § 7.5-7, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation levels during occurrence of base flood discharge; and

(2) If Article V, § 7.5-32(E) is satisfied, all new construction and substantial improvements and other proposed new development shall comply with all applicable flood hazard reduction provisions of Article V.

(F) *Standards for utilities.*

(1) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:

- (a) Infiltration of flood waters into the systems; and
- (b) Discharge from the systems into flood waters.

(2) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-33 STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATION (UNNUMBERED A ZONES) AND/OR FLOODWAYS.

Located within the special flood hazard areas established in Article III, § 7.5-7, where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply.

(A) No encroachments, including fill material or structures shall be located within special flood hazard areas, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(B) New construction or substantial improvements of structures shall be elevated or flood proofed to elevations established in accordance with Article III, § 7.5-7.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-34 STANDARDS FOR SHALLOW FLOODING ZONES.

(A) Located within the special flood hazard areas established in Article III, § 7.5-7, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the water path of flooding is unpredictable and indeterminate; therefore, the following provisions apply.

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(B) All new construction and substantial improvements of residential structures shall:

(1) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade; and

(2) All new construction and substantial improvements of non-residential structures shall:

(a) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade; and

(b) Together with attendant utility and sanitary facilities be completely flood-proofed either to the base flood elevation or above or, in Zone AO, to or above the specified flood depth plus a minimum of one foot so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Article V, § 7.5-32(B).

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-35 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(D) In areas where base flood elevation and floodway data is not available (Zone A or unmapped streams), base flood elevation and floodway data for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall be provided.

(E) All subdivision plans will include the elevation of proposed structure(s) and lowest adjacent grade. If the site is filled above the base flood elevation, the lowest floor and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-36 STANDARDS FOR -ACCESSORY STRUCTURES IN ALL ZONES BEGINNING WITH THE LETTER “A”.

For all accessory structures in special flood hazard areas designated “A”, the following provisions shall apply:

(A) Structure must be non-habitable;

(B) Must be anchored to resist floatation forces;

(C) Will require flood openings/vents no more than one foot above grade, total openings are to be one square inch per one square foot of floor area, at least two openings required on opposite walls;

(D) Built of flood resistant materials below a level one foot above the base flood elevation;

(E) Must elevate utilities above the base flood elevation;

(F) Can only be used for storage or parking; and

(G) Cannot be modified for a different use after permitting.
(Ord. 07-05-1005, passed 5-7-2007)

§ 7.5-37 CRITICAL FACILITIES.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA (100-year floodplain). Construction of new critical facilities shall not be permissible within the floodway; however, they may be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated one foot or more above the level of the base flood elevation at the site. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(Ord. 07-05-1005, passed 5-7-2007)

ARTICLE VI. APPEALS AND VARIANCE PROCEDURES**§ 7.5-41 APPEALS AND VARIANCE PROCEDURES.***(A) Nature of variances.*

(1) The variance criteria set forth in this section of this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

(2) It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level is so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(B) Designation of Variance and Appeal Board. The City Council shall establish an Appeal Board consisting of the Board of Adjustments.

(C) Duties of Variance and Appeal Board.

(1) The Appeal Board shall hear and decide requests for variances from the requirements of this chapter and appeals of decisions or determinations made by the Floodplain Administrator in the enforcement or administration of this chapter.

(2) Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal the decision to the local District Court, as provided in Kentucky Revised Statutes.

(D) Appeals/variance procedures. In passing upon the applications, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and the:

- (1) Danger that materials may be swept onto other lands to the injury of others;
- (2) Danger to life and property due to flooding or erosion damage;

- (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the existing individual owner and future owners of the property;
- (4) Importance to the community of the services provided by the proposed facility;
- (5) Necessity that the facility be located on a waterfront, in the case of functionally dependent facility;
- (6) Availability of alternative locations which are not subject to flooding or erosion damage;
- (7) Compatibility of the proposed use with existing and anticipated development;
- (8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) Safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) Expected height, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets and bridges.

(E) *Conditions for variances.* Upon consideration of the factors listed above and the purposes of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(1) Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

(2) Variances shall only be issued upon a determination that the variance is the “minimum necessary” to afford relief considering the flood hazard. **MINIMUM NECESSARY** means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.

(3) Variances shall only be issued upon a determination that the variance is the “minimum necessary” to afford relief considering the flood hazard. In the instance of an historical structure, a determination shall be made that the variance is the minimum necessary to afford relief and not destroy the historic character and design of the structure.

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(4) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant (as defined in this chapter); and

(c) A determination that the granting of a variance will not result in increased flood height, additional threats to public safety, cause extraordinary public expense, create nuisance (as defined in the definition section under “public safety and nuisance”), cause fraud or victimization of the public (as defined in the definition section) or conflict with existing local laws or ordinances.

(5) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(6) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) and the Federal Insurance Administration (MA) upon request

(7) Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions hereof are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

(F) *Variance notification.* Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;

(2) The construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land; and

(3) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community’s biennial report submission to the Federal Emergency Management Agency.

(G) *Historic structures.* Variances may be issued for the repair or rehabilitation of “historic structures” (see definition) upon determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(H) *No impact certification within the floodway.* Variances shall not be issued within any mapped or designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 07-05-1005, passed 5-7-2007)

ARTICLE VII. SEVERABILITY

§ 7.5-51 SEVERABILITY.

(A) This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, the decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

(B) If any section, clause, sentence or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then the holding shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid. (Ord. 07-05-1005, passed 5-7-2007)

CHAPTER 8: GARBAGE AND TRASH

Section

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CHAPTER 8: GARBAGE AND TRASH

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Editor's note:

Inclusion of §§ 8-1, 8-3 through 8-18, 8-20 and 8-21 of an ordinance adopted 4-5-1979, as Chapter 8, Art. II, §§ 8-19 through 8-37, was at the discretion of the editor, the ordinance being nonamendatory of the code. To accomplish this inclusion, the editor has designated the existing provisions of Chapter 8, §§ 8-1 through 8-8, as Article I, In General. In connection with the establishment of franchises, the user's attention is drawn to § 8-22 of the chapter, which reads as follows: In the event Hardin County adopts an ordinance pertaining to the same subject matter as this chapter, then and in that event any standard of Hardin County's ordinance which is more stringent than the corresponding standard in this chapter shall become the standard for purposes of this chapter.

ARTICLE I. IN GENERAL**§ 8-1 DEFINITIONS.**

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

ASHES. Residue from fires used for cooking and for heating buildings.

COMMERCIAL HANDBILL. Any handbill which:

- (1) Advertises for sale, or promotional gifts or prizes, any merchandise, product, commodity or thing;

(2) Directs attention to any business or other activity for the purpose of either directly or indirectly promoting the interest thereof by sales or by other means;

(3) Directs attention to or advertises any meeting, exhibition, theatrical or other performance or vent of any kind for which an admission fee is charged;

(4) Directs attention to or advertises any meeting, exhibition, theatrical or other performance or event of any kind for which an admission fee is charged; or

(5) While containing reading or pictorial matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

CONSTRUCTION SITES. Any private or public property upon which repairs to existing buildings, construction of new buildings or demolition of existing structures is taking place.

ELEMENTS. Any element whether created by nature or created by humans, which with reasonable foreseeability could carry litter from one place to another. **ELEMENTS** shall include, but not be limited to, air current, rain, water current and animals.

GARBAGE. Wastes resulting from the handling, preparation, cooking and consumption of foods, wastes from the handling, storage and sale of produce.

HANDBILL. Any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet or any other printed matter or literature which is not delivered by United States mail, except that **HANDBILL** shall not include a newspaper that is placed in a paper box provided by a newspaper company.

JUNKED MOTOR VEHICLE. Any motor vehicle which is partially dismantled or wrecked and which cannot safely or legally be operated. Junked, wrecked or nonoperative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery or other means.

LITTER. Any uncontainerized human-made or human-used waste, which, if deposited within the city other than in a litter receptacle, tends to create a danger to public health, safety and welfare or to impair the environment of the people of the city. **LITTER** may include, but is not limited to, any combustible trash, including, but not limited to, paper, cartons, boxes, barrels, wood, excelsior, wood furniture, bedding; non-combustible trash, including, but not limited to, metals, tin cans, metal furniture, dirt, catch-basin dirt, small quantities of rock and pieces of concrete, other mineral waste; street rubbish, including, but not limited to, street sweepings; contents of litter receptacles.

LITTER RECEPTACLE. Any container which is designed to receive litter and to prevent the escape of litter deposited therein, which is of the size or sufficient capacity to hold all litter generated between collection periods and which is in compliance with the regulations issued pursuant to this article.

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MOTOR VEHICLE. Any self-propelled land vehicle which can be used for towing or transporting people or materials, including, but not limited to, automobiles, trucks, buses, motor homes, motorized campers, motorcycles, motor scooters, tractors, snowmobiles, dune buggies and other off-the-road vehicles.

MOTOR VEHICLE ACCESSORIES. Any part or parts of any motor vehicle.

PARK. A public or private park, reservation, playground, beach, recreation center or any public or private area devoted to active or passive recreation, or any other area under the supervision of the department of parks and recreation.

PARKING LOTS. Any private or public property with provisions for parking vehicles, to which the public is invited or which the public is permitted to use or which is visible from any public place or private premises.

PERSON. Includes any individual, firm, partnership or corporation.

PRIVATE PREMISES. Includes any dwelling house, building or other structure designed to be used, either wholly or in part, for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, mailbox or other structure belonging or pertinent to the dwelling house, building or other structure, and any real property not owned by the federal government, state, county, city school board or other public subdivision.

PUBLIC PLACE. Includes any and all streets, boulevards, avenues, lanes, alleys, easements, medians or other public ways, and parks, squares, plazas, grounds and buildings frequented by the general public, whether publicly or privately owned.

REMOVAL. The physical relocation of any of the items herein designated to constitute garbage, litter, ashes, including junked motor vehicles and motor vehicle accessories, to an authorized location.

§ 8-2 LITTERING PROHIBITED.

No person shall deposit any litter within the city except in public receptacles, in authorized private receptacles for collection or in any duly licensed disposal facility.

§ 8-3 PREVENTION OF SCATTERING.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such manner as to prevent litter from being carried or deposited by the elements upon any public place or private premises.

§ 8-4 UPSETTING, TAMPERING WITH RECEPTACLES, OR PLACING GARBAGE IN RECEPTACLES OTHER THAN OWN.

(A) No person shall upset or tamper with a public or private receptacle designed or used for the deposit of litter or cause or permit its contents to be deposited or strewn in or upon any public place or private premises.

(B) No person shall place any garbage, or litter within the city in a receptacle other than his or her own receptacle or one which has been provided for him or her by his or her corporation or landlord. It shall be prima facie proof that the individual has placed garbage or litter in an unauthorized receptacle if the trash found in the receptacle bears the name of the individual who is not authorized to place garbage or litter in the receptacle.

§ 8-5 DUMPING.

It shall be unlawful to dispose of garbage, refuse or ashes by dumping same on any premises in the city, with or without the consent of the owner of the premises. It shall be unlawful for the owner of any real property in the city to dump or permit the dumping of garbage, refuse or ashes on his or her property.

(Ord. passed 3-4-1969)

§ 8-6 CONTAINERS.

(A) All garbage, refuse and ashes awaiting disposal shall be placed in metal or plastic containers equipped with a tight cover. Any container that is not a commercial dumpster used by a sanitation company shall be equipped with handles so that it may be carried by one person and shall have a capacity of not less than ten gallons or more than 30 gallons. While storing garbage, refuse or ashes, the container shall be kept completely closed at all times.

(B) No person shall permit his or her containers to set upon any public right-of-way unless placed there for pickup and then only on the day of pickup and prior to the pickup. All containers shall be placed near a public road, street or at a place convenient to be picked up for disposal purposes.

(Ord. passed 3-16-1967; Ord. passed 3-4-1969)

Cross-reference:

Nuisances, see Chapter 13

Editor's note:

See the editor's note under the chapter analysis.

Statutory reference:

Solid Waste Management, see KRS Ch. 109

§ 8-7 PROHIBITED STORAGE.

(A) It shall be unlawful for any person owning or having custody of any junked motor vehicle or motor vehicle accessories to store or permit any such vehicle or accessories to remain on any private property within the city for a period of more than 30 days after the receipt of a notice requiring the removal, and it shall be further unlawful for any person owning any private property in the city to store or permit to remain any vehicle or accessories on his or her property for more than a like period. The storage is declared to be a public nuisance and may be abated or removed and penalties imposed as provided in this chapter.

(B) It shall be unlawful for any person, after notification to remove any junked motor vehicle or motor vehicle accessories from any private property has been given, to move the same to any other private property upon which storage is not permitted or onto any public highway or other public property for purposes of storage.

(C) This section shall not apply to any motor vehicle or motor vehicle accessories stored underneath a covering including, but not limited to, tarpaulins and/or car coverings in which the motor vehicle or motor vehicle accessories cannot be seen by the public.

§ 8-8 PERMITTED STORAGE.

This section shall not apply to any motor vehicle or motor vehicle accessories stored within an enclosed building or on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of the business enterprise, in a storage place or depository maintained in a lawful place and manner, or seasonal use vehicles such as snowmobiles, motorcycles, motor scooters and non-motorized campers. The business enterprises shall include auto junk yards, auto repair and auto body shops but shall not include automobile service stations or tire, battery and accessory sales stores.

§ 8-9 INVESTIGATION OF PREMISES.

The Code Enforcement Officer on routine inspection or upon receipt of a complaint may investigate a suspected junked motor vehicle or motor vehicle accessories and record the make, model, style and identification numbers and its situation.

§ 8-10 NOTICE OF REMOVAL.

(A) Whenever the Code Enforcement Officer finds or is notified that any junked motor vehicle or motor vehicle accessories have been stored or permitted to remain on any private property within the city, the Code Enforcement Officer shall send, by certified mail, a notice to the owner of record of the

motor vehicle or accessories, if the owner can be ascertained by the exercise of reasonable diligence, and also the owner of the private property as shown on the tax assessment records of the city, on which the same is located, to remove the junked motor vehicle or motor vehicle accessories within 30 days.

(B) The notice shall also contain the following additional information:

(1) Nature of complaint;

(2) Description and location of the motor vehicle and/or motor vehicle accessories;

(3) Statement that the motor vehicle or motor vehicle accessories will be removed from the premises no later than 30 days from date of notification;

(4) Statement that removal from the location specified in the notification upon which the storage is not permitted is prohibited and shall subject the person to additional penalties;

(5) Statement that if removal is made within the time limits specified, notification shall be given in writing to the Code Enforcement Officer; and

(6) Statement of the penalties provided for non-compliance with the notice.

§ 8-11 COMMERCIAL HANDBILLS OR HANDBILLS AND SIGNS ON PUBLIC PLACES.

(A) *Commercial handbills or handbills, signs; public places and objects.*

(1) No person shall paint, mark or write on, or post or other wise affix any handbill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamppost, hydrant, tree, shrub, tree stake or guard, electric light or power or telephone pole or wire appurtenances, or upon any fixture of the fire alarm or police system or upon any lighting system, public bridge, drinking fountain or other lifesaving equipment, street sign or traffic sign.

(2) Nothing in this section contained shall apply to the installation of terrazzo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture in the material of which the same are constructed, and for which the building inspector has granted a written permit.

(3) Any commercial handbill, handbill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of the section, may be removed by the Code Enforcement Officer. The person responsible for any such illegal posting shall be liable for the cost incurred in its removal.

(4) Nothing in this section shall apply to the installation of a metal plaque or plate, or individual letters or figures, in a sidewalk commemorating a historical, cultural or artistic event, location or personality for which the Building Inspector has granted a written permit.

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(B) *Throwing or distributing commercial handbills or handbills in public places.* No person shall throw, scatter or cast any kind of commercial handbill or handbill in or upon any public place within the city; and no person shall hand out or distribute or sell any commercial handbill in any public place; provided, however, it shall not be unlawful for any person to hand out or distribute handbills or any other thing which is otherwise permitted and authorized by law in any public place to any person willing to accept the commercial handbill or handbill or other thing, without payment therefore.

(C) *Placing commercial handbills or handbills in or upon vehicles, except with the consent of the owner of the property.* No person shall deposit, fasten, throw, scatter or cast any handbill in or upon any vehicle. The provisions of the section shall not be deemed to prohibit the handing of any noncommercial handbill to the owner or other occupant of any vehicle who is willing to accept it without payment therefore.

(D) *Premises posted against commercial handbill or handbill distribution.* No person shall place any handbill upon any premises if required by anyone thereon not to do so or if there is placed on the premises in a conspicuous position near any entrance thereof a sign bearing notice indicating in any manner that the occupants of the premises do not desire to have any such handbills left upon the premises.

(E) *Manner of commercial handbill or handbill distribution on inhabited private premises.* No person shall place any commercial handbill or handbill in or upon any private premises which are inhabited, except by handing or transmitting any such commercial handbill or handbill directly to any other person then present in or upon the private premises. However, in case of inhabited private premises which are not posted against commercial handbill or handbill distribution as provided in this article, any person, unless requested by someone upon such premises not to do so, may place or deposit any commercial handbill or handbill in or upon the inhabited private premises, if the handbill is placed or deposited so as to prevent it from being carried by the elements about the premises or elsewhere, except that mailboxes may not be so used when prohibited by federal postal laws or regulations.

(F) *Clean-up.* Any person distributing commercial handbills or handbills shall maintain the area which they are utilizing free of any litter caused by or related to the commercial handbill or handbill distribution.

§ 8-12 MANDATORY GARBAGE PICKUP.

All persons, partnerships, corporations or any legal entity who accumulate garbage or litter within the city shall be required to have the garbage or litter disposed of by a commercial sanitation company which regularly picks up garbage or litter within the city. The garbage or litter shall be picked up at least once per week. Mandatory garbage or litter pickup is required in order to provide for the health and welfare of the citizens of the city and to ensure the best disposal of garbage or litter.

§ 8-13 CONVEY OF LOOSE MATERIALS ON PUBLIC WAYS.

(A) *Vehicles dropping contents on street.* It shall be unlawful for any person to transport in any vehicle or by any other means or manner any loose material or articles likely to sift, fall, spill or be blown about on any public street, alley, easement or median, or any other public way in the city; provided that this section shall not be construed to apply to the provisions of this chapter preparatory to having such material collected and disposed of, in the manner provided herein.

(B) *Regulations for use of garbage or litter disposal vehicles.*

(1) It shall be unlawful for any person to overload such vehicles. Each operator of such a vehicle shall cover the contents or shall convey the contents in tightly secured and covered boxes or other containers. The bed and sides of any vehicle used for the transport of garbage or litter shall be of metal construction or shall be lined with metal.

(2) In case any of the contents of the vehicles shall become blown or scattered upon any public street, alley, easement, median or other public way or place in the city, the person in charge thereof shall immediately gather up or cause to be gathered up any such blown or scattered material.

(3) No persons shall drive or move any loaded or partly loaded truck or other vehicle within the city unless the vehicle is so constructed or loaded as to prevent any part of its load, contents or litter from being blown or deposited upon any public place or private premises. Nor shall any person drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any public place or private premises, mud, dirt, sticky substances, litter or foreign matter of any kind.

§ 8-14 MAINTENANCE OF PROPERTY.

(A) *Litter collection and storage areas; clean conditions.* Every owner or occupant or lessee of a house or building used for residence, business or commercial purpose shall maintain litter collection and storage areas in a clean condition and insure that all litter is properly containerized. Failure to so maintain clean litter collection and storage areas shall constitute a violation of this section.

(B) *Duty to collect litter before it is carried from the premises.* All litter that is subject to movement by the elements shall be secured by the owner of the premises where it is found before the same is allowed to be removed by the elements to adjoining premises. Cleaning up the litter in a reasonable time is a defense to a violation.

(C) *Neglected premises visible to the public.* It shall be the duty of any person owning or controlling a house or other building or premises, including vacant lots visible from any public place or private premises, to maintain the premises in a reasonably clean and orderly manner and to a standard

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conforming to other orderly premises in that vicinity. It shall be a violation of this section to abandon, neglect or disregard the condition or appearance of any premises so as to permit it to accumulate litter thereon. Neglected premises shall not include fields or farm land that are not adjacent to residences and are natural to the field or area.

(D) *Areas around business premises; clean conditions.* The owner or person in control of any public place, including but not limited to restaurants, shopping centers, fast-food outlets, stores, hotels, motels, industrial establishments, office buildings, apartment buildings, housing projects, gas stations, hospitals and clinics shall keep the premises clean of litter and shall take measures to prevent litter from being carried by the elements to adjoining premises. It shall be a violation of this section to abandon, neglect or disregard the condition or appearance of the premises so as to permit it to accumulate litter thereon.

(E) *Construction sites; clean conditions.* The property owners and the prime contractors in charge of any construction site shall maintain the construction site in such manner that litter will be prevented from being carried by the elements to adjoining premises.

(F) *Maintaining sidewalks, easements and alleys.* Persons owning, occupying or in control of any premises shall keep the sidewalks, easements and alleys adjacent thereto free of litter.

(G) *Neglected containers; contractor.*

(1) It shall be unlawful for any person who has contracted to collect and remove litter, or garbage described above to allow that litter, or garbage to remain uncollected beyond the date provided by the contract for its collection and removal, or in any case to allow that container to remain unemptied for longer than fourteen days or in any case until after that litter, or garbage creates any condition which is offensive to persons upon any private premises or public place.

(2) A violation of this section may be abated in accordance with the provisions of § 8-21 of this article; provided, however, that, in lieu of the lien therein provided the container in question may be impounded and a lien be executed against any property held in connection with the business of collecting litter or garbage by the person who has agreed by contract to collect and remove that litter or garbage in question.

§ 8-15 ILLEGAL DEPOSITS OF GARBAGE. (RESERVED)**§ 8-16 ILLEGAL DEPOSITS OF LITTER AND THE LIKE.**

It shall be unlawful to cause or permit any ashes or litter to accumulate except in a covered container.

§ 8-17 DISPOSAL. (RESERVED)

§ 8-18 DUMPING.

(A) It shall be unlawful to dispose of garbage or litter by dumping same on any premises in the city, with or without the consent of the owner of the premises.

(B) It shall be unlawful for the owner of any real property in the city to dump or permit the dumping of garbage or litter on his or her property.

§ 8-19 LITTER RECEPTACLES.

(A) *Containers generally.*

(1) All garbage or litter awaiting disposal shall be placed in metal or plastic containers equipped with a tight cover.

(2) Any container that is not a commercial dumpster used by a sanitation company shall be equipped with handles so that it may be carried by one man and shall have capacity of not less than ten gallons, nor more than 36 gallons.

(3) While storing garbage or litter, the container shall be kept completely closed at all time.

(B) *Pick-up.* No persons shall permit their containers to set upon any public right-of-way unless placed there for pick-up and then only on the day of pick-up and prior to the pick-up. All containers shall be placed near a public road, street or at a place convenient to be picked up for disposal purposes.

(C) *Public places.* Every owner, occupant, tenant or lessee using or occupying any public place shall provide adequate litter receptacles of sizes, numbers and types as required to contain all litter generated by those persons frequenting that public place and as specified by the Code Enforcement Officer.

(D) *Private premises.* The owner or person in control of private premises shall maintain litter receptacles for collection of litter as necessary.

(E) *Specifications.* Litter receptacles shall comply in size, material and all other characteristics with the specification of regulations made pursuant to this article.

(F) *Periodical emptying of receptacles.* All litter shall be removed periodically from litter receptacles as necessary to maintain their usefulness and in accordance with regulations made pursuant to this article.

(G) *Litter receptacles obstructing traffic.* Litter receptacles shall not be placed in any location where they may obstruct vehicular traffic or unreasonably obstruct pedestrian traffic.

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(H) *Containers exempt from the provisions of this section.* No section of this article and no regulations made pursuant to this article in furtherance of the purposes and provisions of this article shall be construed to regulate the containers used in the collection of litter, or garbage which containers are regulated by city ordinances.

§ 8-20 ENFORCEMENT.

Regulations promulgated in this article shall be enforced by the Code Enforcement Officer.

§ 8-21 ABATEMENT BY THE CITY.

The Code Enforcement Officer, where premises are in violation of any section of this article, is hereby empowered to enter upon the premises and may thereupon correct the unclean conditions and place a lien on the land in the same amount and in accordance with the procedure provided for abatement of unwholesome environmental conditions, but the person shall also be liable in an action to recover the hereinafter named penalty.

§ 8-22 RECOVERY BY CITY OF EXPENSES OF LITTER REMOVAL.

The city is damaged by the depositing of litter within the city and the cost of litter removal has become a significant expense of the city. It is intended that persons responsible for the expenses shall bear the costs of same. In order to recover the cost of litter removal, the city may bring a civil action against any person believed to be responsible for depositing litter. The city may, in order to avoid the necessity of the institution of the action, make an offer of settlement to any person believed to be responsible for depositing litter. If the settlement offer is accepted, no action will be instituted by the city.

ARTICLE II. PRINCIPLES FOR ESTABLISHING FRANCHISE**§ 8-51 ESTABLISHED.**

The city does hereby establish an exclusive franchise for the collection of garbage, trash, refuse and waste within the territorial limits of the city for residential and commercial residents as they now exist and as they may exist in the future.
(Ord. passed 4-5-1979; Ord. passed 9-8-2003)

§ 8-52 CONSIDERATION PAID BY BIDDER.

The city shall be paid a consideration by the successful bidder for a franchise, which shall be expressed as a percentage of the gross revenue received by the successful bidder with a guaranteed minimum of 3%. The successful bidder(s) shall pay the percentage of gross revenue known as franchise fees at least on a quarterly basis. The franchise fee shall be due no later than fifteen days from the last day of the quarterly period based on a calendar year basis. (January 15, April 15, July 15 and October 15)
(Ord. passed 4-5-1979; Ord. passed 9-8-2003; Ord. 08-11-1051, passed 11-12-2008)

§ 8-53 VARIOUS BID REQUIREMENTS.

(A) *Collection.* The successful bidder shall collect and dispose of all residential and commercial garbage, trash, refuse and waste, with the exception of no industrial waste and roll-off dumpsters leased by customers for disposal of construction debris on a temporary, limited or one-time basis, and shall collect the approved fees therefor, subject to the approval of the City Council. The successful bidder shall not, at any time, raise the garbage collection rates without the approval of the City Council. No add on charges may be assessed without the expressed consent of the City Council.

(B) *Company information.* Each bidder shall give his or her full name, firm or company and his, her or its address.

(C) *Service of customers.* Each bidder must serve any customer located within the city and be prepared to service the entire area of the city.

(D) *Charges.* Each bidder must state the charge to each customer receiving services and the charges shall not be discriminatory nor unreasonable however, bidder(s) may differentiate among customer charges between commercial customers and residential customers and other relevant factors such as the size of commercial containers and number of pick ups provided but any and all charges must always be approved by the City Council as here and after set out. The charges for each type of collection and disposal service shall be the same for each type of user receiving the service, but in no event shall the collection charges be charged more than three months in advance. The responsibility for the collection of the charges shall be with the franchise holder who assumes the sole responsibility therefore without right of indemnification from the city who is free of obligation for these charges.

(E) *Description of vehicles.* Each bidder must state the number of vehicles, type of vehicle and age of vehicle to be used in servicing its customers.

(F) *Proposed rates.*

(1) Each bidder must state the proposed rates to be charged for:

(a) Collection and transportation services rendered;

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- (b) Disposal services rendered; and
- (c) Total services rendered per customer.

(2) These amounts may be on a per pick-up basis or per time span basis (example: per day, per week, per month and the like) or per volume or per weight basis or container size as it relates to commercial customers.

(Ord. passed 4-5-1979; Ord. passed 2-18-1998; Ord. passed 9-8-2003; Ord 08-11-1051, passed 11-12-2008)

§ 8-54 NUMBER OF WEEKLY COLLECTIONS.

The successful bidder shall be responsible for the pickup of residential garbage, trash, refuse and waste at the street or lot fronting each residence. The collection for residential customers must be at least one time per calendar week. The number of collections for commercial customers shall be agreed upon between the commercial customer and the successful bidder, but shall not be less than one pickup per week and the successful bidder shall be capable of pickups as often as daily.

(Ord. passed 4-5-1979; Ord. passed 2-18-1998; Ord. passed 9-8-2003; Ord 08-11-1051, passed 11-12-2008)

§ 8-55 HOURS OF COLLECTION; LITTERING.

The successful bidder shall make collections between the hours of 6:00 a.m. and 10:00 p.m. and such collection shall be done as quietly as possible. The successful bidder shall not litter any premises, whether public or private.

(Ord. passed 4-5-1979; Ord 08-11-1051, passed 11-12-2008)

Editor's note:

Inclusion of 1, 3-18, 20, 21 of an ordinance adopted Apr. 5, 1979, as Ch. 8, art. 11, 8-19-8-37, was at the discretion of the editor, the ordinance being nonamendatory of the Code. To accomplish this inclusion, the editor has designated the existing provisions of Ch. 8, 1-8-8, as Article I. In General. In connection with the establishment of franchises, the user's attention is drawn to 22 of the ordinance, which reads as follows: In the event Hardin County adopts an ordinance pertaining to the same subject matter as this ordinance, then and in that event any standard of Hardin County's Ordinance which is more stringent than the corresponding standard in this ordinance shall become the standard for purposes of this ordinance.

§ 8-56 BIDDER TO FURNISH PERSONNEL AND EQUIPMENT.

The successful bidder shall furnish all labor, tools and equipment necessary for the operation of the collection system and be responsible for all maintenance of the equipment. The successful bidder shall provide an adequate number of collection vehicles; and each of the vehicles must be inspected annually

by a representative of the city and must be kept in good repair, appearance and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the name and phone number of the successful bidder, but shall not make reference to the city.

(Ord. passed 4-5-1979)

§ 8-57 MATERIALS SUBJECT TO REFUSAL.

(A) The successful bidder may refuse to accept for regular collection the following, except that the successful bidder shall be required to collect material not in convenient garbage cans and bundles such as household fixtures, appliances and furniture at specified times designated as cleanup periods by the City Council. In addition, the successful bidder will be required to furnish, at a location to be determined by the city, one 40-yard roll off box without charge to the city for use by the general public during April clean up.

- (1) Radioactive materials;
- (2) Poisons liable to contaminate the disposal area;
- (3) Liquid wastes;
- (4) Construction projects;
- (5) Materials not in convenient garbage cans and bundles; and
- (6) Household fixtures, appliances, furniture, rock and stone.

(B) The bidder shall operate in compliance with all the applicable laws, ordinances and regulations of the state and the city.

(Ord. passed 4-5-1979; Ord. 08-11-1051, passed 11-12-2008)

§ 8-58 BIDDER TO MAINTAIN OFFICE IN CITY.

The successful bidder shall establish, publish on the customers' statements and maintain a local and/or toll free telephone number providing direct access to an office in Radcliff or the office closest to Radcliff through which he or she may be contacted for service and at which service may be applied for, service fees paid and complaints made. The successful bidder's office shall be equipped with sufficient telephones and shall be open with a responsible person in sufficient charge to reasonably conduct the business of the successful bidder Monday through Friday of each week. Billing may be made for a period of no greater than three calendar months per billing cycle in advance. The successful bidder shall provide notices to residential customers notifying them of large item pickup dates and/or "clean-up dates".

(Ord. passed 4-5-1979; Ord. passed 2-18-1998; Ord. passed 9-8-2003; Ord 08-11-1051, passed 11-12-2008)

§ 8-59 PERFORMANCE BOND.

The successful bidder shall furnish a performance bond for the faithful performance of the agreement, executed by a duly licensed surety company in the penal sum of \$100,000, which shall be continued as long as the agreement is in effect.
(Ord. passed 4-5-1979)

§ 8-60 INSURANCE REQUIRED.

The successful bidder hereby binds himself or herself to indemnify and hold harmless the city from all claims, demands and/or actions, legal and/or equitable, arising from the bidder's operation hereinabove described. The bidder further agrees to obtain and keep continuously in effect public liability and property damage insurance in an amount of not less than \$1,000,000 for any one person and \$3,000,000 for any accident, and not less than \$100,000 property damage insurance, which policy or policies shall be for the protection of the bidder or the city as its interests may appear. Proof of the insurance shall be furnished by the bidder to the city by certificates of insurance, with a minimum cancellation time of ten days, the time to commence after delivery of the notice to the city at the address hereinafter set forth: City of Radcliff, 411 W. Lincoln Trail Blvd., Radcliff, KY 40160.
(Ord. passed 4-5-1979; Ord. passed 2-18-1998)

§ 8-61 COMPLIANCE WITH STATE WORKERS' COMPENSATION PROVISIONS.

The successful bidder, if and when he or she comes within the provisions of the Workers' Compensation Act of the state, shall carry in a company authorized to transact business in the state, a policy of insurance fulfilling all requirements of the Workers' Compensation Act of the state, including, all legal requirements for occupation disease.
(Ord. passed 4-5-1979)

Statutory reference:

Worker's compensation, see KRS Ch. 342

§ 8-62 FAILURE OF BIDDER TO PERFORM.

(A) In the event the successful bidder shall fail to collect materials therein provided to be collected for a period in excess of ten days and provided the failure is not due to war, insurrection, riot, act of God or any other cause or causes beyond the bidder's control the city may, at its option, after written notice to the bidder as provided therein, take over and operate any or all the bidder's equipment used in the performance of the agreement, and provide for the operation until the matter is resolved and the bidder is again able to carry out its operations under the agreement. Any and all operating expense incurred by the city in so doing may be deducted by it from any compensation which might be due to the bidder therein from any source whatever.

(B) If the bidder is unable for any cause to resume performance at the end of 30 days, all liability of the city under the agreement to the bidder shall cease, and the city shall be free to negotiate with other bidders for the operation. The operation with another bidder shall not release the bidder therein of its liability to the city for the breach of the agreement. In the event that the agreement is negotiated with another bidder, third-party liability of the bidder therein shall terminate insofar as same arises from tortious conduct in operation and control.

(C) The city may, at its discretion, at any time during the term of this franchise, review the operation of any solid waste collection and disposal services and may, at its discretion, with just cause, terminate any franchise herein granted, upon 30-days' notice. Additionally, the contracts may be terminated upon five-days' notice for serious violations which the city, in its sole discretion, deems justifiable.

(Ord. passed 4-5-1979; Ord. passed 2-18-1998)

§ 8-63 ASSIGNMENT SUBJECT TO CONSENT OF CITY.

No assignment of the agreement or any right occurring under the agreement shall be made in whole or in part by the successful bidder without the express written consent of the city, nor shall any subcontract be let under the agreement without the express written consent of the city; and, in the event of any assignment, the assignee shall assume the liability of the bidder, but the bidder shall not be relieved of any liabilities due to any assignment or subcontract.

(Ord. passed 4-5-1979)

§ 8-64 RECORDS TO BE KEPT BY BIDDER.

The successful bidder shall keep daily records of garbage and trash collected and the city shall have the right to inspect the same for the purpose of analysis of the financial conditions of the operation. The bidder shall submit a proposed record and accounting system for approval. All information so obtained shall be confidential and shall not be released by the city unless expressly authorized in writing by the bidder.

(Ord. passed 4-5-1979)

§ 8-65 TERMINATION OF AGREEMENT.

The agreement shall terminate in the case of bankruptcy, voluntary or involuntary, or insolvency of the bidder. The time of termination in the event of bankruptcy shall be the day and time of filing of the petition in bankruptcy.

(Ord. passed 4-5-1979)

§ 8-66 MODIFICATION.

The agreement shall constitute the entire agreement and understanding between the parties; and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.
(Ord. passed 4-5-1979)

§ 8-67 RIGHT OF ENFORCEMENT BY CITY.

The failure of the city at any time to require performance by the bidder or any provisions of the agreement shall, in no way, affect the right of the city thereafter to enforce same. Nor shall waiver by the city of any breach of any provisions be taken or held to be a waiver of any succeeding breach of provision or as a waiver of any provision itself.
(Ord. passed 4-5-1979)

§ 8-68 DISPOSAL OF WASTE MATERIALS.

All waste materials collected by the bidder shall be disposed of in the Hardin County Recycling and Disposal Facility located at Pearl Hollow. The successful bidder shall be required to pay any charges for disposal as any other landfill customer. In the event this designation of the franchise is for any reason found illegal, invalid or unconstitutional, the city shall have the right to exercise its option to terminate this franchise.
(Ord. passed 4-5-1979; Ord. passed 2-18-1998)

§ 8-69 DEFINITIONS.

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

COMMERCIAL CUSTOMERS and **GARBAGE**. All types of solid waste generated by stores, offices, restaurants, warehouses and other service and non-manufacturing activities, excluding residential and industrial solid waste.

INDUSTRIAL SOLID WASTE. Solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from processes for manufacturing or producing the following: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and

miscellaneous plastic products, except tire-derived fuel; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. Industrial waste and industrial customers are not included in this franchise and those customers may negotiate with any waste disposal company that is capable of removing and disposing of their industrial solid waste and garbage

RESIDENTIAL CUSTOMERS. Customers with solid waste, including garbage and trash generated by single and multiple family residence, hotels, motels, bunk houses, ranger stations, crew quarters and recreational areas such as picnic areas, parks and camp grounds. For the purpose of this franchise, a **RESIDENTIAL CUSTOMER** is hereby defined to be those places used by persons as their place of residence, including private residences, apartment buildings and mobile homes, including mobile homes located within a mobile home park and commercial customers are customers who are not residential customers.

SUCCESSFUL BIDDER. He or she shall negotiate with owners of apartment buildings and mobile home parks as if they were commercial customers if the customers use the ordinary containers of a commercial customer such as storage dumpster; the negotiation shall be on the same rates as were bid and approved for commercial customers in this franchise.
(Ord. passed 9-8-2003; Ord. 08-11-1051, passed 11-12-2008)

§ 8-70 AUTHORITY TO ADVERTISE FOR BIDS.

The Mayor or his or her designee is hereby authorized to advertise for bids as herein before set out.

§ 8-71 RESIDENTIAL/COMMERCIAL BID ACCEPTANCE.

The city expressly reserves the right to distinguish between residential garbage/solid waste, commercial garbage/solid waste and/or industrial solid waste and award a franchise limited in whole or in part to residential garbage/solid waste and commercial garbage/solid waste or may accept separate bids for each and/or reserve the right to accept a bid for a joint collection of each.

§ 8-72 TERM OF THE FRANCHISE.

This franchise shall be for a period not to exceed five years, to commence on a date agreed to by the city and the bidder(s) and the city reserves the right to grant the franchise for such terms or optional period as fixed by the city.

§ 8-73 PENALTY.

Any person who shall violate this article shall be fined not less than \$20, nor more than \$500, and/or 12-months' imprisonment for each offense; a separate offense shall be committed for each day the violation occurs. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993; Ord. passed 10-11-1994)

CHAPTER 9: HEALTH CLUBS, MASSAGE SALONS AND THE LIKE

Section

- 9-1. Definitions
- 9-2. Permits **CHAPTER 9: HEALTH CLUBS, MASSAGE SALONS AND THE LIKE**
- 9-3. Permit application
- 9-4. General equipment standards
- 9-5. Building structure and layout
- 9-6. Sanitation and hygiene
- 9-7. Sleeping and sleeping quarters
- 9-8. Contact with opposite sex
- 9-9. Tolerating violations of law
- 9-10. Inspections
- 9-11. Penalty

§ 9-1 DEFINITIONS.

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

HEALTH CLUB. Any establishment which offers service in the form of massage, baths, exercises or similar services, in combination to club members, or to the public for a charge; including massage and bath parlors and the like. The term **HEALTH CLUB** does not include:

- (1) Hospitals, nursing homes, medical clinics or the offices or quarters of a physician, a surgeon or an osteopath;
- (2) Exercise clubs exclusively for members or clientele of one sex alone where the services, without massage in any form, are performed by persons of the same sex as the members or clientele; or
- (3) Barber shops and beauty parlors.

MASSEUR or MASSEUSE. A person who practices any one or more of the arts of body massage, either by hand or mechanical apparatus, oil rubs, corrective gymnastics, mechano-therapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath.
(Ord. passed 11-21-1972)

§ 9-2 PERMIT REQUIRED.

No person shall operate a health club without a permit issued by the City Clerk.

§ 9-3 PERMIT APPLICATION.

An applicant for a permit to operate a health club shall submit to the City Inspector plans and specifications of the quarters proposed to be occupied. The plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing fixtures, water supply and waste and vent connections.

(Ord. passed 11-21-1972)

Cross-reference:

Licenses and Taxation, see Chapter 10

Nuisances, see Chapter 13

Statutory reference:

Powers generally, see KRS 82.082

§ 9-4 GENERAL EQUIPMENT STANDARDS.

(A) All tables, tubs, shower stalls and floors (except reception and administrative areas) shall be made of nonporous materials which may be readily disinfected.

(B) Closed containers shall be provided for wet towels and waste material.

(Ord. passed 11-21-1972)

§ 9-5 BUILDING STRUCTURE AND LAYOUT.

(A) No health club shall begin operations until the building occupied or to be occupied shall have been approved by the City Inspector.

(B) Each health club shall be equipped with separate readily available toilet and lavatory facilities for patrons and separate readily available toilet and lavatory facilities for personnel; each operating area shall be equipped with a hand lavatory.

(C) Either the club quarters or the floor of the building on which the quarters are located shall be equipped with a service sink for custodial services.

(Ord. passed 11-21-1972)

§ 9-6 SANITATION AND HYGIENE.

(A) All equipment, shower stalls, toilets and lavatories of a health club shall be regularly treated with disinfectants and shall be maintained in a clean and sanitary condition at all times.

(B) No health club shall knowingly serve any patron infected with any fungus or other skin infections; nor shall service be performed on any patron exhibiting skin inflammation or eruptions; provided, however, that, a duly-licensed physician may certify that a person may be safely served, prescribing the condition thereof.

(C) All personnel shall wash their hands in hot running water using a proper soap or disinfectant, before giving any service or treatment to each separate patron.

(D) All towels and tissues, all sheets or other coverings shall be used singularly for each patron and discarded for laundry or disposal immediately after use.

(E) Nondisposable tools of the trade shall be disinfected after use upon one patron.
(Ord. passed 11-21-1972)

§ 9-7 SLEEPING AND SLEEPING QUARTERS.

No part of any quarters of any health club shall be used for, or connected with, any bedroom or sleeping quarters; no person shall sleep in the health club except for limited periods incidental to and directly related to a massage or bath. This section shall not preclude the location of a health club in separate quarters of a building housing, a hotel or other separate businesses or clubs.
(Ord. passed 11-21-1972)

§ 9-8 CONTACT WITH OPPOSITE SEX.

It shall be unlawful for any owner or manager to operate a health club where any physical contact with the recipient of the services is provided by a person of the opposite sex. Any person violating the provisions of this section shall, upon conviction, be punished as provided in § 1-8 of this code. In addition to the penalty, it shall be the duty of the City Clerk to revoke the permit of the owner or manager of the establishment, wherein the provisions of this section have been violated.
(Ord. passed 11-21-1972)

§ 9-9 TOLERATING VIOLATIONS OF LAW.

No owner or manager of a health club shall tolerate in his or her establishment any activity or behavior prohibited by state law, including, but not limited to, those statutes prohibiting prostitution, sodomy, adultery, fornication and any lewd and lascivious cohabitation or obscenity.
(Ord. passed 11-21-1972)

§ 9-10 INSPECTIONS.

All city officers and employees shall be given access to any part of the quarters of a health club for purposes of inspection at all reasonable times.
(Ord. passed 11-21-1972)

§ 9-11 PENALTY.

Any person who shall violate this chapter shall be fined not less than \$20, nor more than \$500, and/or 12-months' imprisonment for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Any person violating this chapter may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this chapter or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 8-9-1993)

CHAPTER 10: LICENSES AND TAXATION

CHAPTER 10: LICENSES AND TAXATION

Section

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Cross-reference:

Health Clubs, Massage Salons and the Like, see Chapter 9

Editor's note:

An ordinance adopted 6-26-1986, not specifically amendatory of the code, has been codified as superseding former Art. II, §§ 10-16 through 10-19, relative to automobile insurance tax, as derived from an ordinance adopted 10-24-1984.

Statutory reference:

Licensing power of city, see KRS Ch. 91A

Revenue and taxation, see KRS 131.010 et seq.

ARTICLE I. AD VALOREM TAXES

§ 10-1 PROPERTY ASSESSMENT MORATORIUM FOR COMMERCIAL AND RESIDENTIAL FACILITIES ON AD VALOREM TAXES.

(A) *Purpose.* As an inducement for the remodeling, permanent improvement, refurbishing of commercial facilities or residences which are ten years old or older and whose commercial facility or residence is a structure the primary purpose of which is the operation of a commercial business or residence.

(B) *Scope.* Only those businesses or residences that are located within the city shall be entitled to apply for any property assessment moratorium established herein.

(C) *Definitions.* All definitions are the same as those in KRS 99.595.

APPLICATION.

(a) Before any qualified business or residence shall be entitled to a property assessment moratorium as enumerated herein, it shall first make a sworn application in writing on forms to be

provided to the Director of Finance. All applications shall be made on or before December 31 of the year in which the property assessment moratorium is requested, due to the fact that the ad valorem assessment date is January 1 of each year. Upon submission of an application, the Director of Finance shall promptly review same and determine whether or not the applicant is deemed “qualified” and entitled to a property assessment moratorium. Applicants shall promptly provide all support data and documents reasonably requested by the Director of Finance in furtherance of this property assessment moratorium. An application for a building permit shall be prima facie proof of the cost of the improvements.

(b) Upon determining that an applicant is a “qualified business” or a “qualified residence” entitling the applicant to the benefits of this property assessment moratorium, this qualification shall be certified by the Director of Finance of the city, for a determination of the amount of property assessment moratorium in accordance with this section.

ELIGIBILITY FOR PROPERTY ASSESSMENT MORATORIUM. Based on the cost of any permanent improvement by a qualified business during the eligibility period of time. The eligibility period of time runs from 1-1-2004 until 12-31-2009. Any improvement which has been either started or finished during the eligibility period is eligible for the property assessment moratorium.

ENTITLEMENT. To be entitled to a property assessment moratorium, any permanent new improvement must have been started or finished between 1-1-2004 and 12-31-2009.

PROPERTY ASSESSMENT MORATORIUM. There shall be an ad valorem tax property assessment moratorium on all real property that is used as a commercial facility or residence and which is ten years old or older that is rehabilitated, repaired or restored deferring the value of the improvements from the added taxable assessment of qualifying units of real property for a period of years. This moratorium is based on the authority of the city’s ability to establish an ad valorem moratorium in accordance with KRS 99.595 *et seq.* On the assessment date next following the expiration, cancellation or revocation of an assessment, the property shall be assessed on the basis of its full fair cash value. Any assessment moratorium certificate may be transferred or assigned by the holder of the certificate to a new owner or lessee of the property. Any application for an assessment moratorium not acted upon by the applicant shall become void two years from the date of the application and shall be purged from the files of the city. The applicant shall have two years in which to complete the improvement unless granted an extension by the city. In no case shall the application be extended beyond two additional years. The applicant shall notify the city when the project is complete and the city shall then conduct an on-site inspection of the property for purposes of verifying the improvements.

QUALIFIED BUSINESS. Any new or existing lessee, corporation, partnership, proprietorship, cooperative or association within the scope of this property assessment moratorium.

(D) *Benefit.* It is intended that all benefits conferred by this property assessment moratorium shall adhere to, and exist for the benefit of those qualified businesses directly responsible for the payment of the permanent improvements.

(E) *Effective date.* This amendment to the property assessment moratorium shall take effect on 1-1-1994.

(Ord. passed 4-27-1993; Ord. passed 7-20-1993; Ord. passed 11-19-1997; Ord. passed 12-8-2003)

§ 10-2 REVITALIZATION CREDIT.

(A) *Purpose.* The purpose of this program is to provide assistance to current and new commercial property owners, small business owners and merchants in improving their property in a manner that is both commercially sound and architecturally attractive.

(B) *Scope.* Only those businesses that have a place of business within the city shall be entitled to apply for the revitalization credit established herein.

(C) *Definitions.*

APPLICATION.

(a) Before any qualified business shall be entitled to revitalization credit enumerated herein, it shall obtain a credit form from the Business License Clerk to be submitted with the first business license gross receipts return submitted following the completion of the property improvements.

(b) Upon submission of the credit form, the Director of Finance shall promptly review same and determine whether or not the applicant is deemed “qualified” and entitled to a revitalization credit. Applicants shall promptly provide all support data and documents reasonably requested by the Director of Finance in furtherance of this revitalization credit. A complete description of the project and copies of paid receipts equaling the amount of the credit claimed shall be prima facie proof of the cost of the improvements.

(c) Upon determining that an applicant is a “qualified business” entitling the applicant to the benefits of this revitalization credit, this qualification shall be certified by the Director of Finance of the city.

ELIGIBILITY FOR PROPERTY REVITALIZATION CREDIT. Eligibility for a revitalization credit is based on the submission of a revitalization credit form and itemized copies of the paid receipts for the project and the approval of the City’s Financial Officer.

REVITALIZATION CREDIT. An amount equal to the approved revitalization credit shall be deducted from gross receipts before computing business license due. If the revitalization credit

exceeds the amount of the gross receipts, the balance of the revitalization credit may be carried over to the next year. No single credit shall be carried over for more than two years. The minimum fee shall be due and payable in all cases regardless of credits.

(D) *Entitlement.* This entitlement will be retroactive to 1-1-2003. This entitlement will expire on 12-31-2009.

(Ord. passed 12-8-2003)

ARTICLE II. INSURANCE TAX

§ 10-16 TAX IMPOSED.

There is hereby imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within the corporate limits of the city for the calendar year 1987, and thereafter on a calendar-year basis.

(Ord. passed 6-26-1986)

§ 10-17 AMOUNT OF TAX.

The license fee imposed upon each insurance company which issues any insurance policy, which is not a life or health insurance policy, shall include the following, and shall be 11% of the premiums actually collected within each calendar quarter by reason of the issuance of the policies on risks located within the corporate limits of the city on those classes of business which the company is authorized to transact, less all premiums returned to policyholders; however, any license fee or tax imposed upon premium receipts shall not include premiums received for insuring the city against any or all liability insurance for city owned property or premiums received employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Workers' Compensation Act:

(A) Casualty;

(B) Automobile;

(C) Inland marine; and

(D) Fire and allied perils.

(Ord. passed 6-26-1986; Ord. passed 9-2-1986; Ord. passed 3-24-2003, eff. 7-1-2004)

§ 10-18 WHEN DUE; LATE PAYMENT PENALTY.

All license fees imposed by this article shall be due no later than 30 days after the end of each calendar quarter. License fees which are not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6).

(Ord. passed 6-26-1986)

§ 10-19 RECORDS.

Every insurance company subject to the license fees imposed by this article shall annually, by March 31, furnish the city with a written breakdown of all collections in the preceding calendar year for the following categories of insurance:

(A) Casualty;

(B) Automobile;

(C) Inland marine; and

(D) Fire and allied perils.

(Ord. passed 6-26-1986)

ARTICLE III. BUSINESS PRIVILEGE LICENSE; GROSS RECEIPTS TAX

§ 10-34 DEFINITIONS.

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

ASSEMBLY/MANUFACTURING. Material having no commercial value for its intended use before processing and has appreciable commercial value for its intended use after processing by machinery. However, ***MANUFACTURING*** shall not include processing or finishing operations which do not change the general design or form of a product. The term ***MANUFACTURING*** shall not include foundries, machine shops or tin shops, blacksmith or other sheet iron or metal work.

BUSINESS. The carrying on or exercise, for gain or economic benefit, either directly or indirectly, of any business, trade, profession, occupation, vocation, calling or commercial activity whatsoever, and the rendering of any type of service in any commerce whatsoever in the city, but such term does not include employees of a business or person licensed under this article. The term ***BUSINESS*** shall not include the usual activities of the boards of trade, chambers of commerce, trade associations or unions (or other associations performing the services usually performed by trade associations or unions), community chest funds or foundations; corporations organized and operated exclusively for religious, charitable, scientific, literary, educational or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational or

fraternal purposes, where no part of the earnings or income or receipts from such units, groups or associations inures to any private shareholder or individual; provided, however, that if any such unit,

group, or association shall engage in activities other than the activities in which such units, groups or associations usually engage, such other activities shall be included in the term **BUSINESS**; provided, further, that, activities conducted for gain or profit by any educational institution, hospital or any other institution mentioned in this section are included in the term **BUSINESS**.

BUSINESS ENTITY. Each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization or other legal entity through which business is conducted.

CITY. The City of Radcliff, Kentucky.

CONCLUSION OF THE FEDERAL AUDIT. The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return becomes final and unappealable.

DISTRIBUTION. The distribution or delivery of unfinished products or materials having no commercial value for its intended use before delivery to site located outside the city.

FINAL DETERMINATION OF THE FEDERAL AUDIT. The revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

FISCAL YEAR. The same year used by a taxpayer in making his or her federal income tax return.

GROSS RECEIPTS.

(1) The gross receipts from any business, trade, occupation, profession, vocation, calling, commerce, personal service or business activity of any kind, in the form of cash, credits, or other value proceeding from or accruing from the sale of tangible property (real or personal) or the rendering of any services, or both, including and without any deductions for interest, rentals, royalties, the cost of material used, the cost of goods sold, labor costs, taxes or any other costs, or any other expenses whatsoever.

(2) There may be deducted from gross receipts, returns and allowances the amount of state or federal excise taxes computed on a basis of the sale prices of commodities sold by a taxpayer, but the total gross receipts including the taxes and the amount of the taxes taken as a deduction shall be shown on the application and return required by this article.

(3) The term **GROSS RECEIPTS** when used in connection with, or in respect to, financial transactions involving the sale of notes, stocks, bonds or other securities, or the loan, collection or

advance of money, or the discounting of notes, bills or other evidence of debt, or the assignment of, or

purchase of, municipal, county or state tax bills, shall be deemed to mean the gross interest, gross discount, gross commission or other gross receipt earned by means of or resulting from the financial transactions, but the term **GROSS RECEIPTS** shall not include amounts received as repayment of the principal of debts.

(4) The term **GROSS RECEIPTS** shall include the gross receipts from all sales made from a place of business within the city, both to persons within the city and to persons outside the city, including sales made by contracts entered into in the city or sales where deliveries of commodities are made within the city.

(5) In the case of a taxpayer owning or operating a business in the city for the sale of goods, wares or merchandise, who also operates a branch factory or store which is located outside the city, then the term **GROSS RECEIPTS** shall not include the sale or proceeds of sales of goods, wares or merchandise not manufactured in the city, unless the goods, wares or merchandise are located in the city at the time of sale or delivery of the goods, wares or merchandise.

(6) In all transactions covered by the provisions of this article, the taxable gross receipts of all principals shall include not only the amounts actually received by them but shall include all commissions paid by them to brokers, commission merchants, attorneys or agents in such transactions, as the case may be, and all other expense and discounts incident thereto.

INTERNAL REVENUE CODE. The Internal Revenue Code in effect on 12-31-2003 exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on 12-31-2003, that would otherwise terminate.

PERSON. An individual, firm, partnership, joint venture, association, corporation (domestic and foreign), trust, estate, assignee, receiver or any other combination acting as a unit.

RECEIPTS FROM SALES IN TRADE OR BUSINESS. Receipts from sales in trade or business, in addition to meaning a sale of property for money, includes also any transaction, exchange, or barter or disposal or otherwise, for a consideration. The amount to be reported as receipts from sales in trade or business is as follows.

(1) If the sale was made for a consideration wholly in cash, the total cash received constitutes the receipts.

(2) If the sale was made for part in cash, the balance to be paid within a period of time, the amount of cash plus the amount which was to be paid constitutes the receipts; provided that, the subsequent receipt of deferred payment does not constitute a receipt under the meaning of this article.

(3) If the sale was made for part in cash, the balance to be paid within a period of time, the amount of cash plus the amount which was to be paid constitutes the receipts; provided that, the subsequent receipt of payment of the note or evidence of indebtedness does not constitute a receipt within the meaning of this article.

(4) If a sale is made for credit the amount of the credit constitutes the receipt; provided, however, that, the subsequent liquidating of the credit does not constitute a receipt within the meaning of this article.

(5) If the sale is an installment sale, the total amount of the installments paid, or to be paid, constitutes the receipts, including any interest or carrying charges. In other words, a person who sells or disposes of personal property in trade or business on the installment plan, whether or not title remains in the vendor until property is fully paid for and all of the conditions prescribed and fully performed, must return as receipts the total amount of contracts entered into prior to the period covered by the return, but not the money collected or contracts entered into prior to the period covered by the return.

(6) If the sale is made by exchange of property of any kind, the fair market value of the property received in exchange constitutes the receipts. However, where a used article is accepted in part payment of the purchase price of a new article, such as automobiles, furniture, washing machines, radios, mechanical refrigerators and the like, the seller of the new article shall report the sales price of the new article less any allowance made for the used article; provided, however, that when the used article is sold, the sales price of the used article shall constitute receipts with the meaning of this article.

(7) Accounts receivable actually written off on a taxpayer's records as uncollectible may be deducted from gross receipts, but if the accounts shall be collected, the same shall constitute receipts within the meaning of this article.

RETURN/REPORT. Any properly completed and, if required, signed form, statement, certification, declaration or any other document permitted or required to be submitted or filed with the city.

SALES REVENUE. Receipts from the sale, lease or rental of goods, services or property.

TAX DISTRICT. Any city of the first to fifth class, county, urban county, charter county, consolidated local government, school district, special taxing district or any other statutorily created entity with the authority to levy net profits, gross receipts or occupational license taxes.

TAXABLE GROSS RECEIPTS.

(1) In the case of a business entity having payroll or sales revenues both within and without the city, gross receipts as defined herein, and as apportioned under § 10-37 of this chapter.

(2) In the case of a business entity having payroll or sales revenues only with the city, gross receipts as defined in § 10-37(A) of this chapter.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

TAXPAYER. Any person liable for any business privilege license fee under the provisions of this article.

(Ord. passed 12-31-1973; Ord. passed 8-27-1990; Ord. passed 8-17-2000; Ord. 08-04-1030, passed 4-22-2008)

§ 10-35 BUSINESS PRIVILEGE LICENSE/GROSS RECEIPTS TAX APPLICATION REQUIRED.

Every person and business entity engaged in any business in the city shall be required to apply for and obtain an occupational license from the city before the commencement of business of business or in the event of a change of business status. Licenses are required to notify the city of any changes in address, the cessation of business or any other changes that render the information supplied to the city in the license application inaccurate.

(Ord. 08-04-1030, passed 4-22-2008)

§ 10-35.1 APPLICATIONS.

Any applicant for a business license in the city shall be required to provide the city with the following information as provided by the Finance Office of the city:

(A) Employer identification number as issued by the Federal Internal Revenue Service; and

(B) Any and all other requirements imposed by ordinance.

(Ord. passed 12-31-1973; Ord. passed 12-21-1976; Ord. passed 3-18-1986; Ord. 08-04-1030, passed 4-22-2008)

§ 10-36 BUSINESS PRIVILEGE LICENSE/GROSS RECEIPTS TAX PAYMENT REQUIRED.

(A) The fee for the business privilege license required by this article shall be measured by the amount of gross receipts during the last fiscal year (except for a new business or one that has been sold during the taxable year which shall come under § 10-37(B)(1)) of a taxpayer ending prior to April first of the calendar year for which the business privilege license is required in accordance with the classifications and schedules set out in this article. The fiscal year of a taxpayer shall be the same used for making an income tax return to the Kentucky Revenue Cabinet or the IRS.

(B) The business privilege license/gross receipts tax shall be measured by the appropriate business category percentage (see § 10-56(D)) of the gross receipts from business conducted in the city by a

business entity.

(C) The business privilege license/gross receipts tax imposed in this section shall not apply to the following persons or business entities:

(1) Any bank, trust company, combined bank and trust company, combined trust, banking and title insurance;

(2) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;

(3) Any compensation received by precinct workers for election training or work at election booths in state, county and local primary, regular or special elections;

(4) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the state's Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their gross receipts derived from the non-public service activities apportioned to the city;

(5) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of the gross receipts derived from the manufacturing or trafficking in alcoholic beverages; and

(6) Life insurance companies incorporated under the laws of and doing business in the commonwealth.

(Ord. passed 12-31-1973; Ord. passed 2-7-1992; Ord. 08-04-1030, passed 4-22-2008)

§ 10-37 PAYMENTS, RETURNS AND APPORTIONMENT.

(A) The business privilege license fee required herein shall be payable as follows.

(1) A minimum fee of \$25 annually imposed hereinafter shall be due and payable no later than the fifteenth day of April of the year due; any minimum license fee not paid within 30 days thereafter shall be in default.

(2) Any license fee due in excess of the minimum after apportionment has been calculated shall be based on the classifications and schedules set out in this article and be due and payable on the fifteenth day of April of each year; provided, however, when the remaining license fee due in excess of the minimum is in excess of \$100, payment of one-half of the amount may be deferred until the

fifteenth day of October of each year, on which date the remaining one-half thereof shall be due and payable. A discount of 5% will be given on any balance in excess of \$100 paid in full by April 15 once the minimum has been deducted. The 5% discount does not apply to the minimum fee.

(B) Except as provided in division (B)(4) below, taxable gross receipts shall be apportioned as follows:

(1) For business entities with both payroll and sales revenue in more than one tax district, by multiplying the gross receipts by a fraction, the numerator of which is the payroll factor, described in division (B)(3) of this section, plus the sales factor, described in division (B)(4) of this section, and the denominator of which is two;

(2) For the business entities with sales revenue, but no payroll, in more than one tax district, by multiply the gross receipts by the sales factor as set forth in division (B)(4) of this section;

(3) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the city during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the city based on the time the individual's service is performed within the city;

(4) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the city during the tax period, and the denominator of which is the total sales revenue of the business entity in the city during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period. The sales, lease or rental of tangible personal property is in the city if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser with the city, regardless of the F.O.B. point or other conditions of the sale;

(b) The property is shipped from an office, store, warehouse, factory or other place of storage in the city and the purchaser is the United States government;

(c) Sales revenues, other than revenues from the sale, lease or rental of tangible personal property or the lease or rental of real property, are apportioned to the city based upon a fraction, the numerator of which is the time spent in performing the income-producing activity within the city and the denominator of which is the total time spent performing that income-producing activity; and

(d) Sales revenue from the sale, lease or rental of real property is allocated to the tax district (city) where the property is located.

(5) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the city, the business entity may petition the city or the city may require, in

respect to all or any part of the business entity's business activity, if reasonable:

- (a) Separate accounting;

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(b) The exclusion of any one or more factors;

(c) The inclusion of one or more additional factors which will fairly represent the business entity's business activity in the city; and

(d) The employment of any other method to effectuate an equitable allocation and apportionment of gross receipts.

(6) All partnerships, S corporations and all other entities where income is "passed through" to the owners are subject to this article. The occupational license tax imposed in this article is assessed against income before it is "passed through" these entities to the owners;

(7) If any business entity dissolves, ceases to operate or withdraws from the city during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the city;

(8) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this article on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes; and

(9) Whenever the date for a payment deadline falls on a Sunday, the taxpayer shall be given the next business day which in all cases shall be a Monday unless the Monday shall be a legal holiday in the city, in which to present payment. Presentment for payment shall be satisfied if payment is made at the Finance Office before closing time on the last acceptable day for payment, or if payment is tendered by mail and postmarked prior to midnight on the last acceptable day, and provided further that if payment is made otherwise than by cash it must be by a good and valid negotiable instrument acceptable for payment when presented to the bank on which it was drawn. Payment shall not be considered made in such cases where payment is by an unsigned check, or check made in such cases where payment is made by an unsigned check, or check that is backed by insufficient funds.

(C) A person subject to the payment of the business privilege license fee shall file a return with the Finance Office and/or other designated by the City Council on or before April 15 each year. The return shall be filed on forms to be furnished by the city, which shall be obtained at the Finance Office. Each return shall show:

(1) (a) Each kind of business, profession, occupation, trade, vocation, calling or activity engaged in or services rendered; the taxpayer's gross receipts during the last fiscal year ended prior to

April first of the year for which the business privilege license fee is due; and

(b) Any one time (special construction projects, remodeling project, remodeling project, pool installation and the like) business, profession, occupation, trade, vocation, calling or activity that is just beginning its business and has no prior gross receipts upon which to base its business license fee, shall file the same form as one who is basing its business license fee on the prior fiscal year's gross receipts, only the new business shall estimate what its gross receipts will be for the taxable year. The fee shall then be based on the estimate furnished by the taxpayer. By April 15 of the taxable year ending the preceding December 31, the taxpayer shall file an amended tax return which accurately reflects the actual gross receipts during the previous period of time which had been estimated. If the taxpayer owes more money, then it shall be paid upon the filing of the return by April 15. If the taxpayer has overpaid based on estimated gross receipts which was too high, then the taxpayer shall be refunded their overpayment.

(2) The address or addresses of each place of business being licensed;

(3) The exact name shown or to be shown on the taxpayer's federal income tax return for the same fiscal year being reported on to the city; and

(4) Such other information as may be considered necessary by the Director of Finance and/or other appropriate city employee designated by the City Council to administer the business privilege license fee.

(D) In order to determine the amount of business privilege license fee due, the Director of Finance or other designated employee may require any person engaged in any kind of business, profession, occupation, trade, vocation, calling or activity to furnish such information as deemed necessary under oath or may be required to verify the return under oath. The return shall be signed by the owner, manager or other responsible official representing the person filing the return and the title of the person signing shall be shown.

(Ord. passed 12-31-1973; Ord. passed 8-27-1990; Ord. passed 2-7-1992; Ord. passed 4-13-1995; Ord. passed 11-15-1996; Ord. passed 8-17-2000; Ord. passed 5-22-2001; Ord. 08-04-1030, passed 4-22-2008)

§ 10-37.1 COMPLIANCE WITH LAW REQUIRED.

All persons holding city licenses shall, before the Director of Finance may issue their business licenses, meet all Building Code and Health Department regulations. Failure to meet any Building Code requirement or any Health Department requirement or any of the requirements set forth in this chapter shall be sufficient grounds for the Director of Finance to deny the applicant a business license, whether the applicant is a new applicant or an applicant for the renewal of his or her business license. (Ord. passed 12-31-1973; Ord. passed 12-21-1976; Ord. 08-04-1030, passed 4-22-2008)

§ 10-38 ENTIRE GROSS RECEIPTS TO BE REPORTED; LIST OF CONTESTED RECEIPTS.

The entire gross receipts derived from a business shall be reported on the required return. If an owner contends that any such receipts do not constitute the receipts of the business within the meaning of this article, or if a person questions the taxability of any items reported, there shall be attached to the return a list of the receipts, the source from which they were derived and the reasons supporting the contentions.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-39 REPORTS IN CASES OF MERGERS, ACQUISITIONS AND THE LIKE.

If a person liable for the business privilege license fee under this chapter, during the license year, sells the assets, or merges or consolidates his or her business with the business of another person, the prior owner shall be liable for the tax and for reporting the receipts for the portion of the year in which the prior owner owned the business, based on the actual gross receipts to the date of the selling of the business. The new owner of the business shall be required to obtain a new business license.

(Ord. passed 12-31-1973; Ord. passed 2-7-1992; Ord. 08-04-1030, passed 4-22-2008)

§ 10-40 RETURNS REQUIRED.

(A) All business entity returns for the preceding taxable year shall be made by April 15 of each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the city.

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the city.

Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to a business privilege license/gross receipts tax governed by the provisions of this article shall keep records, render under oath statements, make returns and comply with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability of the

business entity.

(D) The city may require for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

(E) The full amount of the unpaid tax payable by any business entity, as it appears from the face of the return, shall be paid to the city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

(F) The information in returns filed by persons subject to license fee under this chapter shall be confidential as respecting the business of any person and shall be made available only to officers and employees of the city whose official duties require the use of the information and, on a confidential basis, to the Kentucky Commission of Revenue or to employees in his or her department in reciprocity for access to the confidential files under his or her supervision.

(G) Any person divulging such information, except on an order of a court of competent jurisdiction, shall, upon conviction, be subject to a fine of not less than \$50, nor more than \$1,000, or to imprisonment for not exceeding 30 days, or both fine and imprisonment at the discretion of the court or jury. Nothing in this section shall prohibit the city from publishing statistics based in information in the returns in such manner as not to reveal data respecting the business of any particular person. (Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-41 INTEREST AND PENALTIES FOR LATE PAYMENTS AND EXTENSIONS.

(A) Any person or business entity failing to file a return or failing to pay the minimum business privilege license fee due on or before April 15 of the year due; or failing to pay the remaining excess due under this article on or before April 15 of the year due; or failing to pay the deferred one-half portion of the excess of the business privilege license fee on or before October 15 or failing to file a corrected return or to pay an additional business privilege license fee within 30 days after receipt of notice as provided in § 10-43 hereof, or failing to pay a business privilege license fee before beginning a new business, shall pay a penalty of 3% of the license fee due for the first month of delay, or any fraction thereof, and 3% of the tax for each additional month of delay, or any fraction thereof; provided, however, that, the minimum penalty in any event shall be \$25 and the total penalty levied shall not exceed 15% of the total tax due.

(B) The city may grant any business entity an extension of not more than six months unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

(C) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the estimated tax shown due on the return, but previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city. A

fraction of a month is counted as an entire month.

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(D) In addition to the penalty provided for in division (A) above, a person shall pay interest at the rate of 12% per annum on the amount of any additional tax found due as a result of an investigation or audit by the Director of Finance and/or other designated city employee; the interest shall begin to run on the date when the license tax was to have been paid.

(E) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.

(F) Every tax imposed by this article, and all increases, interest and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.

(G) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected or any part there, shall be guilty of a Class A misdemeanor.

(H) Any person who willfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with, any matter arising under this chapter of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document, shall be guilty of a Class A misdemeanor.

(I) A return for the purpose of this section shall mean and include any return, declaration or form prescribed by the city and required to be filed with the city by the provisions of this article or by the rules of the city or by written request for information to the business entity by the city.

(J) Any person violating the provisions of § 10-41 of this article by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than \$500 or imprisoned for not longer than six months or both.

(Ord. passed 12-31-1973; Ord. passed 8-27-1990; Ord. passed 11-15-1996; Ord. 08-04-1030, passed 4-22-2008; Ord. 14-03-1152, passed 2-18-2015)

§ 10-42 RESERVED.

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§ 10-43 REFUNDS.

Where there has been an overpayment of gross receipts tax upon business levied under § 10-36 of this article, a refund or credit shall be made to any person or business entity to the extent of overpayment only upon a written application for refund or credit to the city within two years from the date that overpayment was made.

(Ord. 08-04-1030, passed 4-22-2008)

§ 10-44 COMPUTATION OF TAX WHEN ONE BUSINESS SUBJECT TO SEVERAL DIFFERENT FEES.

(A) If a person owns, operates or manages a business which is divisible into different types of business which are subject to different assessment rates, the person must use the highest applicable rate that applies to gross receipts or any one of those businesses to determine his or her license fee. If separate tax records are kept for each type of business, the taxpayer may file one return, listing the gross for each category and determining the amount due by applying the applicable rate for each type of business. Under this option, the taxpayer will pay the minimum fee for each business category.

(B) If the records are not maintained, the taxpayer may complete the affidavit on the return form supporting his or her estimate of the gross receipts from each type of business, but in such case the business privilege license fee applicable to the major portion of his or her business shall be paid on the total gross receipts of all types of business, and in addition thereto, as penalty for failure to maintain separate records, he or she shall pay any business privilege license fee applicable to the minor portions of his or her business on the estimated gross receipts from the minor portions as shown in his or her return.

(C) If separate records on each type of business are not maintained or a sworn estimate is not submitted as provided in this section, the entire business of the taxpayer shall be subject to the highest business privilege license fee prescribed for any one type of business engaged in by the taxpayer.

(Ord. passed 12-31-1973; Ord. passed 8-27-1990; Ord. 08-04-1030, passed 4-22-2008)

§ 10-45 FEDERAL AUDIT PROVISIONS.

(A) (1) As soon as practicable after each return is received, the city may examine and audit the return. If the amount of tax computed by the city is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the city within five years from the date the return was filed, except as otherwise provided in this division.

(a) In the case of a failure to file a return or of a fraudulent return, the additional tax may be assessed at any time.

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(b) In the case of a return where a business entity understates gross receipts, or omits an amount properly includable in gross receipts, or both, which understatement or omission, or both, is in excess of 25% of the amount of gross receipts stated in the return, the additional tax may be assessed at any time within six years of the return was filed.

(c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this division, or six months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.

(2) The times provided in this division may be extended by agreement between the business entity and the city. For the purposes of this division, a return filed before the last day prescribed by law for filing the return shall be considered as extending the last day prescribed by law for filing the return.

(B) Every business entity shall submit a copy of the final determination of the federal audit within 30 days of the conclusion of the federal audit.

(C) The city may initiate a civil action for the collection of any additional tax within the times prescribed in division (A) above.

(Ord. 08-04-1030, passed 4-22-2008)

§ 10-46 BUSINESS CLOSING DURING THE CALENDAR YEAR.

Any business, as defined in § 10-34, electing to close during the current calendar year shall be assessed as follows: The minimum fee shall not be included in determining the amount of fees owed by the business, the fees shall be considered as an administrative fee. The total fees owed by the business as shown on the business application shall be prorated by the division of 360 (days) into the estimated business license fee for that year based on prior year's gross sales based on their application, multiplied by the number of days the business was in operation during that calendar year.

(Ord. passed 1-4-1993; Ord. 08-04-1030, passed 4-22-2008)

§ 10-47 ADMINISTRATIVE PROVISIONS.

(A) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.

(B) (1) Any tax collected pursuant to the provisions of this chapter may be refunded or credited within two years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:

(a) In any case where the assessment period contained in § 10-45 of this chapter has been extended by an agreement between the business entity and the city, the limitation contained in this division shall be extended accordingly; and/or

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this division or six months from the conclusion of the federal audit, whichever is later.

(2) For the purposes of this division and division (B)(1) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this article is vested exclusively in the city.

(Ord. 08-04-1030, passed 4-22-2008)

§ 10-48 LICENSE CERTIFICATES.

(A) A license certificate shall be issued to each person paying a business privilege license fee due under this article for a calendar year, or remaining portion of a calendar year in the case of a new business. The certificate shall show the calendar year, or remaining portion of a calendar year in the case of a new business. The certificate shall show the calendar year for which issued, the name of the person to whom issued and the address or location of the place of business being licensed. If a taxpayer has more than one place of business, a license certificate shall be issued for each place of business.

(B) Each taxpayer shall display his or her license certificate in a conspicuous place in each licensed place of business.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-49 RESTRICTION ON LICENSE ISSUANCE.

No license shall be issued under this article for any business that the Director of Finance, with the approval of the Mayor, shall consider to be detrimental to the public welfare or contrary to the public welfare or contrary to the public interest, but any such decision to refuse to issue a license may be appealed to the City Council.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-50 LICENSE TRANSFER.

Unless otherwise provided a license issued under this article may be transferred from one person to another provided that the taxpayer ID# has not changed, if the kind of business is not materially changed, and may be transferred to cover another location if a taxpayer moves his or her place of business.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-51 USE OF LICENSE FEE AND GROSS RECEIPTS TAX.

All money obtained from the payment of the license fees and gross receipts tax provided for in this article shall be paid into and become a part of the General Fund of the city.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-52 ENFORCEMENT.

(A) *Investigative powers.* It shall be the duty of the Director of Finance to collect and receive all license fees imposed by this article and to keep records showing the amounts received by him or her from each business.

(B) *Examination of records.*

(1) The Director of Finance, or any agent or employee designated in writing by him or her, is hereby authorized to examine the books, papers, records and tax returns of any business or suspected business or any taxpayer or suspected taxpayer, in order to determine the accuracy of any return made, or, if no return was made, to ascertain the amount of tax imposed by the terms of this article. Each business or alleged business or taxpayer or suspected taxpayer is hereby directed and required to give to the Director of Finance or his or her duly authorized agent or employee the means, facilities and opportunity for the examination and investigation that is hereby authorized.

(2) The Director of Finance is hereby authorized to examine any person, under oath, concerning any gross receipts which were or should have been returned and, to this end, he or she may compel the production of any books, papers, records, tax returns and the attendance of all persons before him or her, whether as parties or witnesses, whom he or she believes to have knowledge of the gross receipts to the extent that any officer empowered to administer oaths in the state is permitted to so order.

(C) *Enforcement powers of Director of Finance.*

(1) The Director of Finance is hereby charged with the enforcement of the provisions of this article and is hereby empowered to prescribe, adopt, promulgate and enforce the rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this

article including, but not limited to, provisions for the reexamination and correction of returns to which an overpayment or underpayment is claimed or found to have been made. The rules and regulations promulgated by him or her shall be binding upon the businesses and the taxpayers.

(2) It shall be the duty of the Director of Finance to collect and account for the taxes imposed by this article. He or she shall keep records showing the amount received by him or her from each business and taxpayer and the date of the receipt.

(Ord. passed 12-31-1973; Ord. passed 8-27-1990; Ord. 08-04-1030, passed 4-22-2008)

§ 10-53 TEMPORARY SUSPENSION.

(A) The Director of Finance shall, for probable cause, suspend a license issued pursuant to this article after a notice in writing is served upon its holder on day in advance of the suspension.

(B) Probable cause for the suspension shall consist of any violation of the laws of the state or city ordinance, the violation of which in relation to the business privilege license fee so held would tend to affect the licensee's ability to serve the public with safety and fairness.

(C) The suspension shall not exceed a period of 30 days, and upon the expiration of the period, the license suspended shall be automatically reinstated unless action shall be instituted against the licensee or permittee as provided in § 10-49.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-54 REVOCATION.

(A) The Director of Finance shall revoke a license issued pursuant to this article for the remainder of the license year after serving notice in writing, setting forth specifically the grounds of the complaint, time and place of hearing to the licensee or permittee. The notice shall be served by mail or, at the address given by the licensee upon application for the license, five days prior to the hearing.

(B) Upon specific findings of fact which meet the allegation of the complaint, the city's License Officer shall order the license revoked and forfeited to the city for:

(1) Any fraud, misrepresentation or false statement contained in the application for license;

(2) Any fraud, misrepresentation or false statement made in the course of carrying on the business or occupation;

(3) Any violation of this article;

(4) Any conviction of any felony or misdemeanor involving moral turpitude; and

(5) Conducting the business or occupation in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-55 APPEALS FROM LICENSE SUSPENSION OR REVOCATION.

Any person aggrieved by the Director of Finance in the revocation or suspension of his or her license issued pursuant to this article or in the denial of an application for the same shall have recourse to the City Council by way of appeal. The appeal shall be perfected by filing within 14 days from the date the final action was taken from which the person was aggrieved, a statement in writing setting forth in full the grounds for the appeal. The City Council shall set a time and place for a hearing, which notice of hearing shall be served on the appellant five days prior to hearing at which time he or she shall be given an opportunity to be heard by himself, herself or counsel. Upon review of the findings and order of the Director of Finance, the City Council shall enter an order which shall be final and conclusive upon the person so aggrieved.

(Ord. passed 12-31-1973; Ord. 08-04-1030, passed 4-22-2008)

§ 10-56 COMPUTATION OF LICENSE FEE; MINIMUM.

(A) Except as otherwise provided, the license fee paid by any business, profession, trade, occupation, vocation, calling or activity for the privilege of doing business in this city shall be its taxable gross receipts subject to apportionment calculation multiplied by the assessment rate.

(B) The annual business privilege license minimum fee for all businesses shall be \$25. The \$25 shall be a credit to the overall license fee assessment rate as outlined in division (D) below.

(C) Any claim for a reclassification of category not filed within one year of the deadline for filing a return, for the year in which the fees or request for reclassification is claimed, shall be deemed to have been waived.

(D) The assessment rates in determining the license fee to engage in the businesses, professions, occupations, vacations, callings, activities or trades shall be as follows:

<i>Annual Business License</i>	
<i>Category</i>	<i>Assessment Rate</i>
Antique shops	.0025
Apparel shops	.0025
Appliance sales and service	.0025

<i>Annual Business License</i>	
<i>Category</i>	<i>Assessment Rate</i>
Art galleries	.0025
Auctioneers	.004
Automobile dealers, new and used cars	.00094
Automobile parts	.00094
Automobile repair shops	.00125
Automobile salvage yards	.00125
Bakery	.00094
Barbershops	.0025
Beauty shops	.0025
Boat dealers	.00125
Bookstore, stationery, card shop	.00125
Bowling centers	.0025
Building cleaning and maintenance	.0025
Cable and other pay television	.004
Car wash	.00125
Circuses, carnivals and tent shows	.0025
Coin operated laundry	.00125
Computer processing and data preparation	.00125
Computer programming	.0025
Computer rental and leasing	.004
Computer and software sales	.00125
Concrete company	.00125
Contractors (carpentry; concrete; electrical; excavating and foundation; floor laying; general building; single-family and residential buildings; commercial construction, glass and glazing work, highway and street construction; masonry, stone setting and other stonework; painting and paper hanging; plastering, drywall, acoustical and insulation work; plumbing, heating and air conditioning; roofing, siding and sheet metal work; structural steel erection; swimming pool construction; terrazzo, tile, marble and mosaic work; water, sewer, pipeline, communication and power line construction)	.00125
Credit bureau	.004
Dairy products delivery	.00125

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<i>Annual Business License</i>	
<i>Category</i>	<i>Assessment Rate</i>
Department stores	.0025
Detective, guard and armored car services	.00125
Drugstores	.0025
Dry cleaners and laundry	.00125
Electrical parts	.00094
Engravers	.0025
Equipment rental and leasing	.004
Finance companies	.004
Floor coverings	.0025
Florist	.0025
Fruit stands	.00094
Funeral homes	.004
Furniture stores	.0025
Garden nursery	.0025
Grocery stores	.00094
Hardware and appliance	.0025
Hatchery and feed store	.0025
Insurance, real estate, securities agencies	.004
Insurance and securities agents, brokers	.004
Jewelry store	.0025
Leasing-passenger cars	.00125
Linen, towel or uniform supply service	.00125
Kindergarten and nursery	.004
Manufacturing of finished product sold within the city	.00094

<i>Annual Business License</i>			
<i>Category</i>			<i>Assessment Rate</i>
Assembly/manufacturing or distribution of unfinished products sold outside the city. Minimum fee and discount do not apply. Payment due may not be divided into two installments. License fee is based on the number of employees:			
<i>Over</i>	<i>Not Over</i>		
0	10	\$150.00	
11	25	\$250.00	
26	50	\$500.00	
51	75	\$750.00	
76	100	\$1,000.00	
101	125	\$1,250.00	
126	150	\$1,500.00	
151	175	\$1,750.00	
176 and over		\$2,000.00	
Mobile home dealers			.00125
Mobile home parks			.005
Mobile home parts			.00094
Motorcycle sales/new and used			.00094
Motels/hotels/tourist courts			.005
Mortgage companies			.0025
Moving/storage			.0025
Musical instruments sales/supplies			.00125
Music/pinball machines and others			.0025
Newspaper distributors			.00125
Novelty/hobby shops			.0025
Nursing homes			.0025
Pawn shops			.0025
Pest control			.0025
Pet shops			.0025
Photograph and supplies			.0025
Printing shops/publishing			.0025
Professions (accountant, architect, attorney-at-law, chiropractor, chiropodist, chirosurgeon, civil engineer, dentist, detective, electrical engineer, exodontist, insurance adjuster, magnetic healer, masseur, oculist, optician, optometrist, osteopath, pension agent, periodontist, physician, practical chemist, surgeon, surveyor, title guarantor, title abstractor, veterinarian or any other profession or calling for which a certificate or license is required before a person can enter such a profession or calling)			.004

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<i>Annual Business License</i>	
<i>Category</i>	<i>Assessment Rate</i>
Real estate, agents, brokers and dealers	.004
Recreational vehicle dealers	.00094
Reducing/exercising salon	.0025
Rentals, commercial	.005
Rentals, residential	.005*
*Owners of one home, zoned single-family residential are exempt from purchasing a residential rental license.	
Restaurants	.00125
Roller skating rink	.0025
Service stations	.00094
Service stations/food store	.00125
Shoe repair	.0025
Shoe store	.0025
Sign shops	.0025
Sporting supplies	.0025
Stereo/TV sales	.0025
Tattoo artists and palmists	.005
Tax preparation	.004
Taxicab company	.0025
Telephone communications	.00125
Theaters	.0025
Thrift shops	.0025
Tire sales or service	.0025
Towing service	.00125
Travel agencies	.00125
Vending machine companies	.0025
Video tape rentals	.004

<i>Annual Business License</i>	
<i>Category</i>	<i>Assessment Rate</i>
Wholesale sales	.00094
Business, profession, trade, occupation, vocation, calling or activities not otherwise listed above	.0025

(Ord. passed 12-31-1973; Ord. passed 3-15-1974; Ord. passed 12-26-1974; Ord. passed 12-21-1976; Ord. passed 12-21-1979; Ord. passed 9-2-1986; Ord. passed 8-29-1990; Ord. passed 2-7-1992; Ord. passed 11-17-1992; Ord. passed 12-21-1994; Ord. passed 11-19-1996; Ord. passed 8-17-2000; Ord. passed 5-15-2001; Ord. passed 12-9-2002; Ord. passed 3-24-2003; Ord. 08-04-1030, passed 4-22-2008)

§ 10-57 TRANSIENT MERCHANTS/PEDDLERS/SOLICITORS.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

TEMPORARY OR TRANSIENT BUSINESS. Any business conducted for the sale or offer for sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle or real estate in one locality for a period of less than six months in each year. A **TEMPORARY OR TRANSIENT BUSINESS** does not include a business which has a permanent and continuous business license with the city and operates one business in at least one permanent location.

TRANSIENT MERCHANT. Any person, firm, corporation, partnership or other entity which engages in, does or transacts any temporary or transient business, either in one locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise or commodities of any kind, and includes those merchants who, for the purpose of carrying on such business, hire, lease, use or occupy any building, structure, motor vehicle or real estate. A **TRANSIENT MERCHANT** shall not include a person, firm, corporation, partnership or other entity that has a permanent business license with the city and carries on a regular continuous business in the city.

(B) The fee paid by a transient merchant for the privilege of doing business in the city shall be its gross receipts subject to apportionment calculation multiplied by the assessment rate. However, in any case the maximum gross receipts on which the assessment rate may be levied shall be \$8,500,000 for the year 2001 and subsequent years.

(C) The annual business privilege license minimum fee for all businesses to include transient merchants shall be \$25. The \$25 shall be a credit to the overall license fee assessment rate.

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(D) The word **SOLICITOR** shall mean, unless the context requires otherwise, any person engaged in the business of soliciting orders for magazines, periodicals, encyclopedias, books, Bibles or other printed matter or material on a cash basis or by contract or note, the delivery of which magazines, periodicals, encyclopedias, books, Bibles or other printed material is contingent upon a future event, such as a down payment or one or more installment payments with the following exceptions:

(1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;

(2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;

(3) Solicitations, sales or distributions made by charitable, education or religious organizations;

(4) The city will allow a Farmer's Market sale in the City Hall parking lot on Wednesday and Saturday of each week during the months of April through November for the sale of produce and related items;

(5) Sales made by minors and/or their parents or boosters that involve orders for articles when the sales are made for the sole purpose of obtaining funds for a school bank, club or other organization, and the sales are approved by the school system; and

(6) Refusal to leave. Any solicitor who enters upon premises owned, leased or rented by another and refuses to leave the premises after having been notified by the owner or occupant of the premises, or his or her agent, to leave the same and not return to the premises, shall be deemed guilty of a misdemeanor.

(E) It shall be unlawful for any solicitor to enter upon any private premises when the same are posted with a sign stating "No Solicitors Allowed" or other words to such effect.

(F) It shall be unlawful for any solicitor to make false or fraudulent statements concerning the quality or nature of his or her goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

(G) It shall be unlawful for any solicitor to engage in the business of soliciting within the city between the hours of one-half hour before sunset and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

(H) Solicitors are required to register with Business License Clerk before doing any business

within the city limits. The Clerk shall obtain the name, permanent address and phone number of the solicitor, the name, permanent address and phone number of the parent company and a general description of the merchandise being offered. No license is required.

(I) (1) If the applicant does not have a permanent facility attached and known within the law as an attached improvement to real estate from which to operate the business for which he or she makes application for license, then and in that event, there shall be a presumption that the applicant is a transient merchant.

(2) Before a business license is issued by the city and before a transient merchant can begin conducting his or her business, he must have a permit as required by KRS 365.660.

(Ord. passed 12-31-1973; Ord. passed 12-21-1976; Ord. passed 5-18-1982; Ord. passed 5-15-1990; Ord. passed 10-10-1991; Ord. passed 2-7-1992; Ord. passed 11-17-1992; Ord. passed 12-6-1999; Ord. passed 8-17-2000; Ord. passed 12-9-2002; Ord. passed 9-8-2003; Ord. 08-04-1030, passed 4-22-2008)

Statutory reference:

Permit required, see KRS 365.660

§ 10-58 PENALTY.

Except as otherwise provided, any person violating or failing to comply with any provision of this article shall, upon conviction thereof, be fined not less than \$20, nor more than \$250, for each offense. Each day's violation or noncompliance shall constitute a separate offense. The criminal penalties shall be in addition to the penalties provided for § 10-41 hereof. Any persons violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to insure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993; Ord. 08-04-1030, passed 4-22-2008)

§ 10-59 YARD SALES. (RESERVED)

§ 10-60 SEVERABILITY.

Each section and each provision of each section of this article are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, the holding shall not affect or impair the remainder of this article, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

(Ord. 08-04-1030, passed 4-22-2008)

§ 10-61 UNLOADING LICENSE. (RESERVED)

§ 10-62 OFF-SITE TEMPORARY MOTOR VEHICLE SALES.

Off-site temporary motor vehicle sales are permitted within the corporate limits of the city upon the following conditions:

(A) The motor vehicle dealer shall have its principal office and business within the corporate limits of Radcliff.

(B) The dealer shall comply with all City and Planning and Zoning requirements and insure that the site for the temporary motor vehicle sales shall be in compliance with all City Planning and Zoning requirements.

(C) The site and the dealer shall comply with all proper business regulations and requirements, including state motor vehicle dealer regulations.

(D) No dealer shall be limited from selling or distributing motor vehicles within the corporate city limits provided the above conditions and obligations have been met.
(Ord. 08-11-1055, passed 11-12-2008)

§ 10-63 EFFECTIVE DATE.

The effective date of this article shall be 1-1-2009, and the filing of the city license return as described herein for 2009 shall be based on gross receipts as defined herein for calendar year 2008.
(Ord. 08-04-1030, passed 4-22-2008)

ARTICLE IV. FRANCHISE AGREEMENTS**§ 10-65 IMPOSED.**

There is hereby levied an franchise fee for the purpose of giving the municipality the rights and power to control original occupation of its streets and public rights-of-way and not for control or regulation on each utility company and cable television company operating within the city. The rate of the fee shall be as indicated below and apply to the gross revenue of each utility company and cable television company received from all customers within the corporate limits. Copies of all franchise ordinances are available for inspection in their entirety in the City Clerk's office.

<i>Utility</i>	<i>Rate</i>	<i>Ordinance Number</i>	<i>Effective Date</i>	<i>Expiration Date</i>
Louisville Gas and Electric	3%	97-02-738	2-1-1998	2-1-2018
Elizabethtown Gas and Electric	3%	97-02-737	3-1-1997	3-1-2017

<i>Utility</i>	<i>Rate</i>	<i>Ordinance Number</i>	<i>Effective Date</i>	<i>Expiration Date</i>
Hardin County Water Dist #1	3%	97-07-746	1-17-1998	1-17-2018
Hardin County Water Dist #2	None			
Brandenburg Telephone Co.	3%	97-09-753	12-19-1998	12-19-2018
Verizon (GTE)	3%		7-1-1998	6-30-2018
Nolin RECC	3%	302A	2-1-1998	2-23-2018
Kentucky Utilities	3%	93-03-601	3-16-1993	3-16-2013
Insight	5%	09-06-1059	6-18-2009	6-17-2024
Comcast	5%	94-06-666	7-1-1998	6-30-2013
Waste Management of KY	3%	08-11-1052	1-1-2009	12-31-2013

(Ord. passed 3-21-1961; Ord. 09-08-1072, passed 8-10-2009)

§ 10-66 PAYMENTS.

The fee imposed by the agreements shall be payable as per the terms of each specific ordinance.

§ 10-67 EXEMPTION.

The fee imposed by this article shall not apply on the amounts of bills for service furnished to the city. This article does not apply to solid waste collection. See Chapter 8, Article II.

(Ord. passed 3-21-1961; Ord. passed 11-19-1997)

§ 10-68 PENALTY.

Except as otherwise provided, any person violating or failing to comply with any provision of this Article IV shall upon conviction thereof, be fined not less than \$20, nor more than \$250, for each offense. Each day's violation or noncompliance shall constitute a separate offense. Any persons violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover said fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to insure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 1-21-1975; Ord. passed 3-16-1993; Ord. passed 9-21-1993; Ord. passed 2-10-1997; Ord. passed 11-19-1997)

ARTICLE V. OCCUPATIONAL PRIVILEGE FEE**§ 10-76 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

ASSOCIATION. A partnership or any other form of unincorporated enterprise owned by two or more persons.

BUSINESS. Any enterprise, activity, profession or under taking of any nature conducted for gain or profit, whether, conducted by an individual, co-partnership, association, corporation or any other entity; but shall not include the usual activities of a board of trade, chamber of commerce, trade association, or unions; community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or fraternal purposes, where no part of the earnings, income or receipts of the units, groups or associations inures to the benefit of any private shareholder or other person.

CITY. The City of Radcliff, Kentucky.

COMPENSATION. The amount paid to any natural person for services rendered, in money or money's worth, regardless of the form or method of payment. It includes the receipt, actual or constructive, by an individual of the earnings of an individual business enterprise or of a partnership.

CORPORATION. A corporation of joint stock company organized under the laws of the United States, Kentucky, another state, territory or foreign country or a dependency thereof.

DIRECTOR OF FINANCE or **CLERK.** The Director of Finance or Clerk of the city, or his or her agent, designee or assistant.

EMPLOYEE. Any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee or elected official of the United States, a state or any political subdivision of a state, or any agency of instrumentality of any one or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an **EMPLOYEE**.

EMPLOYER. The person for whom an individual performs or performed any service, of whatever nature, as the employee of the person, except that: If the person for whom the individual performs or

performed the services does not have control for the payment of wages for the services, the term

EMPLOYER means the person having control for the payment of the wages, and means in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term **EMPLOYER** means such person.

FEEPAYER. Any person or business made liable for the occupation privilege fee or for the payment of amounts withheld from employees under the terms of this article.

GROSS SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATIONS. The total gross amount of all salaries, wages, commissions, bonuses or other money payments of any kind, or any other considerations entitled to be received from an employer for any work done or personal services rendered in any occupation, trade or profession, including all deductions whether for tax, insurance or other. Amounts paid to traveling salespersons or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer are excluded; but to the extent of the excess of the amounts over the expenses actually incurred and accounted for by the employee to his or her employer, it is included in the foregoing definition. **GROSS SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION** shall not mean or include gratuities and tips customarily received by an employee from persons other than his or her employer.

NONRESIDENT. Any individual, co-partnership, fiduciary, association or other entity domiciled outside the city.

OBLIGOR. Any person required hereunder to file a separate return or to pay a license fee thereon under this article.

OCCUPATION, TRADE, PROFESSION OR OTHER ACTIVITY. The doing of any kind of work, the rendering of any kind of work, the rendering of any kind of personal service or the holding of any kind of position or job within the city, by any clerk, laborer, trader, manager, official or other employee, including any nonresident of the city, who is employed by an employer as defined in this article, where the relationship between the individual performing the services and the person for whom the services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, and shall also include and mean the holding of any kind of office or position, either by election or appointment, by the federal, state, county or city government or any officer or employee thereof where the services of such official or employee are rendered within the city.

PAYROLLS. The total wages, salaries and other personal service compensation.

PERSON. Every natural person, co-partnership, fiduciary, association or corporation, whenever the term person is used in any clause prescribing and imposing a penalty in the nature of a fine or

imprisonment, the word, as applied to association, shall mean the partners or members thereof and as applied to corporations, the officers and directors.

RESIDENT. An individual, co-partnership, association, corporation or other entity domiciled or having a business situs in the city.

SALES. Gross sales of merchandise or of services, or both, computed by whatever method of accounting is authorized for federal income tax purposes.

SALES WITHIN THE CITY. Sales of merchandise delivered to a customer within the city or service performed within the city for a customer.

YEAR. The calendar year or the fiscal year, employed by a business subject to the occupation privilege fee imposed by this article if the feepayer reports for federal income tax purposes on the basis of a period other than the calendar year. If, under any of the provisions of this article, a period of less than a full year is involved, the full-year basis of computation shall be employed, and the fraction of a year allocated by employing the ratio of the number of full months of tax liability to 12, the number of months in a year.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-77 PAYMENT OF OCCUPATION PRIVILEGE FEE, INDIVIDUALS.

(A) On and after 1-1-1987, every individual, that is, every natural person, engaged in any occupation shall pay into the city treasury for purposes of the general budget contemplated in KRS 92.280 through 92.281, an annual occupation fee for the privilege of conducting the occupation in the city; which occupation privilege fee shall be measured by 2% of all salaries, wages, commissions and other compensation earned in the city for work done or service performed in the city.

(B) If salaries, wages, commissions or other compensation are earned for work done or services performed or rendered, both within and without the city, the occupation privilege fee shall be measured by that part of the salaries, wages, commissions and other compensation that is earned as a result of work done or services performed or rendered in the city. The occupation privilege fee shall be computed by obtaining total compensation for work done or services performed or rendered within the city.

(C) Where compensation is received (paid) in property, its fair market value, at the time of receipt shall be subject to an occupational privilege fee and/or to withholding, deduction of fee at source. Board and lodging and similar items, where considered part of the compensation paid, shall be included in earnings at their fair market value. However, the value accepted for the purpose of the state and federal payroll taxes may be accepted by the Director of Finance.

(D) (1) In the case of employees who incur and pay expenses directly connected with the

performance of their duties or services and for which no retirement is made by the employer, the reasonable actual expenses incurred and paid in earning the compensation may be deducted in computing the amount subject to the occupational privilege fee. To be allowed, however, the expenses must be recognized as deductions by the federal and state authorities for payroll tax purposes and the federal authorities for income tax purposes.

(2) Such items as personal, family or living expenses, expenses of commuting to and from work, old age benefits taxes, deductions for group insurance, hospitalization, pension plans and the like are not deductible as expenses directly connected with the performance of service.

(E) Payments made to an employee by an employer as vacation pay and paid holidays or any other type of payments made under an employer's wage or salary continuation plan during periods of absence by an employee from work are fully subject to the occupational privilege fee.

(F) Payments made to employees by an employer at the time of a voluntary or involuntary separation, or dismissal, of the employee from the service of the employer are to be regarded as subject to the license fee.

(G) The following are subject to the occupational privilege fee:

(1) Salaries, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

(a) As an officer, agent or employee, or both, of a corporation (including a corporation of the first or nonprofit class), joint stock association or joint stock company;

(b) As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more persons, where the person or persons receive a salary in addition to other disbursements, then said salary shall be added back to the partnership, limited partnership or other unincorporated enterprise to determine the gross profits of the partnership, limited partnership or unincorporated enterprise;

(c) As an agent or employee (as distinguished from the proprietor) of a business, trade or profession, conducted by an individual owner;

(d) As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit of the commonwealth, or any of the political subdivisions thereof, or those of any of the political subdivisions thereof, or those of any other state or commonwealth;

(e) As an officer, agent or employee (whether elected or appointed) of a governmental administration agency, arm, authority, board, body, branch, bureau, department, division, section or unit of the United States government or a corporation created and owned or controlled by the United States government or any of its agencies, or those of any foreign country or dependency except those enlisted or commissioned in the military service; or

(f) As an officer, agent or employee of any other entity.

(2) Wages, bonuses or incentive payments received by an individual, whether directly or indirectly through an agent and whether in cash or in property for services rendered:

(a) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-work rates; and

(b) Whether paid by an individual, partnership, association, corporation (including a corporation of the first or nonprofit class), a governmental administration, agency, arm, authority board, body, branch, bureau, department, division, section or unit, or other entity.

(3) Commissions received by a feepayer, whether directly or indirectly through an agent and whether in cash or in property for services rendered regardless of how computed or by whom paid (if amounts received as a drawing account exceed the commissions earned, the fee is payable on the amounts received). If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individuals and therefore subject to occupational privilege fee under § 10-79, they shall not again be separately charged.

(4) (a) Fees, unless the fees are properly included as part of the gross compensation of a trade, business, profession or enterprise regularly carried on by the individual and the gross profits are subject to the occupational privilege fee under § 10-80.

(b) Fees paid to a director or officer of a corporation are subject to withholding under § 10-77 as in the case of any other employee.

(5) Other compensation which will be treated as subject to the occupation privilege fee.

(a) *Tips received by waiters and others.* Tips received are subject to the occupational privilege fee and will be reported in the same manner as earnings of an independent contractor.

(b) *Vacation and/or holiday benefits.* Payments made to employees by an employer as vacation wages are subject to the occupation privilege fee.

(c) *Separation payments.* Payments made to employees by an employer at the time of voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the occupational privilege fee.

(H) Computation of percentage which the salaries, wages, commissions and other compensation for work performed or service rendered within the city bears to the total compensation earned. Compensation from activities conducted in the city shall be computed as follows:

(1) Multiply the entire compensation from all sources by an allocation percentage to be determined by:

(a) Ascertaining the percentage which wages, salaries and other personal service compensation period covered by the report for services performed or rendered within the city bears to the total wages, salaries and personal service compensation for or such period of all the licensee's employees within and without the city.

(b) Multiplying the percentage determined in accordance with division (A) above by the total gross compensation to determine the gross compensation on which the fee is due.

(2) Sales within the city shall be sales of merchandise made within the city and delivered to a customer within or without the city or services performed within the city for a customer. (Ord. passed 9-2-1986; Ord. passed 4-13-1995; Ord. passed 3-24-2003; Ord. 08-04-1031, passed 4-22-2008)

§ 10-78 SPECIAL OCCUPATIONS.

(A) *Nurses.*

(1) A registered nurse (except as provided below) is in the same status as any other professional person and is required to file a return upon his or her compensation. He or she may deduct the actual expenses incurred from the earning of his or her fees. Deductible items are such expenses as are recognized as deductions by the Internal Revenue Service and the Kentucky Department of Revenue.

(2) A registered nurse regularly employed by a hospital, institution, business entity or individual is subject to the withholding provisions of this article.

(B) *Executives and directors.* An officer or director of a corporation performing services out of Radcliff, except for occasional visits to a city office to examine correspondence and the like, is not subject to the occupational privilege fee. Where an organization meets in the city and part of the work required as officer or director of the organization is performed by him or her in the city, his or her compensation is subject in the ratio those duties bear to his or her total duties.

(C) *Miscellaneous.*

(1) Where compensation is received (paid) in property, its fair market value at the time of receipt shall be subject to this occupational privilege fee and/or to withholding (deduction of fee at source). Board and lodging and similar items shall be included in earnings at their fair market value, where the board and lodging is considered part of the compensation paid. However, the value accepted for the purpose of the state and federal payroll taxes may be accepted by the Director of Finance.

(2) In the case of employees who incur and pay expenses directly connected with the performance of their duties or services and for which no reimbursement is made by the employer, the reasonable actual expenses incurred and paid in earning the compensation may be deducted in computing the amount subject to the occupational privilege fee. To be allowed however, the expenses must be recognized as deductions by the federal and state authorities for payroll tax purposes.

(3) Such items as personal, family or living expenses, expenses of commuting to and from work, old age benefits, taxes, deductions for group insurance, hospitalization, pension plans and the like are not deductible as expenses directly connected with the performance of service.

(D) *Insurance agents.*

(1) *General.* Individuals engaged in the sale of insurance may be either employees or independent contractors.

(a) Where the individual is subject to the direct control of another as to the manner of his or her conduct and is paid a fixed fee, he or she is considered an employee and the amount of the occupational privilege fee shall be withheld at the source.

(b) Where the individual is not under the direct control of another and may conduct the sale as he or she sees fit, receiving his or her payment in the form of commission from the sale, he or she is considered an independent contractor and shall file his or her own return and make payment as an independent contractor.

(2) *Commissions subject to occupational privilege fee.*

(a) In determining whether the commissions payable by reasons of the selling of any policy by an agent resulting from work done or services performed or rendered in the city, the test shall be the residence of the insured at the time of issuance of the policy, rather than the actual place of solicitation, except where the solicitation is in the city and the agent's established place of business is within the city, the commission is subject to the occupational privilege fee regardless of the residence of the insured.

(b) If an agent has an office outside the city, as well as an office within the city, the commission on policies sold to nonresidents, if handled through the outside office, are not subject to an occupational privilege fee, since, under such circumstances, they are not earnings or profits of an independent city business.

(3) *Group insurance commissions.* Commissions paid on the sale of contracts of group insurance are subject if the group is located within the city as a unit without regard to the residence of the writing agent.

(4) *Bonuses and incentive payments subject to occupational privilege fees.* Proportionate part of all bonuses and incentive payments received by an agent which bears the same ratio to the total amount of bonuses and incentive payments received by him or her as the amounts of commissions received by him or her on policies sold to residents bears to the total amount of commissions received by him or her on all policies sold to him or her by both residents and nonresidents is subject to the occupational privilege fee.

(5) *Advances and drawing accounts.*

(a) There are two main types of advances and drawing accounts payments:

1. Those which impose upon the agent a written obligation to repay if they are not in fact earned; and
2. Those which (though offset by commissions as earned) cannot be recovered at law even though the agent fails to produce enough business to justify them.

(b) The first of these two types of advance and drawing account payments is in the nature of a loan and accordingly is never subject to an occupational privilege fee. All commissions or bonuses applied toward the repaying of these types of advances and drawing accounts are subject in accordance with the rules set forth above.

(c) The second type of advance and drawing account payments is subject to an occupational privilege fee when received to the extent that it exceeds compensation earned after 1-1-1987.

(6) *Collection of an occupational privilege fee at source.* It is the duty of all companies doing business in the city (or general agents in the cases of agents whose contracts are with a general agent alone and to whom payment is made by general agent out of his or her fund) to deduct or withhold monthly or more often the amount of occupational privilege fee due on all compensation paid to agents who are considered employees.

(E) *Railroad and train service employees.*

(1) Railroad employees who perform all of their work within the limits of the city are subject upon their entire gross earnings.

(2) Where such employees serve both within and without the city, the occupational privilege fee shall be measured by the proportionate share of their gross earnings representing service within the city.

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(3) Where the work of such employees is preponderantly outside the city, the employee shall not be deemed to be engaged in a service within the city.

(4) Officers and supervisory personnel whose headquarters is in the city and whose occupations regularly require part of the work to be done outside the city shall be allowed to prorate the compensation on which an occupational privilege fee is due, for that part of the work done within the city. There shall be no proration of compensation for employees headquartered within the city where travel is only incidentally connected with the occupation. Individual cases of claimed exemption under this division (E)(4) shall be subject to review by the Director of Finance.

(5) The fact that any particular railroad employee affected by the foregoing regulations may be engaged in interstate commerce, is not relevant in determining the applicability of this article to compensation received by him or her.

(F) *Motor freight and commercial transportation other than railroads.* Since the circumstances involved in the employment of such employees are substantially analogous to those of railroad employees, the regulations applicable thereto shall apply to employees in the aforementioned category.

(G) *Federal, state or municipal employees.*

(1) Compensation received from the federal government for services performed within any federal reservation or building situated within the geographical limits of the city, title to which may or may not be in the federal government, is subject income, even though exclusive jurisdiction thereof was granted to the federal government by the commonwealth and/or the city.

(2) Compensation received from state, county and municipal governmental agencies is subject to the provisions of this article.

(3) Refund of fees withheld and paid covering activities outside the city will be made to employees upon application on form provided by the Director of Finance.

(H) *Real estate salespersons and brokers.*

(1) Real estate salespersons or brokers who engaged in the business as employees rather than independent contractors are not required to file a return for commissions earned by them. The employer is required to deduct the fee from the commissions earned and remit the same to the Director of Finance.

(2) Real estate salespersons or brokers acting as independent contractors are subject to an occupational privilege fee on their compensation in accordance with the city's business license/gross

receipts tax ordinance.

(Ord. passed 9-2-1986; Ord. passed 4-13-1995; Ord. 08-04-1031, passed 4-22-2008)

§ 10-79 EXEMPTIONS.

The following classes of persons shall be exempt to the extent herein set forth from the provisions of the city's occupational privilege fee and no occupational privilege fee shall be due from them.

(A) Domestic servants to the extent of their salaries, wages or other compensation received from the rendering of domestic services in private homes.

(B) All state, county and district officers directly named and designated in the text of the constitution to the extent of their salaries, wages or other compensation received for work or services received in the performance of the duties and obligations of their respective offices.

(C) The following money receipts are not deemed to be "salaries, wages, commissions and other compensation and net profits" within the meaning of this article.

(1) *Old age or retirement payments.* Periodical payments, commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment, are not subject to the occupational privilege fee.

(2) *Disability, accident benefits and unemployment compensation.* Payments made to employees by an employer under a disability or accident plan are not subject to the occupational privilege fee. Unemployment compensation payments by the commonwealth or any other agency are not subject.

(3) *Death benefits.* Death benefits payable by an employee to the beneficiary of an employee or to his or her estate, whether payable in a single sum or, otherwise, are not subject to the occupational privilege fee.

(4) *Benefits arising under the Workers' Compensation Act.* Amounts received by employees under the Workers' Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of the disability, are not subject to the occupational privilege fee.

(5) *Income received from royalties, patents and copyrights.*

(D) Full-time elementary or secondary students or students who are regularly employed for 15 hours or less by all of their employers, are exempt from the occupational privilege fee imposed in this article by means as follows: In the case of elementary or secondary students, any student who can furnish to the director a certified statement by the Superintendent of the Board of Education that the student is enrolled in a full-time study.

(E) Applicability of the foregoing regulations to employees whose compensation is not wholly subject. In the case of individuals whose compensation is earned for services performed both within and without the city and who receive subject payments as set forth in the foregoing rules and regulations,

they are subject to the occupational privilege fee in the same proportion that services performed within the city bear to their total employment time.

(Ord. passed 9-2-1986; Ord. passed 4-13-1995; Ord. 08-04-1031, passed 4-22-2008)

§ 10-80 PAYMENT OF OCCUPATIONAL PRIVILEGE FEE BY EMPLOYERS; RETURN.

(A) Each employer who employs one or more persons within the city shall deduct monthly, or more often than monthly, at the time of the payment thereof, the occupation privilege fee due from each employee, measured by the amount of salaries, wages or other compensation due by the employer to the employee, and shall pay to the Director of Finance the amount of the occupation privilege fee so directed. The payment required to be made on account of deductions by employers shall be made quarterly, for the quarterly periods ending March 31, June 30, September 30 and December 31 of each year or on or before the last day of each month next following the quarter of the deduction to the Director of Finance.

(B) The employer shall, annually, by the end of February of each year, make a return to the Director of Finance, in which is set forth the name and residence of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages or other compensation earned during the preceding year by each employee, together with any pertinent information as the Director of Finance may require to include federal forms W-2 and W-3, or a detailed listing with the equivalent information. However, the failure or omission by an employer to deduct the occupational privilege fee shall not relieve the employee from the payment of the occupational privilege fee and compliance with these regulations with respect to making returns and payments thereof, as may be fixed in this article or established by the Director of Finance.

(C) Where an employee receives compensation for personal services rendered or performed partly within and partly outside the city, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of appointment:

(1) If the obligor is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume, of business transacted by the employee within the city bears to the volume of business transacted by him or her both within and outside the city.

(2) The deducting and withholding of personal service compensation of all other employees (including officers of corporation) shall attach to the portion of the personal service compensation of the employee which the total number of working days employed within the city bears to the total number of working days employed within and outside the city.

(3) If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee or of the unusual basis of compensation, apportionment shall be made in accordance with the facts and the fee deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced) the employer shall furnish the Director of Finance a detailed statement of facts.

(4) The occasional entry into the city of an employee who performs the duties for which he or she is employed entirely outside the city, but enters the city for the purpose of reporting, receiving instruction, accounting and the like, incidental to his or her duties outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

(D) An employer is required to withhold the occupational privilege fee on the full amount of any advances made to an employee on account of commissions where in excess of commissions earned.

(E) An employer, required to withhold the occupational privilege fee (on compensation paid to an employee) may, in determining the amount on which the fee is to be withheld:

(1) Ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his or her services; or

(2) Deduct any amount necessarily incurred and expended by the employee in the actual performance of his or her services, for which expense he or she has not been and is not to be reimbursed by the employer; provided that, in either case, the expense must be recognized by the federal and state authorities for payroll tax purposes and the federal authorities for income tax purposes, and the employee shall furnish the employer, before the deduction is made, an itemized statement of the expenses claimed.

(F) The employer shall, however on or before February 28 of each year furnish the Director of Finance a list of employees, in such form as the employer may choose, setting forth the following information in respect to the preceding calendar year: name, address, gross wages paid and Social Security number of each employee.

(Ord. passed 9-2-1986; Ord. passed 4-13-1995; Ord. 08-04-1031, passed 4-22-2008)

§ 10-81 FILING OF RETURN; PAYMENT OF FEE OR REFUND CLAIM.

(A) Each person subject to the occupation privilege fee imposed by this article and who is compensated by salaries or wages shall, on or before the fifteenth day of the fourth month following the close of each year, make and file with the Director of Finance a return, in finance, setting forth the aggregate amount of salaries, wages and other compensation earned during the preceding year, with

any other pertinent information as the Director of Finance may require. However where the entire occupation privilege fee due and payable under this article has been withheld under the provisions of this article and no refund is claimed by the feepayer, the Director of Finance may waive the filing of the return by the obligor. If the fiscal year of the business, profession or other activity differs from the calendar year and

the obligor files state income tax returns for the other fiscal period, the occupational privilege fee shall be measured by the gross of the fiscal year; and where the return is made for a fiscal year or any other period different from a calendar year, the return shall be made on or before the fifteenth day of the fourth month following the end of the fiscal year or other period. The return shall also show the amount of the occupation privilege fee imposed by this article.

(B) The person making the return shall, at the time of filing thereof, pay to the Director of Finance the amount of occupation privilege fee shown as due thereon. However, where any portion of the occupation privilege fee due has been deducted at the source, credit for this amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing of the return. It shall be the duty of each employer who has deducted the occupation privilege fee from the wages, salaries or other compensation referred to in this article to furnish the employee a statement showing the amount of salary earned and occupational privilege fee deducted and paid by the employer during the preceding calendar year on or before February 15 of each year.

(C) Feepayers who are entitled to deductions for employee expenses provided for in the definition of "net annual salaries or wages" in this article and who have had the occupation privilege fee withheld by the employer on the basis of gross salary, shall be entitled to file a return, pursuant to this section, setting forth the expenses. The excess fee withheld over and above actual liability shall be refunded by the Director of Finance in a reasonable time.

(D) Where there has been an overpayment of occupational fees under § 10-77 of this article, a refund or credit shall be made to the employer to the extent of the overpayment only if a written application for refund or credit is received by the city from the employer within two years from the date of the overpayment was made.

(E) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-82 RETURNS TO BE FILED BY EMPLOYEE.

When a return to form and substance satisfactory to the Director of Finance is not filed by an employer and the occupational privilege fees are not paid to the city by the employer, the employee for

whom no return has been filed and no payment has been made shall file a return with the Director of Finance on or before January 31 of each year showing in the return his gross salaries, wages, commissions and other compensation subject to occupational privilege fees during all or any part of the preceding calendar year. The return may be made by completing the original copy of the statement

furnished him or her by his or her employer in accordance with this article if the statement shows all of the salaries, wages, commissions and other compensation earned by him or her, wherever employed, during the period for which the return is made. If for any reason all occupational privilege fees of a person subject to the provisions of this article were not withheld by his or her employer, the person shall file the return required by this section on a form obtainable at the Director of Finance's office. In addition to the gross salaries, wages, commissions and other compensation earned by him or her, the return shall show such other pertinent information as may be required by the Director of Finance. Each person making a return required by this section shall at the time of filing thereof pay to the Director of Finance the amount of occupational privilege fee due under this article; provided, however, that, any portion of the occupational privilege fee deducted at the source shall be deducted on the return and only the balance if any, shall be due and payable at the time of filing the return. The amount of any occupational privilege fee which was due on March 31, June 30, September 30 and December 31, as provided herein, shall bear interest from the date the same became due at the rate of 12% per annum until paid, and the employer failing to pay the same when due shall also pay the penalty imposed under this article.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-83 DUTIES OF DIRECTOR OF FINANCE.

(A) *Investigative powers.* It shall be the duty of the Director of Finance to collect and receive all occupational privilege fees imposed by this article and to keep records showing the amounts received by him or her from each employer.

(B) *Examination of records.*

(1) The Director of Finance or any agent or employee designated in writing by him or her is hereby authorized to examine the books, papers and records of any employer or supposed employer or any obligor or supposed obligor, in order to determine the accuracy of any return made, or, if no return was made, to ascertain the amount of occupational privilege fee imposed by the terms of this article. Each employer, or supposed employer or, obligor or supposed obligor is hereby directed and required to give to the Director of Finance or his or her duly authorized agent or employee the means, facilities and opportunity for the examination and investigation that is hereby authorized.

(2) The Director of Finance is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or gross receipts which were or should have been returned and, to this end, he or she may compel the production of books, papers, records and the attendance of all persons before him or her, whether as parties or witnesses, whom he or she believes to have knowledge of the wages, salaries, commissions or other compensation or gross receipts, to the extent that any officer empowered to administer oaths in the state is permitted to so

order.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-84 ENFORCEMENT POWERS OF DIRECTOR OF FINANCE.

(A) The Director of Finance is hereby charged with the enforcement of the provisions of this article and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter, or thing pertaining to the administration and enforcement of the provisions of this article including, but not limited to, provisions for the reexamination and correction of returns to which an overpayment or underpayment is claimed or found to have been made. The rules and regulations promulgated by him or her shall be binding upon the obligor and the employers.

(B) It shall be the duty of the Director of Finance to collect and account for the occupation privilege fee imposed by this article. He or she shall keep records showing the amount received by him or her from each obligor and employer and the date of the receipt.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-85 CONFIDENTIALITY OF RETURNS, INFORMATION AND THE LIKE.

Any information gained by any official or agent or employee of the city as a result of any returns, investigations, hearings or verification required or authorized by this article shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. Any person or agent divulging such information shall, upon conviction, be subject to a Class A misdemeanor. However, the Director of Finance may disclose to the Commissioner of Revenue of the state or his or her duly authorized agent such information and give the Commissioner the right to inspect any of the books and records of the city if the Commissioner of Revenue of the state grants to the Director of Finance the reciprocal right to obtain information from the files and records of the Department of Revenue of the state and maintains the privileged character of the information so furnished to him or her.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-86 USE OF OCCUPATIONAL PRIVILEGE FEES.

All money derived from fees under the provisions of this article shall be paid to the Director of Finance and placed to the credit of the General Fund of the city and shall be used and expended for:

(A) Defraying the current, general and incidental expenses of the city; and

(B) For capital improvement.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-87 UNLAWFUL IMPOSITION OF OCCUPATIONAL PRIVILEGE FEE.

It is not the intention of the city or of this article to impose and require an occupational privilege fee for any occupation.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-88 UNPAID OCCUPATIONAL PRIVILEGE FEES; INTEREST AND PENALTIES.

All occupational privilege fees imposed by this article remaining unpaid after they become due shall bear interest at the rate of 12% per annum, and the person from whom the occupational privilege fees are due shall further be charged a penalty of 1% of the amount of the unpaid occupational privilege fee for each month the fee remains unpaid. Any employer who fails or refuses to withhold monthly the occupational privilege fee measured by a percent of salaries, wages and the like or who fails to pay the money, after withholding the same, to the Director of Finance at the time it is due as provided under the terms of this article, shall be liable for the amount due, and shall bear interest at the rate of 12% per annum in addition to which a penalty of 1% of the amount shall be added for each month or fraction of a month the occupational privilege fees remain unpaid.

(Ord. passed 9-2-1986; Ord. 08-04-1031, passed 4-22-2008)

§ 10-89 CRIMINAL PENALTY.

(A) Any person who shall fail, neglect or refuse to make any return as to any occupational privilege fee required by this article; any employer who shall fail to withhold the occupational privilege fee or pay over the city the fee so withheld under the terms of this article; any person who shall refuse to permit the Director of Finance or any agent or employee designated by him or her, in writing, to examine his or her books, records and papers; any person who shall knowingly make any incomplete, false or fraudulent return, or any person who shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings or profits in order to avoid the payment of the whole or any part of the occupational privilege fee shall, upon conviction, be guilty of a Class A misdemeanor in addition to the occupational privilege fee due.

(B) The failure of any employer or obligor to receive or procure returns or other forms is not an excuse for failure to make any return or to pay the occupational privilege fee.

(C) Any person who shall violate this section shall be fined not less than \$20, nor more than \$500, and/or 12-months' imprisonment for each offense; a separate offense shall be committed for each day the violation occurs. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city.

If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in

a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 9-2-1986; Ord. passed 3-16-1993; Ord. 08-04-1031, passed 4-22-2008)

§ 10-90 CLAIM FOR REFUND OF OVERPAYMENT.

Any claim for refund of overpayment of occupational privilege fees paid under this article not filed within one year of the deadline for filing a return for the year in which the fees are claimed to have been paid, shall be deemed to have been waived.

(Ord. passed 9-2-1986; Ord. passed 7-15-1993; Ord. 08-04-1031, passed 4-22-2008)

ARTICLE VI. TRANSIENT ROOM TAX

§ 10-95 ESTABLISHMENT OF COMMISSION; IMPOSITION.

(A) The City Council establishes the “Radcliff Convention and Tourism Commission” and levies a transient room tax per KRS 91A.350.

(B) The imposition and collection of this transient room tax shall be on the day beginning 7-1-1988, and each day thereafter.

(Ord. passed 3-21-1988; Ord. passed 3-21-1991)

Cross-reference:

Administration, see Chapter 2

Annual occupation (income) tax, see §§ 10-76 et seq.

Editor’s note:

A nonamendatory ordinance of 3-21-1988, §§ 1 through 11, has been codified herein as Art. VI, §§ 10-95 through 10-105, at the editor’s discretion. Sections 12 and 13 of said ordinance, pertaining to severability and repeal, respectively, have not been included.

§ 10-96 MONTHLY COLLECTION BY COMMISSION TREASURER; DELINQUENCY CHARGES.

(A) These transient room tax returns and revenues collected shall be filed and paid to the Treasurer of the Convention and Tourism Commission no later than the twentieth day following the

previous month in which the tax was charged and collected. In other words, the tax collected 7-1-1988, through 7-31-1988, shall be reported on the return and paid to the Commission no later than August 20. Each entity shall file a monthly return, in duplicate, on forms to be authorized, together with the tax due.

(B) Any tax imposed by this article which shall remain unpaid after it becomes due and payable, as set forth herein, shall have added to it a penalty of 10%, regardless of the period of any delinquency, together with interest at a rate of 2% for each month of delinquency or fraction thereof, until paid. For example, taxes to be paid in the sum of \$1,000 for a particular month would then result in a tax bill of \$1,000 for the principal sum of tax, plus \$100 for the 10% penalty, plus \$20 for one-month's delinquency, totaling to \$1,120, if the original thousand-dollar tax was not paid for a period of one month past its due date. The tax imposed by this article shall be in addition to other general taxes and the occupational privilege fee or business license tax presently in force.
(Ord. passed 3-21-1988; Ord. passed 2-22-1989; Ord. passed 3-21-1991)

§ 10-97 PERCENTAGE RATE IMPOSED.

The imposition and levy of a transient room tax of 3% of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses, as approved, shall apply to transient guests who occupy a room in motor courts, motels, hotels, inns or like or similar accommodations businesses. Transient guests are occupants or users of the room(s), units or similar accommodations of any of the subject businesses, regardless of the period of stay at the subject establishment.
(Ord. passed 3-21-1988)

§ 10-98 COLLECTION AND PAYMENT BY ACCOMMODATIONS BUSINESS ESTABLISHMENTS.

All persons, companies, corporations or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses shall collect and pay the transient room tax as stated above.
(Ord. passed 3-21-1988)

§ 10-99 TAXATION OF ROOM AND/OR SPACE CHARGES.

The tax shall be for room and/or space charges only.
(Ord. passed 3-21-1988)

§ 10-100 BONDING OF COMMISSION TREASURER OR OFFICER HANDLING FUNDS; QUARTERLY REPORT.

(A) The Treasurer and any other officer of the Commission writing checks and handling funds shall be bonded by the city in an amount commensurate to the largest amount of money on hand in any given month.

(B) The Commission Treasurer shall make an itemized quarterly report to the City Council, showing expenses and outlays for each month.
(Ord. passed 3-21-1988)

§ 10-101 DEPOSITORY DETERMINED BY CITY COUNCIL.

The City Council will determine the depository of the Commission funds.
(Ord. passed 3-21-1988)

§ 10-102 COUNCIL TO APPROVE COMMISSION'S ISSUING OF REVENUE BONDS AND BORROWING OF MONEY BEYOND FISCAL YEAR; EFFECTIVE DATE.

(A) The City Council forbids the Commission to issue revenue bonds or to borrow money beyond the fiscal year, without the express approval of the City Council. Effective 7-1-1988, the fiscal year will begin July 1 of each year and terminate on June 30 following.

(B) This article will become effective 7-1-1988.
(Ord. passed 3-21-1988)

§ 10-103 COUNCIL TO APPOINT CERTIFIED PUBLIC ACCOUNTANT FOR AUDIT; ENFORCEMENT IN ABSENCE OF VOLUNTARY COMPLIANCE.

The City Council will name a certified public accountant to make an annual or specific audit. The City Council shall collect and enforce this article through the Commission in the absence of voluntary compliance and shall agree in advance with the officers of the Commission on a fee from Commission funds for such a service when the service is necessary.
(Ord. passed 3-21-1988)

§ 10-104 COMMISSION TO AUDIT BUSINESSES; TO BRING CIVIL ACTION.

The Commission shall have the privilege of auditing the subject businesses' books for enforcement purposes. If the transient room tax return is not filed nor paid within 30 days of the due date, the Commission may bring a civil action to enforce this article.
(Ord. passed 3-21-1988; Ord. passed 2-22-1989)

§ 10-105 COMMISSION TO BRING CRIMINAL ACTION.

Any violation of any section of this article shall be deemed to be a violation of the Kentucky Revised Statutes and each day of noncompliance or violation shall be considered a separate offense. This criminal violation shall be in addition to any other civil remedies available to the city.
(Ord. passed 2-22-1989)

§ 10-106 COMMISSION MEMBERSHIP DETERMINED BY LAW.

Membership in the Convention and Tourism Commission shall be determined in accordance with KRS 91A.350 *et seq.* and all other relevant and appropriate statutes and laws.
(Ord. passed 3-21-1988; Ord. passed 2-22-1989; Ord. passed 3-21-1991)

CHAPTER 11: MOBILE HOMES AND MOBILE HOME PARKS

Section

- 11-1. Reserved
- 11-2. Reserved **CHAPTER 11: MOBILE HOMES AND MOBILE HOME PARKS**
- 11-3. Manufactured homes must be habitable
- 11-4. Manufactured home installation

§ 11-1 RESERVED.

§ 11-2 RESERVED.

§ 11-3 MANUFACTURED HOMES MUST BE HABITABLE.

As of this date, no manufactured home shall be brought into a manufactured home park or placed on a single lot within the city limits unless the home has been certified habitable and a Class B1 seal affixed as described in KRS 227.600.
(Ord. passed 5-9-2005)

§ 11-4 MANUFACTURED HOME INSTALLATION.

All manufactured homes shall be installed by a certified installer as required by KRS 227.570(3).
(Ord. passed 5-9-2005)

CHAPTER 12: MOTOR VEHICLES AND TRAFFIC

Section

Article I. In General

CHAPTER 12: MOTOR VEHICLES AND TRAFFIC

- 12-1. Traffic-control signs, signals and the like
- 12-2. Authority to regulate

Article II. Operation Generally

- 12-16. Regulation of one-way traffic

Article III. Parking, Stopping and Standing

- 12-27. General parking regulations
- 12-28. Parking in fire lanes
- 12-29. Regulation of parking for the handicapped
- 12-30. Reserved
- 12-31. Regulation of roadblocks for charitable solicitations
- 12-32. Unattended vehicles; locking and braking
- 12-33. Skating and coasting; obstructions to the flow of traffic
- 12-34. Parking on off-street facility
- 12-35. Parking in parks
- 12-36. Obstructional parking, double parking
- 12-36.1. Parking on easements and rights-of-way
- 12-37. Penalty for violation of §§ 12-32 and 12-34 through 12-36
- 12-38. Uniform citation
- 12-39. Prepayment of fines

Cross-reference:

Streets and Sidewalks, Chapter 18

Editor's note:

For the convenience of the user, and to more accurately classify the provisions included in this chapter, the editor has added article heads and, in addition to including ordinances adopted 5-16-1978, 10-16-1979 and 11-20-1979, none of which were amendatory of the Code, has renumbered the existing provisions of Chapter 12 as follows: Former number: 12-1, new number:

12-28; former number 12-2, new number 12-30; former number 12-3, new number 12-1.

Statutory reference:

Motor vehicles and traffic, see KRS 186 through 190

ARTICLE I. IN GENERAL**§ 12-1 TRAFFIC-CONTROL SIGNS, SIGNALS AND THE LIKE.**

The existence and location of every traffic-control sign, signal, device or marking in the city as of the adoption date of this code, is hereby ratified and shall be considered to have been authorized by the Mayor and Council.

§ 12-2 AUTHORITY TO REGULATE.

The City Council hereby delegates to the Mayor, upon recommendation by the Chief of Police, the power to determine the existence and location of every traffic-control sign, signal, device or marking, and the power to determine the speed limit on all city streets, in the city. The Mayor shall enter an executive order when any such designation, location or speed limit is determined. The recommendation of the Chief of Police to the Mayor shall be in writing and shall contain the reasons for the recommendation.

(Ord. passed 2-19-1991)

ARTICLE II. OPERATION GENERALLY**§ 12-16 REGULATION OF ONE-WAY TRAFFIC.**

(A) *Authorized.* There may be established, by proper motion and vote at a meeting of the City Council, a public way or ways upon which all vehicular traffic shall be required to travel in one direction (one-way).

(B) *Marked.* Upon establishment of a one-way public way, the public way shall be conspicuously marked in such manner as to give the public making use of the public way reasonable notice that all traffic is one-way, and shall include notice prohibiting entrance onto the public way from the wrong direction.

(C) *Penalty.* On and after completion of divisions (A) and (B) above, there shall be a penalty for each violation of not less than \$10, but not more than \$100, for each violation.

(D) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC WAY. Any public area dedicated and/or used for ingress, egress and/or for movement of vehicular traffic.

VEHICULAR TRAFFIC. All agencies for the transportation of person(s) or property over or upon a public street within the city which are propelled otherwise than by muscular power. (Ord. passed 10-16-1979)

ARTICLE III. PARKING, STOPPING AND STANDING

§ 12-27 GENERAL PARKING REGULATIONS.

(A) *Authority to regulate.* The City Council hereby delegates to the Mayor, upon recommendation by the Chief of Police and Fire Chief, what streets may be added and deleted, or parts thereof, upon which parking may be prohibited or allowed according to the requirements of this article. The Mayor shall enter an executive order when any such prohibition against parking is allowed on any city streets or parts thereof. The recommendation of the Chief of Police and Fire Chief to the Mayor shall be in writing and shall contain the reasons for the recommendation.

(B) *Definitions; designation.*

(1) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

STOP, STOPPING or STANDING. When prohibited, any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

VEHICLE. Every device in, upon or by which any person or property is or may be transported or drawn upon a highway or street, except devices moved by human power.

(2) *Designation.* The Mayor, by executive order, shall designate any street on which parking is prohibited as to whether the parking is prohibited on the traveled portion of the street or whether the parking is prohibited on the entire right-of-way. The designation of no-parking areas by signs shall be printed as follows: "NO PARKING ON PAVEMENT" or "NO PARKING ON PAVEMENT AND RIGHT-OF-WAY".

(C) *Places where parking prohibited.* At any time, it shall be unlawful to permit any vehicle to stop, stand or park in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic signal device:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;

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- (3) Within an intersection;
- (4) At any curb within ten feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within 25 feet of a crosswalk at an intersection;
- (7) Within 30 feet of a traffic signal; and
- (8) At any place where official signs prohibit stopping, standing or parking.

(D) *Designation of no-parking areas.* Except as provided in divisions (C)(1) through (7) above, whenever parking is prohibited on designated streets in areas of the city, the City Council shall cause the erection of appropriate signs giving notice thereof or by the placing of yellow lines thereat; and no such regulation shall be effective unless the signs are erected and in place or the yellow lines are in place at the time of any alleged offense.

(E) *Parking to make repairs regulated.* No person shall park a vehicle upon any roadway or street for the purpose of repairing or maintaining the vehicle except when repairs are necessitated by an emergency.

(F) *Parking of semitractors, semitrailers and trucks exceeding five tons.*

(1) It shall be unlawful for any person to park any semitractor, semitrailer or truck exceeding five tons on any public street right-of-way.

(2) The public street right-of-way shall include the entire width between the boundary lines of every way publicly maintained, including the shoulders of the road and any grassy areas that may be within the public right-of-way, when any part of that public street or right-of-way is open to use by the public for purposes of vehicular traffic as a matter of right.

(3) The parking prohibitions of this section shall not apply to service or delivery vehicles which are being used to provide services or make deliveries or for the purpose of delivering materials to be used in the repair, alteration, remodeling or construction of any building or structure for which a building permit has been obtained.

(G) *Penalty for violation of section.* Each violation of this section shall be punishable by a fine of not less than \$20, nor more than \$250, for each offense. Any person violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification,

then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings. (Ord. passed 3-16-1993)

§ 12-28 PARKING IN FIRE LANES.

(A) No person shall park a vehicle of any kind in an area which has been designated as a fire lane as hereinafter provided.

(B) The owners and occupants of any shopping center wishing to have fire lanes designated in the parking area of the shopping area and wishing to have this section apply shall submit to the City Clerk for approval by the Chief of Police and Fire Chief, a map of the parking area clearly showing the parking spaces, thoroughfares, the areas to be designated as fire lanes and the number of signs needed.

(C) Upon approval of the map by the Chief of Police and the Fire Chief, the owner or occupant shall install the required amount of striping and number of signs stating the following information near the designated fire lanes.

(1) Curbs shall be identified by a six-inch wide yellow paint stripe on the top and side.

(2) Rolled curbs shall be identified by a six-inch wide yellow stripe on the top.

(3) Roads with no curbs shall be identified by a six-inch wide yellow stripe.

(4) The markings on the ground shall be as follows: The words "NO PARKING – FIRE LANE" shall be at least 18 inches tall in yellow paint with a three-inch stroke and placed eight inches as measured perpendicular to the yellow paint stripe. There shall be an eight-inch stripe both above and below the words "NO PARKING – FIRE LANE". The total depth of the fire lane markings to include lines and letters shall be eight feet. Diagrams may be obtained from the Fire Department.

(5) Highway grade metal (aluminum) signs that read "NO PARKING FIRE LANE" shall be located at 50- to 75-foot intervals. Signs shall be a minimum of 12 inches wide by 18 inches tall with red letters on a white background. Posts for support can be either two-inch galvanized metal or four by four treated wood. The bottom of the sign shall be a minimum of seven feet above the curb. Signs shall be installed nominally parallel to the road, facing the direction of travel. Where signs are adjacent to buildings, the Fire Official may allow an alternate means of placement. Diagrams may be obtained from the Radcliff Police Department.

(D) Any person guilty of violating division (A) above after the proper signs have been installed shall be fined not more than \$100.

(E) The Police Department is hereby authorized to have vehicles parking in fire lanes in violation of this section towed away and impounded at the owner's expense.
(Ord. passed 12-19-1973; Ord. passed 7-25-1990; Ord. 08-03-1025, passed 3-10-2008)

§ 12-29 REGULATION OF PARKING FOR THE HANDICAPPED.

(A) *Tag required.* It shall be unlawful for any person, or agent thereof, to park a motor or other vehicle in any parking space in the city designated for use by the handicapped or reserved for handicapped persons, unless the vehicle shall have procured a handicapped car license tag from the commonwealth or any other state and unless the vehicle being parked had been occupied by a handicapped person. The absence of any such license tags shall be prima facie evidence of a violation.

(B) *Violations to be reported.* The owner, occupant or operator of any facility whose parking lot contains a handicapped parking space shall report violations of this section to the Police Department, which shall, upon the reports or upon their its observation, issue appropriate citations.

(C) *Impounding of illegally parked vehicles.* Any vehicle in violation shall be withdrawn from that parking space and transported to any local garage, service station or detaining facility. An owner or driver may redeem his or her vehicle by paying towing and storage charges and any fines or fees levied.

(D) *Penalty for violation of section.* Each violation of this section shall be deemed a violation, misdemeanor, and upon conviction, the violator shall be fined not less than \$20, nor more than \$250, for each offense plus court costs. Any person violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 3-16-1993; Ord. 07-10-1021, passed 10-16-2007)

§ 12-30 RESERVED.

§ 12-31 REGULATION OF ROADBLOCKS FOR CHARITABLE SOLICITATIONS.

(A) *Permit required.* No person, firm, corporation or charitable organization shall conduct solicitations on the streets of the city or state highways within the city limits without first applying for and obtaining a permit from the Chief of Police.

(B) *Application for permit.* An application for the solicitation permit shall be delivered to the Police Department at least seven days prior to the solicitation activity and will be accompanied by a fee payment of \$10.

(C) *Contents of application.* The application or request shall specify the times, dates, locations and mode of solicitation desired and the charitable purpose benefitted.

(D) *Right to appeal denial of permit.* The applicant may appeal any denial by the Chief of Police of a permit to the Mayor and thereafter to the City Council.

(E) *Police Chief designated enforcing officer.* The Chief of Police shall be the agent of the City Council in establishing reasonable requirements in each case as to locations, times, dates and methods to be used by solicitors. These limitations may include requirements for special clothing easily observable or additional emergency lighting to alert the public and will be set out in writing in the permit issued.

(F) *Penalty for violation of section.* Any such solicitation upon the streets of the city without a permit as provided for herein shall be a violation and, upon conviction therefor, a penalty of not more than \$50 may be imposed.

(Ord. passed 11-20-1979; Ord. passed 7-25-1990)

§ 12-32 UNATTENDED VEHICLES; LOCKING AND BRAKING.

It shall be unlawful for any person driving, or in charge of a motor vehicle, to permit it to stand unattended without stopping the engine, locking the ignition, and removing the key, or when standing on any perceptible grade without setting the brake thereon and turning the front wheels to the curb.
(Ord. passed 7-25-1990)

§ 12-33 SKATING AND COASTING; OBSTRUCTIONS TO THE FLOW OF TRAFFIC.

(A) It shall be unlawful for any person on skates or riding on a coaster, skateboard or sled, or toy vehicle of any kind, to go on any roadway except at a crosswalk.

(B) It shall be unlawful for any person to place any obstruction (ramps, bridges, basketball goals, barrels, cones, ropes, chains and the like) that obstructs, or causes to be obstructed, the flow of traffic on any public way within the city, either during the day or night, except those items required to ensure safety during construction or maintenance of the public way unless excepted by the Chief of Police, Police Department. A written copy of the exception will be provided to the Mayor and to the Planning Department Director and will be filed in the appropriate street file.

(C) It shall be unlawful for any parent or guardian having legal custody of a minor to allow the minor to engage in any activity on any public way with the city that obstructs, or causes to be obstructed, the flow of traffic on any public way within the city, either during the day or night, and endangers the well being of the minor or the operator of, or passengers in, a motor vehicle on any public way.

(D) A police officer upon finding or being notified of any minor in or upon any public assembly, building, place, parking lot, street or highway reasonably believed to be in violation of this section, shall follow the duties of a police officer set forth in KRS 610.200 through 610.280 which governs the taking or receiving of a child into custody on a charge of committing an offense. All other provisions of the state's Unified Juvenile Code shall apply.

(E) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in division (C) above is present.

(F) A police officer upon finding or being notified of any minor in or upon any public assembly, building, place, parking lot, street or highway, whose parent is believed to be in violation of this section shall confront the minor and request such information as his or her name, age, address of his or her parent or legal guardian.

(G) Violation by a minor of the provisions of § 12-33 shall constitute a public offense as contemplated in the provisions of KRS 635.10 *et seq.* and a complaint filed against a minor for such a violation shall be proceeded against in accordance with the provisions of KRS 635.010, 635.020, 635.060, 635.070, 635.080, 635.085 and 635.100.

(H) Any parent or guardian violating this section shall be subject to a fine of no more than \$500 or imprisonment for a period not to exceed six months or both. Any parent or guardian violating this § 14-9 may also be found guilty of a civil offense. The civil fine shall not be more than \$500. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including abatement proceedings.

(I) A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted.

(J) Violation of §§ 12-32, 12-34, 12-35 and 12-36 shall be deemed a violation and, upon conviction, the violator shall be fined not more than \$50.
(Ord. passed 7-25-1990; Ord. passed 8-23-1994; Ord. passed 8-12-2002)

§ 12-34 PARKING ON OFF-STREET FACILITY.

It shall be unlawful for the driver of a motor vehicle to park or abandon the vehicle or drive on or otherwise trespass on another's property, or on an area developed as an off-street parking facility, without the consent of the owner, lessee or person in charge of any such property or facility. If at any time a vehicle is parked, abandoned or otherwise trespasses in violation of the provisions of this section,

a warrant may be obtained in district court by the owner, lessee or person in charge of the property or facility, and the police division, or law enforcement officer as authorized by the city on written complaint of the owner, lessee or person in charge, shall remove or cause to be removed, the vehicle. (Ord. passed 7-25-1990)

§ 12-35 PARKING IN PARKS.

It shall be unlawful for any person to park any motor vehicle in or on any section of any public park, playground, plat lot or tot lot within the city not designed as a parking area or designed and regularly maintained as a roadway. However, nothing contained in this section shall be construed as prohibiting the parking of a motor vehicle parallel to a designated and regularly maintained roadway in any such park or playground where at least two wheels of the motor vehicle are resting on the roadway. (Ord. passed 7-25-1990)

§ 12-36 OBSTRUCTIONAL PARKING, DOUBLE PARKING.

(A) It shall be unlawful for any person to leave any commercial or industrial vehicle or any other thing that may be a nuisance, obstruction or hindrance in or on any public way within the city, either during the day or night, except while the vehicle is being loaded or unloaded and the loading or unloading operation is actually taking place, or while the cab of the vehicle is occupied by the driver thereof.

(B) It shall be unlawful for any person to stop or park any vehicle on the roadway side of any other vehicle stopped or parked at the edge or curb of a street. (Ord. passed 7-25-1990)

§ 12-36.1 PARKING ON EASEMENTS AND RIGHTS-OF-WAY.

(A) (1) Parking any motor vehicle in or on any section of any public easement or right-of-way not designed as a parking area or designed and regularly maintained as a roadway that results in damage to said easement or right-of-way shall be unlawful.

(2) Any vehicle in violation shall be withdrawn from that parking space and transported to any local garage, service station or detaining facility. An owner or driver may redeem his or her vehicle by paying towing and storage charges and any fines or fees levied.

(B) Each violation of this section shall be deemed a violation misdemeanor and, upon conviction, the violator shall be fined not less than \$20, nor more than \$250 for each offense plus court costs. Any person violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid

within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. 07-10-1021, passed 10-16-2007)

§ 12-37 PENALTY FOR VIOLATION OF §§ 12-32 AND 12-34 THROUGH 12-36.

Violation of §§ 12-32 through 12-36 shall be deemed a violation and, upon conviction, the violator shall be fined not more than \$50.

(Ord. passed 7-25-1990)

§ 12-38 UNIFORM CITATION.

(A) The Police Department shall design, print and distribute to all law enforcement officers in the city a uniform citation.

(B) The Police Department shall maintain a system of accountability on all citations issued to assure that the citations are not wrongfully destroyed, tampered with or otherwise compromised in any manner. The citations shall be serially numbered in such a manner that the year of the issue and the individual citation number may be readily ascertained.

(C) All police officers shall use the uniform citations for all violations outlined in this article.
(Ord. passed 7-25-1990)

§ 12-39 PREPAYMENT OF FINES.

(A) All violations under this article are designated as subject to prepayment and may be prepaid by the violator subject to the terms and conditions as approved by the City Council.

(B) An offense which is designated as subject to prepayment is subject to the following conditions:

(1) Designation as subject to prepayment does not preclude a physical arrest by a police officer for that offense if it is an offense for which the violator can be arrested;

(2) Designation as subject to prepayment does not preclude a requirement that the defendant make a court appearance when so indicated on a uniform citation;

(3) For any offense designated as subject to prepayment, the defendant may elect to pay the minimum fine for the offense to the city without appearing in court and without paying court costs if the officer issuing the citation has not required the defendant to make a court appearance on the citation. If the defendant elects not to pay the minimum fine for the offense, then the defendant must appear in the proper court;

(4) Prepayment of the fine as shown on the citation or accompanying schedule shall be considered as a plea of guilty to all purposes; and

(5) The City Council shall approve the amount of prepayment of all fines after a recommendation is submitted to the City Council by the Chief of Police for all fines that may be prepaid.

(Ord. passed 7-25-1990)

CHAPTER 13: NUISANCES

CHAPTER 13: NUISANCES

Section

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ARTICLE I. NUISANCES

§ 13-1 DEFINITION.

For the purpose of this article, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Radcliff - Nuisances

NUISANCE. Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others.

§ 13-2 ILLUSTRATIVE ENUMERATION.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (A) Noxious weeds and other rank vegetation;
- (B) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things, and the storage of motor vehicles in an inoperative condition, motor vehicles unfit for further use, automobile parts or scrap metal within the city limits except on premises authorized by the city for such purposes;
- (C) Any condition which provides harborage for rats, mice, snakes and other vermin;

(D) Any building or other structure including any mobile or manufactured home which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located. The absence of the Class B1 seal shall be prima facie proof that the mobile or manufactured home is uninhabitable;

(E) All unnecessary or unauthorized noises and annoying vibrations, including animal noises;

(F) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of the odors and stenches;

(G) The carcasses of animals or fowl not disposed of within a reasonable time after death;

(H) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;

(I) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;

(J) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;

(K) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities; and

(L) Any dead trees on or near a public right-of-way.

(Ord. passed 5-9-2005)

Cross-reference:

Animals and Fowl, see Chapter 3

Building, Fire, Housing and Safety Standards, see Chapter 4

Explosives and Blasting, see Chapter 7

Garbage and Trash, see Chapter 8

Health Clubs, Massage Salons and the Like, see Chapter 9

§ 13-3 PROHIBITED.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

§ 13-4 NOTICE TO ABATE.

Whenever a nuisance is found to exist within the city or within the city's extraterritorial jurisdiction, the City Inspector or some other duly designated officer of the city shall give five days' written notice to the owner or occupant of the property upon which the nuisance exists or upon the person causing or maintaining the nuisance.

§ 13-5 CONTENTS OF NOTICE.

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

(A) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances;

(B) The location of the nuisance, if the same is stationary;

(C) A description of what constitutes the nuisance;

(D) A statement of acts necessary to abate the nuisance; and

(E) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate the nuisance and assess the cost thereof against the person.

§ 13-6 SERVICE OF NOTICE.

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

§ 13-7 ABATEMENT BY CITY.

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the same, the City Inspector or other duly-designated officer of the city shall proceed to abate the nuisance and shall prepare a statement of costs incurred in the abatement thereof.

§ 13-8 CITY'S COSTS DECLARED LIEN.

Any and all costs incurred by the city in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which the nuisance existed, which lien shall be filed, proven and collected as provided for by law. The lien shall be notice to all persons from the time of its recording and shall bear interest at the legal rate thereafter until satisfied.

§ 13-9 PENALTY.

In addition to the right of the city to abate the nuisance or nuisances, whoever violates any provision of this chapter shall be fined not less than \$20, nor more than \$250, for each offense; a separate offense shall be committed for each day the violation occurs. The citation for a violation shall only be issued after the individual has not abated the nuisance and the administrative process of abatement has been completed by the city. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 3-16-1993)

ARTICLE II. THE PROHIBITION AGAINST NOISE POLLUTION IN THE CITY

§ 13-10 NOISE POLLUTION.

Unreasonably loud, harsh or excessive noise is a hazard to the public health and welfare and the quality of life in the city. Each city citizen has the right to an environment free from noise that jeopardizes one's health or welfare or degrades the quality of life or lowers property values. It is the policy of the City Council to promote and protect the environment for all people free from noise that unnecessarily jeopardizes the citizenry's health or welfare, degrades the quality of life and lowers property values.

§ 13-11 DEFINITIONS.

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

CONSTRUCTION OR DEMOLITION ACTIVITY. The erection (including excavation), demolition, alteration or repair of any building, structure or roadway, or any utility related construction, for which all necessary and proper governmental permits have been obtained.

HIGHWAY. Any road, street, avenue, alley, boulevard, lane, court or bridge, viaduct or trestle and the approaches to them.

NOISE. The intensity, frequency, duration and character of sound or sounds from a source or sources.

PARKING LOTS. Any off-street parking facility for public use, and the approaches to same, whether publicly or privately owned, and shall include, but not be limited to: Parks, shopping centers, restaurants, entertainment centers, car washes, banking or financial institutions, whether publicly or privately owned, operated or controlled.

PERSON. Any person, firm, association, partnership, joint venture, corporation or any private entity of any nature.

PLAINLY AUDIBLE. Capable of being distinctly heard by a person with normal hearing:

- (1) A danger warning with a horn or other audible signaling device; or
- (2) The preservation or protection of property or the life, safety or welfare of a person or persons by use of an audible signaling device.

ROADWAY. The portion of the highway designed for ordinary use for vehicular travel, including the berm, shoulder or any public property adjacent thereto.

UNREASONABLE PERIOD OF TIME. A period of time in excess of that necessary to accomplish.

UNREASONABLY LOUD, HARSH OR EXCESSIVE NOISE. Any noise plainly audible at a distance of 50 feet from its point of origination or emanation.

VEHICLE. Any machine or device in, on or by which, any person or property is or may be transported or drawn on any highway, roadway or parking lot.

§ 13-12 UNLAWFUL CONDUCT.

(A) It shall be unlawful for any person within the city to make, continue or cause to be made or continued, any unreasonably loud, harsh, excessive or unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others unless the making and continuing of the noise is necessary for the protection or preservation of property or the life, health or safety of a person or persons.

(B) The following acts are hereby declared to be loud, disturbing and unnecessary noises in violation of this article, but the enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn or other such audible signaling device on any automobile, motorcycle or other vehicle on any highway, roadway, parking lot or other public place, except as a danger warning, for an unreasonable period of time;

(2) The use or operation of any radio, stereo or other machine or device for the producing, reproducing or amplification of sound in any vehicle in such a manner as to create an unreasonably loud, harsh or excessive noise, that disturbs the peace, quiet or comfort of others;

(3) The use or operation of, or allowing the use or operation of, any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of others by creating or allowing a louder volume than is necessary for the convenient hearing of the person or persons who are voluntarily in the room, chamber or vehicle in which any above described machine, device or musical instrument is located. The operation of any such machine, device or musical instrument between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located, shall be prima facia evidence of a violation of this section;

(4) Use or operate any vehicle on any highway, roadway or parking lot in such a manner as to produce any unreasonably loud, harsh or excessive noise, or to discharge into the open air the exhaust of any vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

(5) Create any unreasonably loud, harsh or excessive noise in connection with the loading or unloading of any vehicle, or by the operation of any such vehicle; and

(6) Use any mechanical loud speaker, amplifier, sound system, stereo or radio on any moving or standing vehicle for advertising, entertainment or any other purpose, in such a manner as to create an unreasonably loud, harsh or excessive noise.

§ 13-13 STANDARDS FOR NOISE POLLUTION.

The standards which shall be considered in determining whether a violation hereof exists shall include, but not be limited to, the following:

- (A) The volume of the noise;
- (B) The intensity of the noise;
- (C) Whether the nature of the noise is usual or unusual;
- (D) The volume and intensity of background noise, if any;
- (E) The proximity of the noise to a residential area or place of public accommodation such as a hotel, motel, inn, campground and the like;
- (F) The nature and zoning of the area within which the noise emanates;
- (G) The density of inhabitation of the area within which the noise emanates;
- (H) The time of day or night the noise occurs;
- (I) The duration of the noise; and
- (J) Whether the noise is recurrent, intermittent or constant.

§ 13-14 EXEMPTIONS.

The following uses and activities shall be exempt herefrom:

- (A) Noises originating or emanating from safety signals, warning devices and emergency pressure relief valves;
- (B) Noises resulting from any authorized emergency vehicle or law enforcement training facilities;
- (C) Noises resulting from construction or demolition activity;
- (D) Noises from the use of farm machinery, lawn mowers or other machinery properly muffled utilized for agricultural or landscaping purposes;
- (E) Noises originating or emanating from religious activities, public recreational facilities such as, but not limited to, fairgrounds, sport arenas, sports stadiums, amusement parks and other public amusement establishments; and

(F) The operation of any aircraft in conformity with, or pursuant to, federal law, federal air regulations and/or air traffic control instructions.

§ 13-15 PENALTIES.

Any person violating this article shall be fined in an amount not less than \$20, nor more than \$250. Each day the violation is continued shall constitute a separate offense. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 8-9-1993)

Cross-reference:

Motor Vehicles and Traffic, see Chapter 12

ARTICLE III. RULES AND REGULATIONS FOR CITY PARKS AND FACILITIES

§ 13-26 RULES AND REGULATIONS FOR CITY PARKS AND FACILITIES.

As a measure to promote the general health, education and welfare of the citizens of the city, the following rules and regulations for various city recreational parks, facilities and Saunders Springs Nature Preserve are herein adopted:

(A) No alcoholic beverages will be allowed on city property except under the following circumstances. For Colvin Community Center:

- (1) The entire Colvin Community Center facility must be rented by the party wishing to have alcohol at their event;
- (2) All Colvin Community Center rental contract requirements must be adhered to and followed;
- (3) Events at which alcohol is being given away must be private occasions not open to the public;

(4) All appropriate state and local licenses and permits (i.e., business licenses, ABC licenses, and the like) must be obtained, where applicable;

(5) Alcoholic beverages can only be brought in, sold or distributed by a state and locally licensed caterer;

(6) Proof must be provided that those who sell and serve alcohol have received the proper training and are age appropriate;

(7) The renting party must execute prior to its event being approved a Waiver of Liability and Indemnification for the benefit of the city;

(8) Events must have liability insurance coverage with the city as a named insured;

(9) No later than 60 days prior to the planned event, a security plan must be submitted by the renting party for the event to the city; the event will not be permitted without the approval of the security plan by the City Police Department;

(10) No later than 60 days prior to the planned event, an alcoholic beverage sale and serving plan must be submitted by the renting party for the event to the city. The event will not be permitted without the approval of the alcoholic beverage sale and serving plan by the city;

(11) Events shall not be allowed to charge a cover charge or admission fee unless the renting party is a non-profit tax exempt entity under Section 501(c)(3) of the Internal Revenue Code as amended or other applicable law;

(12) The city alone may, under special temporary licenses, serve malted alcoholic beverages, wine and distilled spirits at city-owned parks, real property, and facilities, with said alcoholic beverages being served by all persona authorized by law, during any city-sponsored or city-organized event, fair, exposition, party, festival, reception, or other similar occasion.

(B) No smokeless tobacco usage of any kind will be allowed in the city parks or Saunders Springs Nature Preserve. However, tobacco smoking will be allowed only in designated areas, and the city shall post conspicuous signs giving notice to the public where smoking is permitted.

(C) No animals shall be allowed except for a service animal used by an individual with a disability under the control of the animal's handler by harness, leash, tether, or other effective means of control.

(D) No climbing on any fences located in the city parks;

(E) No disorderly conduct;

(F) No profanity;

(G) No skate boarding or skating, except in Radcliff City Park North located on U.S. 31-W in designated skateboard area;

(H) No bike riding;

(I) No ball playing or warming up in the parking areas;

(J) No music during ball games;

(K) No loud music allowed in city parks at any time;

(L) All vehicles must be parked in designated parking areas only. Vehicles/riding devices are not permitted in grass areas. Vehicles may not be left overnight;

(M) There shall be no blocking of the flow of traffic or entrance or exits to/from parking areas;

(N) No fireworks;

(O) No fires except in grills except at Dawley Park or Radcliff City Park North and only in designated areas. There shall be no open fires except on grills which must be extinguished after their use. Fires may not be left unattended;

(P) Trash must be deposited into the trash barrels located throughout the parks;

(Q) No destruction of vegetation;

(R) Children are not to be left unattended;

(S) Destruction or theft of city property will not be tolerated;

(T) No non-firearm weapons will be permitted unless authorized by the Kentucky Revised Statutes or other applicable law;

(U) Use of park facilities or organized activities must have prior written approval from the city's Parks and Recreation Department; and

(V) Play at your own risk. The city assumes no liability for injuries or loss/damage of property. (Ord. passed 3-11-2002; Ord. 10-07-1096, passed 7-12-2010; Ord. 12-05-1127, passed 5-15-2012; Ord. 13-05-1138, passed 5-30-2013; Ord. 13-05-1139, passed 5-30-2013)

§ 13-26(b) RESERVED.

§ 13-27 PENALTIES.

Violation of this article shall be deemed a violation, and upon conviction the violator shall be fined not less than \$20, nor more than \$250, plus court costs. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid then the city may recover the fine in a civil action in a court or board of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 6-17-1997; Ord. passed 3-11-2002; Ord. 10-07-1096, passed 7-12-2010)

CHAPTER 14: OFFENSES-MISCELLANEOUS

Section

Article I. In General

CHAPTER 14: OFFENSES-MISCELLANEOUS

- 14-1. Reserved
- 14-2. Indecent pictures
- 14-3. Drive-in theaters
- 14-4. Interference with city officers, employees and the like
- 14-5. Prohibited conduct on premises of commercial business establishments
- 14-6. Reserved
- 14-7. Wearing of hoods or masks
- 14-8. Firearms defined; discharge in city prohibited; penalty for violation; exceptions
- 14-9. Curfew; penalty for violation
- 14-10. Open burning

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- 14-26. Duty to keep register; required information; access to/by police
- 14-27. Retention of articles in same state or condition
- 14-28. Daily reports
- 14-29. Penalty for violation

ARTICLE I. IN GENERAL

§ 14-1 RESERVED.

§ 14-2 INDECENT PICTURES.

(A) It shall be unlawful to show, display or otherwise exhibit any picture, drawing or other work of art through any window or door that may be readily viewed by the public from any street, roadway or sidewalk where the picture, drawing or work of art reveals any person being nude or indecently exposed.

(B) Any person responsible for the showing, displaying or exhibition of any such picture, drawing or work of art within the city shall be fined no less than \$20, nor more than \$200, and each day same is exhibited shall constitute a separate offense.

(Ord. passed 2-23-1972)

§ 14-3 DRIVE-IN THEATERS.

(A) It shall be unlawful to show, exhibit or otherwise project a motion picture upon a screen at an open-air theater within the city limits at which theater admission is charged to patrons, and where the screen may be viewed by the general public from any public street or roadway.

(B) Any fence, barrier or other object constructed to prevent such screen from being viewed from a public street or roadway shall be constructed in a workmanlike manner and of such materials and design that conform with the contemporary materials and design of other structures in the neighborhood in the same general locality and shall furthermore comply with the zoning ordinance.

(C) Any fence or barrier so constructed shall, at all times, be kept in a good state of repair.

(D) Any person responsible for the showing of a motion picture in violation of this section shall be fined no less than \$20, nor more than \$200, for each offense. Any person permitting a fence or barrier so constructed to become in a poor state of repair shall be fined no less than \$20, nor more than \$100, and each day same is permitted to continue shall constitute a separate offense.

(Ord. passed 2-23-1972)

§ 14-4 INTERFERENCE WITH CITY OFFICERS, EMPLOYEES AND THE LIKE.

It shall be unlawful for any person to interfere with, hinder, harass or obstruct any city officer or employee who is engaged in the official performance of his or her duties.

§ 14-5 PROHIBITED CONDUCT ON PREMISES OF COMMERCIAL BUSINESS ESTABLISHMENTS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL BUSINESS ESTABLISHMENT. Any place holding itself out to the general public as offering goods and/or services for sale to the public and/or for use by the public within the limits of the city.

MOTOR VEHICLE(S). All agencies for the transportation of person(s) or property over or upon a public street within the city which are propelled otherwise than by muscular power.

(B) *Prohibited conduct.*

(1) *Noise.* It shall be unlawful for any person, while on or adjacent to the premises of a commercial business establishment, to race the motor of any motor vehicle, to suddenly start or stop any motor vehicle, or to make or cause to be made any other loud or unseemly noise. It shall also be unlawful for any person parked on the premises of the commercial business establishment to blow or cause to be blown any motor vehicle horn at any time while so parked, unless the prohibited activity directly relates to the business purpose of the commercial business establishment.

(2) *Consumption or possession of alcoholic beverages not purchased on premises.* It shall be unlawful for any patron or other person on the premises of a commercial business establishment, whether in or out of a motor vehicle to drink any beer or other intoxicating liquor or to have in his or her possession any open bottle, can or other receptacle containing beer or alcoholic beverages of any other type, nature or description.

(3) *Loitering.* It shall be unlawful for a person to congregate and/or linger at any location on the premises of a commercial business establishment where the congregating and/or lingering is unrelated to the business purpose of the commercial business establishment or not having any other specific legitimate reason for being there.

(4) *Driving onto and leaving premises without parking.* No person shall drive a motor vehicle onto the premises of a commercial business establishment and then depart from the premises without parking the motor vehicle, unless there is no unoccupied parking space available on the premises, and where the driving onto and departing the premises is not for the purpose of availing the occupant or occupants of the motor vehicle of the use of the commercial business establishment and its business purposes.

(5) *Leaving motor vehicle on parking lot without permission.* It shall be unlawful for any person to leave any unoccupied motor vehicle on any commercial business establishment parking lot and to leave the premises thereof except with the knowledge and consent of the operator of the commercial business establishment.

(6) *Display of warning signs.* Prior to enforcement of this section as to a specific commercial business establishment, it shall be the duty of that commercial business establishment operator who furnishes parking for patrons to post on the premises in a conspicuous location one or more signs bearing the following legend:

“CRUISING IN OR CONGREGATING AND LINGERING OUTSIDE OF A MOTOR VEHICLE IS UNLAWFUL. NO UNOCCUPIED VEHICLE MAY BE LEFT ON THESE PREMISES WITHOUT THE CONSENT OF THE OPERATOR OF THE COMMERCIAL BUSINESS ESTABLISHMENT.”

(C) *Penalty for violation of section.* Any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not more than \$100 or imprisoned for not more than 30 days, or be given both such fine and imprisonment at the discretion of the court.

(Ord. passed 8-21-1979)

Cross-reference:

Nuisances enumerated, see § 13-2

Editor's note:

Inclusion of Art. I, §§ 1 and 2, and Art. II, §§ 1 through 7, of an ordinance adopted 8-21-1979, as § 14-5 was at the discretion of the editor, the ordinance being non-amendatory of the code.

§ 14-6 RESERVED.

§ 14-7 WEARING OF HOODS OR MASKS.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC PLACE. All walks, alleys, streets, boulevards, avenues, lanes, roads, highways or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; all grounds and buildings owned, leased or operated for the use of organizations enjoying all tax exempt privileges as a charitable use.

(B) *Wearing hoods or masks in a public place.* No person or persons shall, while wearing any hood, mask or device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer, enter, be or appear in any public place within the city.

(C) *Wearing hoods or masks on the property of another.* No persons shall, while wearing any hood, mask or device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer, demand entrance or admission, enter or come upon or into or be upon or in the premises, enclosure or house of any other person in the city unless he or she shall have first obtained the permission of the owner and the occupant of the property.

(D) *Exemptions.* The following are exempted from the provisions of divisions (B) and (C) of this section:

- (1) Any person under 16 years of age;
- (2) Any person wearing traditional holiday costumes in season;
- (3) Any person using masks in theatrical productions including use in New Year's celebrations, masquerade balls and the Golden Armor Festival Parade;

(4) Any person lawfully engaged in any activity, trade, employment or sporting activity where a mask or facial covering is worn for the purpose of ensuring the physical health and safety of the wearer or because of the nature of the occupation, trade or professional or sporting activity; and

(5) Any person wearing a gas mask in drills, exercises or emergencies.

(E) *Penalties.* Any person who violates divisions (B) or (C) of this section shall be guilty of a misdemeanor and shall be fined no more than \$250 and/or imprisoned for no longer than 90 days for each offense.

(Ord. passed 1-20-1981)

Editor's note:

See the editor's note to § 14-5.

§ 14-8 FIREARMS DEFINED; DISCHARGE IN CITY PROHIBITED; PENALTY FOR VIOLATION; EXCEPTIONS.

(A) A firearm is any weapon which will expel a projectile by the action of an explosive.

(B) Any person who shoots or discharges a firearm in the city, unless necessary or proper for protection of person or property, shall be fined not less than \$10, nor more than \$100.

(C) The Chief of Police may, as an exception, grant permits upon request for shooting firearms in special areas set aside for the purpose and conducted under safe conditions.

(Ord. passed 2-26-1980)

Editor's note:

See the editor's note to § 14-5.

§ 14-9 CURFEW; PENALTY FOR VIOLATION.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLOW. Either permit or neglect to refrain or prevent. It requires actual or constructive knowledge on the part of the parent or guardian, that is, the parent or guardian must actually know about the child violating this section, or the circumstances must be such that a reasonable, prudent parent or guardian should have known the child was violating this section.

MINOR. Any person under the age of 18 or, as may be otherwise phrased, any person of the age of 17 or under.

PARENT. Any person having legal custody of a minor:

- (a) As a natural or adoptive parent;
- (b) As a legal guardian;
- (c) As a person who stands “in loco parentis”; and/or
- (d) Or as a person to whom legal custody has been given by order of the court.

REMAIN. To stay behind, to tarry or to stay unnecessarily upon or in any public assembly, building, place, parking lot, street or highway.

(B) *Curfew.*

(1) It shall be unlawful for any person under the age of 18 to be or remain in or upon any public assembly, building, place, parking lot, street or highway within the city at night during the following periods:

- (a) 12:00 midnight Friday to 6:00 a.m., Saturday;
- (b) 12:00 midnight Saturday to 6:00 a.m., Sunday;
- (c) 11:00 p.m. Sunday to 6:00 a.m., Monday;
- (d) 11:00 p.m. Monday to 6:00 a.m., Tuesday;
- (e) 11:00 p.m. Tuesday to 6:00 a.m., Wednesday;
- (f) 11:00 p.m. Wednesday to 6:00 a.m., Thursday; and
- (g) 11:00 p.m. Thursday to 6:00 a.m., Friday.

(2) It shall be unlawful for any parent or guardian having legal custody of a minor to allow such minor to be or remain in or upon a public assembly, building, place, parking lot, street or highway in the city under circumstances not constituting an exception as enumerated in division (C) below during the time periods contained in division (B)(1) above.

(C) *Exceptions.* In the following exceptional cases, a minor in or upon any public assembly, building, place, parking lot, street or highway in the city during the nocturnal hours provided for in division (B) above shall not be considered in violation of this section:

- (1) When a minor is accompanied by a parent or guardian;

(2) When accompanied by an adult authorized by a parent or guardian of the minor;

(3) When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; provided that, written notice signed by the minor and countersigned by a parent is in the possession of the minor specifying when, where and in what manner the minor will be exercising the First Amendment rights;

(4) In case of reasonable necessity, but only after the minor's parent has communicated to the Police Department the facts establishing the reasonable necessity;

(5) When the minor is on the sidewalk of the place where the minor resides, or on the sidewalk of either next-door neighbor who has not communicated an objection to a police officer or the Police Department;

(6) When returning home, by a direct route from, and within one hour of the termination of, a school activity or any activity or religious or other voluntary association; provided that, justification indicating the place and time of termination of the event can be given to any investigating officer of the Police Department;

(7) When attending an official school, religious or other recreational activity supervised by adults and sponsored by the county's school system, any duly accredited private school system, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, and official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the minor;

(8) When engaged in a business or occupation which the laws of the state authorized a person under 18 years of age to perform;

(9) When the minor is, with parental consent, in a motor vehicle with a lawfully authorized driver while the vehicle is traveling on a public street or highway;

(10) When the minor, who is a duly authorized and licensed driver, is operating a motor vehicle within the city for the purpose of passing through, by a direct route, from one location to another either within or out of the city, including all minors that may also be within the vehicle; and

(11) When the minor is involved in an emergency.

(D) *Enforcement.*

(1) A police officer upon finding or being notified of any minor in or upon any public assembly, building, place, parking lot, street or highway reasonably believed to be in violation of this section, shall follow the duties of a police officer set forth in KRS 610.200 through 610.280 which governs the taking or receiving of a child into custody on a charge of committing an offense. All other provisions of the state's Unified Juvenile Code shall apply.

(2) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in division (C) above is present.

(3) A police officer, upon finding or being notified of any minor in or upon any public assembly, building, place, parking lot, street or highway, whose parent is believed to be in violation of this section, shall confront the minor and request such information as his or her name, age and address of his or her parent or legal guardian.

(E) *Penalty.*

(1) Violation by a minor of the provisions of this section shall constitute a public offense as contemplated in the provisions of KRS 635.010 *et seq.* and a complaint filed against a minor for such a violation shall be proceeded against in accordance with the provisions of KRS 635.010, 635.020, 636.060, 635.070, 635.080, 635.085 and 635.100.

(2) Any parent or guardian violating this section shall be subject to a fine of no more than \$500 or imprisonment for a period not to exceed six months or both. Any parent or guardian violating this section may also be found guilty of a civil offense. The civil fine shall not be more than \$500. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including abatement proceedings.

(3) A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted.
(Ord. passed 8-23-1994)

§ 14-10 OPEN BURNING.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CLEAN LUMBER. Wood or wood products that have been cut or shaped and includes wet, air-dried and kiln-dried wood products and does not include commercial or industrial waste or wood products that have been painted, pigment-stained or pressure-treated using any hazardous or toxic compounds.

FIRE TRAINING. The instruction of industrial, public and private firefighters conducted in accordance with safety standards and procedures as accepted by the Kentucky State Fire Marshal, the Kentucky Fire Commission or the National Wildfire Coordinating Group.

GARBAGE. Putrescible animal and vegetable matter accumulated in the course of ordinary day-to-day living.

HOUSEHOLD RUBBISH. Waste material and trash normally accumulated by a family in a residence in the course of ordinary day-to-day living, except for garbage, cans, glass, plastic, or other potentially hazardous waste materials.

LAND CLEARING. Clearing of land for agricultural, residential or commercial development purposes, including the construction of roads.

OPEN BURNING. Burning of any matter without a burn chamber approved by the Kentucky Division for Air Quality, or without a stack or chimney with control devices approved by the Kentucky Division for Air Quality.

RECOGNIZED AGRICULTURAL, SILVICULTURAL, RANGE, ECOLOGICAL OR WILDLIFE MANAGEMENT PRACTICES. Burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forestry Service, the Kentucky Department of Fish and Wildlife, the Kentucky State Nature Preserves Commission, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range, and forest lands, weed and understory abatement and pest control and prevention.

(B) *Where and when prohibited.* It shall be unlawful to kindle or maintain any fire in any form without the expressed written consent of the Fire Chief or his or her designee:

- (1) On any public street, alley, roads or other public grounds;
- (2) The burning of garbage, rubbish or flammable and hazardous material that gives off noxious odors, such as, but not limited to, furniture, tires, bedding, leaves and grass;
- (3) Permitted open fires shall be located not less than 50 feet (15 m) from any structure and 75 feet from any wood line [2006 NFPA 1 - 10.11.2.1.];

(4) Where burning is conducted on public property or the property of someone other than the permit applicant, the permit applicant shall demonstrate that permission has been obtained by the appropriate government agency, the owner or the owner's authorized agent [2006 NFPA 1-10.11.1.2]; and

(5) Within 15 feet of fence or property line.

(C) *Non permit-required open burning.* No person shall cause, suffer or allow any open burning except as follows:

- (1) Fires set for the cooking of food for human consumption [401 KAR 63:005];
- (2) Fires set for recreational or ceremonial purposes [401 KAR 63:005]; and
- (3) Small fires set by construction and other workers for comfort heating purposes:
 - (a) Providing excessive or unusual smoke is not created;
 - (b) The ambient temperature is below 50° Fahrenheit;
 - (c) Only clean lumber or vegetative matter is burned; and
 - (d) The fire is burned in a container not exceeding 55 gallons in size [401 KAR 63:005].

(D) *Guidelines for open burning as permitted in divisions (C)(1) through (3) above.*

(1) The following guidelines for open burning as permitted in divisions (C)(1) through (3) above shall apply.

(a) It shall be the responsibility of the person or persons starting the fire to ensure that no fire contains any potentially hazardous substances (i.e., tires, rubbish, plastics and the like) prior to burning.

(b) Open fires and cooking fires shall be constantly attended by a competent person until the fire is extinguished. This person shall have a garden hose connected to the water supply or other fire-extinguishing equipment readily available [2006 NFPA 1 - 10.11.3].

(c) Any and all fires may be required to be extinguished at the discretion of the Fire Chief or his or her designee. Extinguishment shall be performed by the developer, contractor, landowner and/or person starting the fire. If they are not capable of extinguishment, the Fire Department shall extinguish the fire, with the developer, contractor, landowner or person starting the fire being responsible for financial reimbursement for the cost of extinguishing the fire to the city.

(d) Fires shall be located not less than 50 feet from any structure and 75 feet from any wood line.

(e) Conditions that could cause a fire to spread to within 25 feet (7.6 m) of a structure shall be eliminated prior to ignition [2006 NFPA 1 - 10.11.2.4].

(2) The Fire Chief or his or her designee may prohibit, at his or her discretion, any and all permitted open fires when atmospheric conditions or local circumstances make the fire hazardous.

(E) *Permit-required open burning.* Any person who causes, suffers or allows any open burning of the following types shall first obtain permission from the Fire Chief or his or her designee:

(1) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;

(2) Fires set for recognized agricultural, silvicultural, range and wildlife management practices;

(3) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, where no other economically feasible means of disposal is available and practical;

(4) Fires set for the disposal of trees and/or limbs where no other alternative is available; and

(5) Fires set for disposal of natural growth for land clearing for construction purposes.

(F) *Guidelines for open burning as permitted in divisions (E)(1) through (5) above.*

(1) The following guidelines for open burning as permitted in divisions (E)(1) through (5) above shall apply.

(a) It shall be the responsibility of the person or persons starting the fire to ensure that no fire contains any potentially hazardous substances (i.e., tires, rubbish, plastics and the like) prior to burning.

(b) Open fires and cooking fires shall be constantly attended by a competent person until the fire is extinguished. This person shall have a garden hose connected to the water supply or other fire-extinguishing equipment readily available [2006 NFPA 1 - 10.11.3].

(c) Any and all fires may be required to be extinguished at the discretion of the Fire Chief or his or her designee. Extinguishment shall be performed by the developer, contractor, landowner and/or person starting the fire. If they are not capable of extinguishment, the Fire Department shall extinguish the fire, with the developer, contractor, landowner or person starting the fire being responsible for financial reimbursement for the cost of extinguishing the fire to the city.

(d) Fires shall be located not less than 50 feet from any structure.

(e) Conditions that could cause a fire to spread to within 25 feet (7.6 m) of a structure shall be eliminated prior to ignition [2006 NFPA 1 - 10.11.2.4].

(2) The Fire Chief or his or her designee may prohibit, at his or her discretion, any and all permitted open fires when atmospheric conditions or local circumstances make the fire hazardous.

(G) *Enforcement.* The provisions of this section shall be enforced by the Fire Chief, his or her designee or city police officers.

(H) *Penalty for violation.* Any person, firm or corporation violating any of the provisions of this section, or neglecting to comply with the order issued pursuant to this section shall be guilty of a misdemeanor and shall be fined not less than \$75, nor more than \$500, or imprisoned for not more than 12 months, or both the fine and imprisonment. Each day's violation shall constitute a separate offense. Any persons violating this section may also be found guilty of a civil offense. The civil fine shall be not less than \$50, nor more than \$500. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this section or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 9-21-1993; Ord. passed 11-19-1997; Ord. passed 9-9-2002; Ord. 09-08-1074, passed 8-10-2009)

Cross-reference:

Building, Fire, Housing and Safety Standards, see Chapter 4

Editor's note:

An ordinance of 2-15-1983, §§ 1 through 6, enacted the provisions codified as § 14-10 above.

Since the ordinance did not expressly amend this code, the manner of codification has been at the discretion of the editor.

**ARTICLE II. SALE OR EXCHANGE OF JEWELRY, COINS, PRECIOUS
STONES AND METALS**

**§ 14-26 DUTY TO KEEP REGISTER; REQUIRED INFORMATION; ACCESS TO/BY
POLICE.**

It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand or antique jewelry, coins, watches, diamonds or other precious stones, cutlery, old gold, silver, platinum, other precious metals or any other secondhand manufactured articles, composed wholly or in part of gold,

silver, platinum or other precious metals, to keep a book in which every article received by them in the course of their business shall be registered; and in which shall be given as minute a description of every article as is possible, including the maker's name and number of every article received by them. The name, age, sex, color, residence, driver's license number and general description of each and every individual selling or exchanging the articles, shall be taken and entered in the register. The register shall at all times be kept at the place of business of every person engaging in the business aforesaid. Members of the Police Department and Sheriff's Department and State Police shall be allowed free access to the register and the person shall show to such officers all information in his or her possession concerning such articles and all persons selling or exchanging the same.

(Ord. passed 1-20-1981)

Editor's note:

Ord. of 1-20-1981, §§ I, II, did not specifically amend the code; hence, inclusion as Art. II, §§ 14-26 through 14-29, has been at the discretion of the editor.

§ 14-27 RETENTION OF ARTICLES IN SAME STATE OR CONDITION.

All persons engaging in business as described herein shall retain any article received in the same state or condition in which it was received, and shall not commingle with other articles separately received, and shall make it available for examination to members of the Police Department, Sheriff's Department and State Police, for a period of ten days before a resale or exchange unless written permission is obtained from the Chief of Police.

(Ord. passed 1-20-1981)

§ 14-28 DAILY REPORTS.

All persons engaging in business as described herein shall furnish to the Chief of Police daily reports at his or her office, showing fully the name, age, sex, color, residence, driver's license number and general description of each person who shall have sold or exchanged any article during the preceding day, together with a full description of the articles sold or exchanged by the person, including the number of each article bearing a number and the day and hour of the transaction. Every person engaging in the business shall keep duplicates of the reports in a well-bound book or register, which book or register shall, at all times, be subject to the inspection of members of the Police Department, Sheriff's Department or State Police. Any person intending to engage in business as described herein who will not operate that business at an established and permanent location shall give the Chief of Police at least 72 hours' prior notice of the location and date and hours of the operation of the business. In addition to the written daily reports described herein, all persons engaging in business as described herein shall also submit electronic reports regarding said business to L.E.A.D.S. Online, Incorporated, via high speed internet connection. The Chief of Police shall furnish necessary information to all persons engaging in business as described herein for purposes of submitting the electronic reports.

(Ord. passed 1-20-1981; Ord. 08-04-1035, passed 4-22-2008)

§ 14-29 PENALTY FOR VIOLATION.

(A) Failure to comply with the duties and requirements imposed by this article shall be punishable as a Class A misdemeanor. Any person who violates any of the provisions of §§ 14-26, 14-27 or 14-28 shall, upon conviction, be guilty of a misdemeanor and shall be fined not less than \$50, nor more than \$500, and/or be subject to 12 months' imprisonment and his or her business license may be revoked by the city.

(B) Any person violating this article shall also be guilty of a civil offense. The civil fine shall be not less than \$50, nor more than \$500. The civil fine shall be paid directly to the city. Each day that an offense occurs shall be treated as a separate violation of law. If the fine is not paid within 30 days from the date of notification of the fine, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or other appropriate judicial orders to ensure compliance with this article.

(Ord. passed 1-20-1981; Ord. 08-04-1035, passed 4-22-2008)

CHAPTER 14.1: PLANNING AND DEVELOPMENT

Section

Article I. In General

CHAPTER 14.1: PLANNING AND DEVELOPMENT

14.1—14.1-10. Reserved

Article II. Planning Commission

- 14.1-11. Established
- 14.1-12. Members generally
- 14.1-13. Compensation of members
- 14.1-14. Vacancies in membership
- 14.1-15. Removal of members
- 14.1-16. Officers
- 14.1-17. Meetings
- 14.1-18. Bylaws and records
- 14.1-19. Jurisdiction and authority

Article III. Sedimentation and Erosion Control

- 14.1-30. Purpose and applicability
- 14.1-31. Definitions
- 14.1-32. Permit; control plan
- 14.1-33. Plan review and approval
- 14.1-34. Exemptions from permit
- 14.1-35. Existing unvegetated areas
- 14.1-36. Violations and penalties

ARTICLE I. IN GENERAL

§§ 14.1-1–14.1-10 RESERVED.

ARTICLE II. PLANNING COMMISSION**§ 14.1-11 ESTABLISHED.**

A City Planning Commission of the city is hereby established. A more complete statement of purposes and authority of this Commission is set out herein.
(Ord. passed 2-26-1980)

§ 14.1-12 MEMBERS GENERALLY.

The Planning Commission shall consist of six members, being citizen members. The Mayor shall appoint the members of the Planning Commission with the approval of the City Council.
(Ord. passed 2-26-1980; Ord. passed 7-19-1983; Ord. passed 5-31-1988; Ord. passed 11-20-2001)

Cross-reference:

Subdivisions, see Chapter 19

Editor's note:

At the direction of the city, Ord. of 2-26-1980, has been codified as superseding Art. II, §§ 14.1-11, 14.1-25 pertaining to the planning commission and derived from Ord. of 10-5-1976, §§ 1, 2, 5 through 17.

Statutory reference:

Composition of planning commission, see KRS 100.133 et seq.

§ 14.1-13 COMPENSATION OF MEMBERS.

The City Council may authorize reimbursement for expenses or compensation, or both, for citizen members of the Planning Commission.
(Ord. passed 2-26-1980; Ord. passed 11-20-2001)

Statutory reference:

Compensation, see KRS 100.153

§ 14.1-14 VACANCIES IN MEMBERSHIP.

(A) Vacancies on the Planning Commission shall be filled within 60 days by the Mayor.

(B) If the Mayor fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through the expiration of a term of office, it shall be filled for the remainder of that term.

(Ord. passed 2-26-1980)

Statutory reference:

Similar provisions, see KRS 100.147

§ 14.1-15 REMOVAL OF MEMBERS.

(A) Any members of the Planning Commission may be removed by the Mayor for inefficiency, neglect of duty, malfeasance or conflict of interest.

(B) The removal shall be in accordance with the procedure set out in KRS 100.157 and in accordance with all applicable law.

(Ord. passed 2-26-1980)

Statutory reference:

Similar provisions, see KRS 100.153

§ 14.1-16 OFFICERS.

(A) The Planning Commission shall elect annually its Chairperson, Vice-Chairperson and Secretary-Treasurer.

(B) All officers shall be citizen members and shall be eligible for re-election at the expiration of his or her term.

(Ord. passed 2-26-1980)

Statutory reference:

Similar provisions, see KRS 100.161

§ 14.1-17 MEETINGS.

(A) The Planning Commission shall conduct regular meetings as it deems necessary for the transaction of its business, but there shall be at least six regular meetings annually.

(B) All meetings of the Planning Commission shall be public, except when they involve matters which are exempt from the state's Open Meetings Law.

(Ord. passed 2-26-1980; Ord. passed 12-19-1995)

Statutory reference:

Similar provisions, see KRS 100.163

§ 14.1-18 BYLAWS AND RECORDS.

The Planning Commission shall adopt bylaws for the transaction of business, and shall keep minutes and records of all proceedings, including regulations, transactions, findings, determinations and the number of votes for and against each question; and if any member is absent or disqualified from voting,

indicating the facts, all of which shall immediately after adoption be filed in the office of the Commission.

(Ord. passed 2-26-1980)

Statutory reference:

Similar provisions, see KRS 100.167

§ 14.1-19 JURISDICTION AND AUTHORITY.

The Planning Commission shall, in addition to its other duties, have the following jurisdiction and authority:

(A) To prepare and recommend a comprehensive plan for the future development of the city and to review the provisions of the plan and make a report of its findings and recommendations to the City Council;

(B) To initiate a review of the provisions of the city's zoning ordinance and to make a report of its findings and recommendations;

(C) To initiate a review of the provisions of the city's subdivision regulations and to make a report of its findings and recommendations;

(D) To receive and act on applications for actions authorized and specified herein;

(E) To hold public hearings on applications for zoning changes and for approval of subdivision plats and for proposed amendments to all pertinent ordinances in the manner hereinafter described;

(F) Following public hearings, to submit to the City Council as required herein, a report and recommendations on all such public hearings and any and all such amendments;

(G) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by any city official in the interpretation or enforcement of all pertinent ordinances; and

(H) To do any and all acts which the City Council directs and which are authorized by the Kentucky Revised Statutes.

(Ord. passed 2-26-1980)

ARTICLE III. SEDIMENTATION AND EROSION CONTROL

§ 14.1-30 PURPOSE AND APPLICABILITY.

The purpose of this article is to reduce the probability that lands adjacent to sinkhole drains will flood, and to assist in the preservation and protection of the Radcliff water quality and natural environment by regulating the alteration of land and topography, regulating the removal of vegetation, requiring revegetation, and reducing erosion and sedimentation through control requirements. This article shall apply to all land within the city and is intended to complement the 1973 and 1983 editions of the Subdivision Regulations.

(Ord. passed 8-30-1983)

Cross-reference:

Building, Fire, Housing and Safety Standards, see Chapter 4

Editor's note:

Article III, §§ 14.1-30, 14.1-36, is derived from an ordinance read, passed and approved 8-30-1983. The ordinance did not specifically amend this code, and hence has been so codified at the discretion of the editor.

§ 14.1-31 DEFINITIONS.

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

EROSION. The process by which the ground surface is worn away by the action of water or wind.

LAND DISTURBANCE ACTIVITY. Any activity involving the clearing, grading, transporting, filling and any other activity which causes land to be exposed to the danger of erosion.

SEDIMENT. Soil or other surface materials that are transported by wind or water as a result of erosion.

(Ord. passed 8-30-1983)

§ 14.1-32 PERMIT; CONTROL PLAN.

(A) *Permit required.* Prior to any person engaging in a land disturbance activity within the corporate boundaries of the city, he or she shall possess a city-issued permit for the land disturbance activity. A land disturbance/development permit will be issued by the city once a sedimentation and erosion control plan has been submitted and approved.

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(B) *Contents of sedimentation and erosion control plan.* Contents of sedimentation and erosion control plan shall include:

- (1) The size, finished and existing slope and location of any proposed cut or fills;
- (2) A general description of the predominant soil types to be disturbed as indicated by the area soil and water conservation district or other reliable sources;
- (3) The general location and size of the land area to be disturbed and the extent to which the vegetation and topsoil will be removed;
- (4) The general location, volume and type of soil or other materials to be used for fill in areas other than the roadway;
- (5) Location and description of existing natural features on the site such as contours, vegetation and drainage ways;
- (6) Measures that will be taken to contain the sedimentation to the subject property, both during and after construction;
- (7) Measures that will be taken to limit erosion of the subject property both during and after construction;
- (8) The approximate length of time that specific portions of the proposed development will lie unvegetated, including the approximate date it will be denuded and the approximate date it will be reseeded or planted; and
- (9) The type of plant material that will be planted, the approximate time frame for planting and the persons who will be responsible for the planting.

(C) *Review of plan.* The City Engineer shall review the sedimentation and erosion control plan. The plan will be approved and a permit issued if he or she finds that it complies with the following land disturbance activity standards.

- (1) Land disturbance activities shall be done in a manner which will minimize soil erosion:
 - (a) The extent of the disturbed area and the duration of its exposure shall be kept within reasonable limits.
 - (b) Cut and fill operations shall be kept to a minimum. Developments calling for excessive cutting and filling may be refused a permit if it is determined that the land use proposed for the site can be reasonably constructed with less alteration of the natural terrain.

- (2) Land shall be developed in increments of workable size which can be completed during a single construction season. Erosion and sedimentation control measures shall be coordinated with the sequence of grading, development and construction operations.
- (3) When feasible, natural vegetation shall be retained, protected and supplemented.
- (4) Topsoil shall be saved where practical and reapplied to the site after grading has been finished.
- (5) Provisions shall be provided which minimize the damage from surface water to the cut face of excavations or the sloping surface of fills.
- (6) Disturbed soils shall be stabilized as quickly as possible; however, no area shall be left disturbed for more than 12 months.
- (7) Temporary seeding, mulching or other suitable methods of stabilization shall be used to protect exposed areas which have been disturbed longer than 12 months.
- (8) Water runoff shall be minimized and retained on-site, wherever possible, to facilitate groundwater recharge and reduce erosion.
- (9) Measures shall be taken to contain as much sedimentation as practical on-site:
 - (a) Sedimentation shall be trapped by the use of debris, basins, sediment basins, silt traps or similar measures approved by the City Engineer until the area has been stabilized.
 - (b) All required sedimentation and erosion reduction measures and structures shall be in place prior to any land disturbance.
 - (c) Sedimentation shall be kept out of sinkhole throats/outlets.
 - (d) All necessary soil erosion and sedimentation control measures installed shall be adequately maintained by the developer until the land has been completely stabilized as verified by the City Engineer.
- (10) The type of stabilization or revegetation shall be appropriate for the slope and soil type of the site;
- (11) Provisions shall be made for reseeding areas which do not vegetate the first time.
- (12) Difficult areas, such as ditchlines and other slopes, may have to be sodded or stabilized in some other approved manner.

§ 14.1-33 PLAN REVIEW AND APPROVAL.

(A) The City Engineer shall review the plan within 30 days of its receipt and notify the applicant of his or her action. In the case of a denial, the reasons for the denial shall also be given. An applicant may appeal a denial of a permit to the Planning Commission. All appeals shall be made in writing within ten days of the denial and the applicant shall be entitled to a hearing before the Planning Commission within 30 days of the date of the appeal.

(B) A land disturbance/development permit will be issued on the basis of approved plans. No fee will be charged for the permit.

(Ord. passed 8-30-1983)

§ 14.1-34 EXEMPTIONS FROM PERMIT.

The following land disturbance activities are specifically exempt from this article:

(A) Land disturbance associated with existing one- and two-family dwellings;

(B) Use of land for home gardening;

(C) Agricultural use of land which is used in accordance with a farm conservation plan approved by the local soil conservation service or which has been determined by the service that the use will not cause excessive erosion or sedimentation; and

(D) Land disturbance activities covered under an approved subdivision's sedimentation and erosion control plan. (NOTE: Often these plans will cover only the land disturbance associated with lot arrangement and street development and not the individual lot development.)

(Ord. passed 8-30-1983)

§ 14.1-35 EXISTING UNVEGETATED AREAS.

Within six months of the passing of this article, all existing unvegetated areas within the city shall submit and have approved a sedimentation and erosion control plan and possess a land disturbance permit. Within 18 months of the passage of this article, all areas of the city shall be vegetated or stabilized in accordance with this article. The existing unvegetated areas shall institute measures to keep their sedimentation on-site and out of sinkhole outlet areas while the erosion control and revegetation measures are in progress.

(Ord. passed 8-30-1983)

§ 14.1-36 VIOLATIONS AND PENALTIES.

Any person violating any of the provisions of this article for which no other penalty is provided shall upon conviction be fined an amount not less than \$20, nor more than \$250. A separate offense shall be committed for each day the violation occurs. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(Ord. passed 3-16-1993)

CHAPTER 15: RESERVED

CHAPTER 16: POLICE DEPARTMENT

Section

Article I. In General
CHAPTER 16: POLICE DEPARTMENT

- 16-1. Established
- 16-2. Police Chief
- 16-3. Police officer
- 16-4. Weapons
- 16-5. Basic law enforcement training; authority of Mayor to contract with newly hired, uncertified probationary patrol officers

Cross-reference:

Motor Vehicles and Traffic, see Chapter 12

Offenses-Miscellaneous, see Chapter 14

ARTICLE I. IN GENERAL

§ 16-1 ESTABLISHED.

There is hereby established a Police Department to be governed and staffed as provided by state law and the Mayor and City Council.

§ 16-2 POLICE CHIEF.

(A) There is hereby created the Office of Chief of Police of the city.

(B) The powers and duties of this Office are hereby established as follows:

(1) Plans, organizes, directs coordinates and evaluates the activities and programs of the Police Department;

(2) Formulates Department policies and procedures, rules and regulations following consultation with higher authority and subordinate officers;

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(3) Develops organizational structure of the Department in accordance with professional standards and city policy;

(4) Prepares and authorizes work schedules;

(5) Furnishes technical advice on police problems;

(6) Maintains constant surveillance of criminal and traffic reports in addition to activity reports;

(7) Initiates corrective action when and where necessarily indicated;

(8) Supervises and evaluates the use of police equipment;

(9) Instructs and evaluates Department personnel;

(10) Reviews and recommends acceptable standards and procedures for the recruitment, selection, promotion and training of Departmental personnel;

(11) Requests purchase requisitions of supplies and equipment for the Department within the constraints of the budget and subject to approval of the Mayor;

(12) Confers with representatives of federal, state and local agencies on various police problems;

(13) Prepares memoranda and reports on activities of the Department, orally and in writing, and supervises others in the preparation of reports;

(14) Attends all Council meetings;

(15) Receives complaints from the general public;

(16) Studies and reviews all laws, official opinions and guidelines;

(17) Maintains a proper record system pertaining to citations, arrest and investigations;

(18) Participates in approved law enforcement courses and schedules subordinates for the training;

(19) Represents the Department as needed; and

(20) Develops and conducts an effective public relations program.

(C) The individual holding the position of Police Chief shall be compensated for his or her efforts in accordance with the pay plan adopted by ordinance by the City Council.

(D) The Chief of Police shall report to the Mayor.

§ 16-3 POLICE OFFICER.

(A) The position of police officer is hereby established.

(B) The powers and duties of the position of city police officer shall be as stated in the adopted position description for the position as contained in the classification plan for city employees or as otherwise provided by Council.

(C) The individual holding the position of city police officer shall take the following oath upon assuming office:

“I, (state your name), so solemnly swear to faithfully execute the duties and fulfill the responsibilities of the office of Radcliff Police Officer to the very best of my abilities and with honesty, dependability and integrity. I do solemnly swear to uphold in the conduct of my office, all ordinances of the City of Radcliff and all laws of the Commonwealth of Kentucky and of the Government of the United States. I do further solemnly swear to conduct myself at all times with a dignity of purpose and manner which will bring credit to the citizens of the City of Radcliff.”

(D) The individual holding the position of police officer shall be compensated for his or her efforts in accordance with the pay plan adopted by ordinance by the City Council.

Editor's note:

Section 16-3 is derived from §§ 1 through 3 of an ordinance enacted 6-22-1982. Since the ordinance

did not provide for the specific manner of inclusion of its provisions into this code, it has been codified as § 16-3 at the discretion of the editor.

§ 16-4 WEAPONS.

(A) All sworn members of the Police Department that carry deadly weapons on or about their persons in their regularly scheduled duties as patrol/law enforcement officers for the city, may carry concealed deadly weapons on or about their persons at all times within the state.

(B) Deadly weapons that may be carried by all sworn members of the Police Department within the state are those weapons that are usually carried by the officers in performing their duties while on regularly scheduled shift of duty for the city.

(C) This section is enacted for the express purpose of protecting the sworn police officers of the city from prosecution under the provisions of KRS 527.020 and KRS Ch. 237 when they may be outside the corporate limits of the city and for no other purpose.

(Ord. passed 11-17-1970; Ord. passed 12-18-1996)

§ 16-5 BASIC LAW ENFORCEMENT TRAINING; AUTHORITY OF MAYOR TO CONTRACT WITH NEWLY HIRED, UNCERTIFIED PROBATIONARY PATROL OFFICERS.

(A) The Mayor, on behalf of the city, is hereby authorized and directed to execute a contract with each newly hired, uncertified probationary patrol officer of the city, whereby the city agrees to advance the officer's salary and expenses while completing the program of basic law enforcement training by the Bureau of Training, Department of Justice, Commonwealth of Kentucky, at Eastern Kentucky University, pursuant to the Kentucky Law Enforcement Foundation Program Fund, and the newly hired, uncertified probationary patrol officer agrees to reimburse the city for such sums as advanced on his or her behalf, while completing the training, if he or she voluntarily terminates employment with the city as a patrol officer within three years of completion of this training.

(B) This section, and any contract executed pursuant thereto, shall be subject to the provisions of Kentucky Revised Statutes and ordinances of the city regarding probationary status of newly hired patrol officers, and shall in no way be construed as a modification of the statutes or ordinances.

(C) If a patrol officer bound by a contract executed pursuant to this section shall be terminated by the city for any reason during the probationary period or the three-year period following completion of basic law enforcement training, the provisions of the contract shall be null and void.
(Ord. passed 6-22-1982; Ord. passed 12-18-1996; Ord. passed 2-15-2000)

CHAPTER 17: RESERVED

CHAPTER 17.5: STORM WATER UTILITY AND MANAGEMENT

CHAPTER 17.5: STORM WATER UTILITY AND MANAGEMENT

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ARTICLE I. IN GENERAL**§ 17.5-1 FINDINGS.**

- (A) The city maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components as well as natural waterways.
- (B) The storm water system in the city requires regular maintenance and improvements.
- (C) Storm water quality is degrading due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials and other substances into and through the storm water system.
- (D) The public health, safety and welfare is adversely affected by poor ambient water quality and flooding that results from inadequate management of both the quality and quantity of storm water.
- (E) All real property in the city either uses or benefits from the maintenance of the storm water system.
- (F) The extent of use of the storm water system by each property is dependant on factors that influence runoff, including land use and the amount of impervious surface on the property.

(G) The costs of improving, maintaining, operating and monitoring the storm water system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the storm water management system.

(H) Management of the storm water system to protect the public health, safety and welfare requires adequate revenues and it is in the interest of the public to finance storm water management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which they contributes to the need for it.

(I) The city is required to develop a storm water quality program through the NPDES Phase II storm water program that is required by state and federal law.

§ 17.5-2 AUTHORITY.

Authority for the adoption of a system of charges to fund the implementation of storm water management programs is conferred on the city by KRS Chapters 76, 220 and 262.

§ 17.5-2.1 JURISDICTION AND AUTHORITY.

The utility shall, in addition to its other duties, have the following jurisdiction and authority:

(A) To initiate and control a storm water runoff control ordinance and to make recommendations on its adoption to the City Council;

(B) To initiate and control a storm water design manual to ensure compliance with this and other related ordinances;

(C) To initiate and oversee a storm water credits policy program and to make recommendations on its adoption to the City Council;

(D) To receive and act on applications for storm water surcharge credits in accordance with this and other related ordinances; and

(E) To review, update and initiate changes in the fee structure for the utility and to make recommendations on those changes to the City Council.

§ 17.5-3 DEFINITIONS.

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

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ASSESSMENT ROLL. The official listing of assessments of real property maintained by the county's Property Valuation Office.

BASE RATE. The storm water management fee charges on a base unit. The monthly storm water management fee for a single-family residential (SFR) property in the city equals the **BASE RATE**.

CHIEF ADMINISTRATIVE OFFICER. The Chief Administrative Officer for the city or his or her designee.

DEVELOPED PROPERTY. Real property which has been altered from its natural state by the addition of any improvements such as buildings, structures or other impervious areas.

EQUIVALENT RESIDENTIAL UNIT (ERU). The average impervious surface area associated with a single-family residential property in the city as calculated using standard statistical approximation methods.

FEE or STORM WATER MANAGEMENT FEE. The charge established under this chapter and levied on owners of parcels or pieces of real property to fund the costs of storm water management and of operating, maintaining and improving the storm water system in the city.

FISCAL YEAR. July 1 of the calendar year to June 30 of the next calendar year, both inclusive.

IMPERVIOUS SURFACE. A hard surface area which is compacted or covered with material that is resistant to infiltration by water including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots and any other oiled, graveled, graded, compacted or other surface which impedes the natural infiltration of surface water.

IMPERVIOUS SURFACE AREA. The number of square feet of hard surface covered by buildings and other impervious surfaces such as driveways and parking lots. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

MULTI-FAMILY DWELLING. A building with three or more dwelling units.

NON-SINGLE FAMILY RESIDENTIAL (NON-SFR). Developed property other than single-family residential property. The property shall include, but not be limited to, multi-family dwellings, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices and churches.

NPDES PHASE II PERMIT. National Pollution Elimination System Phase II storm water permit as mandated by United States Environmental Protection Agency.

PROPERTY OWNER. The property owner of record as listed in the county's Property Valuation Office assessment rolls. A property owner includes any individual, corporation, firm, partnership or group of individuals acting as a unit, and any trustee, receiver or personal representative.

SINGLE-FAMILY RESIDENTIAL (SFR) PROPERTY. A developed property which serves the primary purpose of providing a permanent dwelling unit and which is classified as residential in the Hardin County assessment rolls. A single-family detached dwelling containing an accessory apartment is included in this definition. For purposes of this definition, a “duplex” shall be considered as two separate *SFRs*.

STORM WATER MANAGEMENT. The planning, design, construction, regulation, improvement, repair, maintenance and operation of facilities and programs relating to water, floodplains, flood control, grading erosion, tree conservation, pollutant capture and/or transformation and sediment control.

STORM WATER MANAGEMENT FUND OR FUNDS. The Fund created by this chapter to operate, maintain and improve the city’s storm water system.

STORM WATER SYSTEM. The primary system or network of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, natural streams and sinkholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components, as well as all natural waterways. Public roads and sidewalks are considered part of the *STORM WATER COLLECTION SYSTEM*.

UNDEVELOPED PROPERTY. Any non-SFR property not altered from its natural state.

WATER. Any storm water, surface water, snow melt or ground water.

§ 17.5-4 ESTABLISHMENT OF STORM WATER MANAGEMENT FUND.

(A) The storm water management program is established and the storm water system is provided to protect the waterways and land in the city by managing flooding and to benefit the natural environment. The costs of designing, developing, improving, operating, maintaining and monitoring the storm water system required in the city should, therefore, be allocated, to the extent as practicable, to all property owners based on their impact on the storm water system. In order to provide revenue to fund those costs and to fairly allocate those costs, a Storm Water Management Fund (“the Fund”) is established.

(B) All revenues collected from the storm water management fee from grants, permit fees and other charges collected hereunder, shall be deposited to the Fund. The City Council may make additional appropriations to the Fund. All disbursements from the Fund shall be for the purposes of the Fund as set forth in § 17.5-5.

§ 17.5-5 PURPOSES OF THE FUND.

The Fund shall be used for the following purposes:

(A) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate and maintain storm water management facilities;

(B) All costs of administration and implementation of the storm water management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements;

(C) Engineering and design, debt service and related financing expenses, construction costs for new facilities and enlargement or improvement of existing facilities;

(D) Operation and maintenance of the storm water system;

(E) Monitoring, surveillance and inspection of storm water control devices;

(F) Water quality monitoring and water quality programs;

(G) Retrofitting developed areas for pollution control;

(H) Inspection and enforcement activities;

(I) Costs of public education relating to storm water and related issues;

(J) Billing and administrative costs; and

(K) Other activities which are reasonably required.

§ 17.5-6 STORM WATER MANAGEMENT FEE.

(A) A monthly service charge is imposed upon all real property in the city, beginning no earlier than 7-1-2003, to fund storm water management programs. This service charge shall be known as the "storm water management fee" ("fee"). Any real property completed or added after July 1 or annexed into the city after July 1 shall be subject to a monthly service charge.

(B) The fee is based on:

(1) The extent to which runoff from each property creates the need for the storm water management program;

- (2) The amount of impervious area on each property; and
- (3) The cost of implementing a storm water management program.

§ 17.5-7 CLASSIFICATION OF PROPERTY FOR PURPOSES OF DETERMINATION OF THE STORM WATER MANAGEMENT FEE.

(A) *Generally.* For purposes of determining the storm water management fee, all properties in the city are classified into one of the following classes:

- (1) Single-family residential (SFR) property;
- (2) Non-single-family residential (non-SFR); or
- (3) Non-developed property.

(B) *Single-family residential fee.* The Council finds that the contribution to runoff of most parcels of real property in the city classified as single-family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structures and other impervious areas) on each parcel. Therefore, all single-family residential properties in the city shall be charged a flat storm water management fee, equal to the base rate or ERU regardless of the size of the parcel or the improvements.

(C) *Other developed property fee.* The fee for non-SFR property in the city shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one ERU. The impervious surface area for non-SFR property is the square footage for the buildings and other improvements on the property. At the sole discretion of the Chief Administrative Officer, the impervious surface area of non-SFR property may be approximated through site examination, mapping information, aerial photographs and other available information. The minimum storm water management fee for other developed property shall equal the base rate for single-family residential property.

§ 17.5-8 BASE RATE.

The City Council shall, by ordinance, establish the monthly base rate for the storm water management fee. The base rate shall be calculated to ensure adequate revenues to fund the costs of storm water management and to provide for the operation, maintenance and capital improvements of the storm water system in the city.

§ 17.5-9 SCHEDULE OF MONTHLY RATES FOR STORM WATER MANAGEMENT FEE.

(A) The following schedule of rates shall apply to each property owner. This schedule includes the rate for the Storm Water Utility fees.

<i>Rate Category</i>	<i>Rate per Month</i>
Single-family residential	\$4.50
Non-single-family residential	\$4.50 multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one equivalent residential unit (ERU)

(B) Annual cost of living adjustment will be added to the user charges each year beginning with the second billing cycle in March. The adjustments will be based upon the Consumer Price Index maintained and reported by the U.S. Department of Labor, Bureau of Labor Statistics and reported by the Kentucky Department of Local Government each February.

(Ord. passed 12-6-2004; Ord. 08-05-1046, passed 5-27-2008)

§ 17.5-10 CHARGES FOR TAX-EXEMPT PROPERTIES; EXEMPTIONS.

(A) The City Council finds that all real property in the city contributes to runoff and either uses or benefits from the maintenance of the storm water system. Therefore, all real property in the city, including property that is tax exempt from property tax by the Kentucky Revised Statutes, as amended, shall be charged with the fee.

(B) Property which is owned by the city shall be charged with the fee.

(C) All federal, state, county and city roads are exempt from the fee and are considered to be part of the city drainage system.

(D) Undeveloped property in its natural state shall be exempt from the fee.

§ 17.5-11 ASSESSMENT NOTICES.

(A) The Chief Administrative Officer may, but is not required to, send assessment notices for the fee to property owners prior to the billing for the fee.

(B) If assessment notices are sent, the notice shall include the following information:

- (1) The classification of the property for purposes of determining the fee;

(2) For property classified as other developed property:

(a) The impervious surface area of the property; and

(b) The method by which the impervious surface area of the property was determined; that is, whether the computation of the impervious surface area of the property is based on information in the county's Property Valuation Office, site examination, mapping information, aerial photographs or other methods.

(3) The amount of the base rate (i.e., the single-family residential fee) and, for other developed property, the number of base units on the property.

§ 17.5-12 WHEN STORM WATER MANAGEMENT FEE PAYABLE; INTEREST AND PENALTIES; LIEN ON REAL PROPERTY; ABATEMENT OF SMALL AMOUNTS DUE.

(A) The fee shall be billed to each user on a monthly basis. Billings for any particular month shall be made by the due date shown on the bill. Any payment not received within ten days after the bill due date shall be considered delinquent.

(B) The fee charged to any customer that is due for a fiscal year must be paid within 30 days after the bill is mailed or issued to the property owner and is overdue after that date. An overdue fee bears interest and penalties at the rate of 12% per annum or fraction of a month that the fee is overdue.

(C) The fee, including interest and penalties, when overdue is a lien on real property and may be collected by a suit against the property owner.

(D) The Chief Administrative Officer may abate the fee, including interest and penalties, if the cost of collection is reasonably estimated to exceed the amount of the fee, including any interest and penalties, due and payable.

§ 17.5-13 REQUESTS FOR CORRECTION OF THE STORM WATER MANAGEMENT FEE.

(A) A property owner may request correction of the fee by submitting the request in writing to the Chief Administrative Officer within 30 days after the date the assessment notice or the bill is mailed or issued to the property owner. Grounds for correction of the fee include:

(1) Incorrect classification of the property for purposes of determining the fee;

(2) Errors in the square footage of the impervious surface area of the property;

(3) Mathematical errors in calculating the fee to be applied to the property; and

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(4) Errors in the identification of the property owner of a property subject to the fee.

(B) The Chief Administrative Officer shall make a determination within 30 days after receipts of the property owner's completed written request for correction of the fee. The Chief Administrative Officer's decision on a request for correction of the fee shall be final.

(C) A property owner must comply with all rules and procedures adopted by the city when submitting a request for correction of the fee and must provide all information necessary for the Chief Administrative Officer to make a determination on a request for correction of the fee. If a property owner alleges an error under § 17.5-13(A)(2), the request for correction must include a certification by a registered engineer or professional land surveyor of the impervious surface area of the property. Failure to comply with the provisions of this division shall be grounds for denial of the request.

§ 17.5-14 REQUEST FOR CREDIT.

A property owner may request credit for a portion of the Storm Water Utility fee in accordance with the provisions of the city's Storm Water Runoff Control Ordinance.

ARTICLE II. STORM WATER RUNOFF CONTROL AND QUALITY MANAGEMENT**§ 17.5-21 TITLE; PURPOSE; GENERAL PROVISIONS.**

(A) *Title.* This article shall be known as the "Storm Water Quality Management Regulations" for the City of Radcliff ("the city"), Kentucky, and may be so cited.

(B) *Purpose.* The purpose of this article is to provide regulations and measures that will address storm water quality in the city and to establish procedures by which these requirements are to be administered and enforced.

(C) *Jurisdiction.*

(1) The laws of the Commonwealth of Kentucky shall apply to this article.

(2) This article shall govern all properties within the jurisdictional boundaries of the city.

(3) This article is applicable to all new development and redevelopment activities that result in the disturbance of 5,000 square feet or more of land including disturbance of less than that if part of a larger common plan.

(4) The following activities are exempt from the provisions of this article:

(a) Agricultural and silviculture (woodland production) operations according to an Agricultural Water Quality Plan approved by the City Conservation District or approved as required in the Kentucky Agricultural Water Quality Plan developed in accordance with the Kentucky Agricultural Water Quality Authority.

(b) Land reclamation projects regulated by the Kentucky State Department for Surface Mining Reclamation and Enforcement.
(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-22 DEFINITIONS; ACRONYMS.

(A) For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCIDENTAL DISCHARGE. A discharge of spills and dumping or any disposal of materials other than storm water into the system.

BEST MANAGEMENT PRACTICES (BMPS). Those measures described in the latest edition of the “National Menu of Best Management Practices, Post-Construction Storm Water Management in New Development and Redevelopment” found at <http://cfpub.epa.gov/KPDES/stormwater/menuofbmps/index.cfm> as published by the United States Environmental Protection Agency (USEPA), “Kentucky Erosion Prevention and Sediment Control Field Guide” as published by the Kentucky Division of Water, “Best Management Practices for Construction Activities” as published by the Kentucky Division of Conservation and Division of Water and “Kentucky Construction Site BMP Planning and Technical Specifications Manual” developed by the KDOW and KYTC. This shall also include related documents published and distributed by the city.

BUILDER. A person, partnership, contractor, or corporation constructing one or more buildings for occupancy or any other use.

CERTIFICATION. A signed, written statement that specific construction, inspections or tests (when required) have been performed and that such comply with the applicable requirements of this article.

CITY. The City of Radcliff government.

CITY REPRESENTATIVE. The person or persons currently designated by the Mayor to administer the storm water program and any related permit activities.

CLEAN WATER ACT. The Federal Water Pollution Control Act (33 U.S.C § 1251 et seq.)

CONTRACTOR. A person who contracts with the permittee, landowner, builder, developer or another contractor to undertake any or all of the land-disturbing activities covered by this article.

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CONSTRUCTION ACTIVITY. Land-disturbance activities subject to state KPDES general construction permits or local permits. Such activities include, but are not limited to clearing and grubbing, grading, excavating, and demolition.

CONSTRUCTION WEATHER DAYS. Days in which a needed activity could occur.

DETENTION BASIN. A drainage facility constructed to restrict the runoff of storm water to a prescribed maximum rate and to detain for a specified period of time the excess waters that accumulate upstream from the outlet structure.

DEVELOPMENT. The planning or construction project involving substantial property improvement and, usually, a change of land-use character within the site; the act of using land for building purposes.

DIRECTLY CONNECTED IMPERVIOUS AREA (DCIA). Surface area that drains/discharges to an outfall without passing through a BMP.

DRAINAGE AREA. The surface area from which water drains to a point of consideration.

ENGINEER. A person licensed as a professional engineer in the Commonwealth of Kentucky in accordance with KRS 322.

EROSION PREVENTION AND SEDIMENT CONTROL (EPSC) MEASURE. The practice, or a combination of practices, to prevent erosion and to abate the resulting off-site sedimentation.

FEMA. The Federal Emergency Management Agency.

FINAL STABILIZATION.

- (a) All soil-disturbing activities at the site have been completed;
- (b) There are no areas of active erosion evident; and
- (c) A uniform perennial vegetative cover with a density of 85% of the cover for the area has been established or equivalent measures, i.e. mulches or geotextile fabrics, have been employed.

FLOODPLAIN. Any area inundated by a 100-year flood or as determined by the FEMA Flood Insurance Rate Map(s) or an engineering study.

FLOODWAY. The channel of a river or stream and those portions of the floodplain adjoining the channel that are required to carry and discharge the peak flow of the regulatory flood of any river or stream. The **FLOODWAY** is where the water is likely to be fastest and not include the channel and the portion of the adjacent floodplain.

ILLICIT DISCHARGE. Any discharge to a Municipal Separate Storm Sewer System (MS4) that is not composed entirely of storm water exempted by this article or managed pursuant to a Kentucky Pollution Discharge Elimination System permit (other than the city's KPDES storm water permit) or otherwise defined by this article.

INDUSTRIAL ACTIVITY. Activities subject to KPDES industrial permits as defined in 40 CFR § 122.26 (b)(14).

KDOW. The Kentucky Division of Water.

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES) STORM WATER DISCHARGE PERMIT. A permit issued by the Kentucky Division of Water (KDOW) under designated authority by the United States Environmental Protection Agency (USEPA), whether the permit is applicable on an individual, group or general area wide basis.

LAND-DISTURBING ACTIVITY. All clearing and grubbing, clear cutting, construction, reconstruction, grading, modification, extension or expansion of structures or parking areas, placement of fill and dumping that change the natural cover or topography, thereby creating the potential for erosion and contribution of sediment.

LANDOWNER. A person holding legal title who directly or indirectly allows the land-disturbing activity or who benefits from it.

LAND SURVEYOR. A person licensed as a professional land surveyor in the Commonwealth of Kentucky according to KRS 322.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, that is designed or used for collecting or conveying storm water; not privately owned; not a combined sewer; and not part of a Publicly Owned Treatment Works (POTW).

NOI. The Notice of Intent.

NON-STORM WATER DISCHARGE. Any discharge to the storm drainage system that is not composed entirely of storm water or otherwise allowed by this article.

NOT. The Notice of Termination.

OUTFALL. The point or location where storm water runoff discharges from a BMP, conduit, stream or drain, storm sewer, channel, or detention/retention facility.

PERIMETER OUTFALL. The locations from which storm water flow(s) from the project site/disturbed area.

PERIMETER CONTROL PLAN (PCP). A component of the Storm Water Quality Management Plan that documents how sediment is controlled from leaving the project site.

PERMITTEE. The person responsible for the land-disturbing activity; who must have ownership interest in the property and is designated on an approved SWQMP permit.

PERSON. Except to the extent exempted from this article, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, town, or other political subdivision of the state, any interstate body or any other legal entity conducting land-disturbing activities subject to this article.

POLLUTANT. Anything of a chemical component or nature which causes or contributes to pollution.

POLLUTION. The contamination or other alteration of any water's physical, chemical, or biological properties by the addition of a constituent.

POST-CONSTRUCTION STORM WATER POLLUTION PREVENTION PLAN (P-SWPPP). A component of the Storm Water Quality Management Plan that illustrates how the pollutants or pollution will be prevented, treated and otherwise managed in the long-term, beyond that of construction phases.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved.

PROJECT SITE. The area of land-disturbing activity.

QUALIFIED PROFESSIONAL. An individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework, as accepted according to this article, that enables the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

REDEVELOPMENT PROJECTS. Classified as any activity that requires the submittal of a development plan. Existing single family structures are exempt from redevelopment requirements.

RETENTION BASIN. A drainage facility constructed to contain the runoff of storm water to a prescribed maximum rate/volume to pass into the groundwater system without discharging the retained volume to surface waters except through an emergency bypass under conditions beyond the designed capacity.

SITE. The entire area or project site of the land-disturbing activity as proposed in the permit application.

STOP WORK ORDER. An order by the city directing a permittee to suspend all construction and/or operations except for work related to remediation of the violation.

STORM SEWER. A channel, ditch, catch basin, inlet pipe, culvert, conduit or other conveyance used for the purposes of collecting and conveying storm water.

STORM WATER QUALITY MANAGEMENT PLAN (SWQMP). Illustration and documentation of how sediment and other pollutants are managed on the project site during and after the construction phase. This is composed of three primary elements: (1) the Perimeter Control Plan, (2) the Storm Water Pollution Prevention Plan, and (3) the Post-Construction Storm Water Pollution Prevention Plan.

STORM WATER QUALITY MANAGEMENT PLAN (SWQMP) PERMIT. A legal document that allows the permit holder to break ground or disturb soil on a site within the provisions of a SWQMP.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A component of the Storm Water Quality Management Plan that illustrates how the suspension of sediment and other construction pollutants will be prevented.

WATERS OF THE COMMONWEALTH. Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the Commonwealth of Kentucky which are not entirely confined and retained completely upon the property of a single person.
(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-23 PROGRAM OBJECTIVES; GENERAL APPROACH.

(A) *Program objectives.*

(1) Protection of the short-term and long-term public health, safety, and general welfare. This objective will be achieved by the following:

(a) Providing for regulation and management of the city's storm water system, including public and private facilities in the city's service area.

(b) Protecting, and preserving storm water quality and thereby fish and wildlife habitat within the city and in downstream receiving waters.

(c) Protecting those downstream and adjacent properties from storm water quality impairment.

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(2) Compliance with state and federal storm water regulations developed pursuant to the Clean Water Act Amendments of 1987 and subsequent amendments. This objective will be achieved by the following:

(a) Benefitting storm water quality to a level of “designated use” as defined by the Clean Water Act §§ 305(b) and 303(d) and minimizing the impacts from new development and/or areas of significant redevelopment.

(b) Managing the quality of storm water discharged to the MS4 by controlling the contribution of pollutants associated with new development and redevelopment.

(c) Prohibiting illicit discharges to storm water.

(d) Managing the discharge of spills and dumping or any disposal of materials other than storm water into the system.

(e) Managing storm water pollution caused by the suspension and transport of soils, sediment and other construction pollutants.

(f) Minimizing damage to public facilities and utilities.

(g) Managing the use of the public and private storm water/drainage system that will not result in excessive maintenance costs.

(h) Encouraging the use of natural and aesthetically-pleasing designs that maximize the preservation of natural areas.

(i) Guiding the construction of storm water management facilities by developing comprehensive master plans that address storm water quantity, quality, design, operation, and maintenance.

(j) Encouraging the preservation of floodplains, floodways and open spaces to protect and benefit the community’s quality of life and natural resources.

(k) Encouraging the planning for and use of regional BMPs.

(B) *General approach for development.*

(1) To most effectively achieve the program objectives, the city promotes an approach that encourages the consideration and use of:

(a) Regional BMPs.

(b) Low-impact development design principles.

- (c) Waterway buffers.
- (d) Low maintenance on-site BMPs.
- (e) A series of multiple BMP treatment systems.

(2) The city will encourage a primary preference for regional BMPs through:

(a) Enabling and facilitating private partnerships where on-site storm water quantity and/or quality requirements may be achieved or offset by watershed based solutions.

(b) Enabling and supporting private to public partnerships, offsets and regional BMP banking, and in-lieu fee funds.

(3) In support of this approach, the city integrates into the planning and construction plan review processes, when and where available, the use of:

- (a) City Council adopted watershed studies.
- (b) City Council adopted master plans.
- (c) City of Radcliff Storm Water Design Manual.
- (d) City of Radcliff Storm Water Credit Policy Program.
- (e) FEMA floodplain delineations.
- (f) USEPA, KDOW 303(d) reports.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-24 AUTHORITY; RIGHT OF ENTRY.

(A) Upon request to the person, the city shall have safe and easy access to the areas to be inspected and/or monitored.

(1) The city shall have the right-of-entry on or upon the project site. The city shall be provided access to all parts of the premises subject to this article for the purposes of inspection, monitoring, sampling, and for the performance of other duties necessary to determine compliance with this article.

(2) Where a project site has security measures in place which require proper identification and clearance of individuals before entry into its premises, the person shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification and written request, the city will be permitted to enter without delay for the purposes of performing specific responsibilities.

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(3) The city shall have the right to set up on a project site such devices necessary to conduct sampling and/or metering of the storm water operations or discharges.

(4) Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored that can reasonably be moved shall be removed promptly by the person at the written or verbal request of the city. The costs of clearing such access shall be borne by the person.

(5) The city or its designated representative may inspect the facilities of any user in order to ensure compliance with this article. Such inspections shall be made with the consent of the owner, manager, or signatory official. If such consent is refused, denied or not promptly addressed, the city may seek issuance of a search warrant.

(6) The city has the right to determine and impose inspection schedules necessary to enforce the provisions of this article. Inspections may include, but are not limited to, the following:

(a) An initial inspection prior to Storm Water Management Plan approval;

(b) An inspection prior to burial of any underground drainage structures;

(c) Erosion control inspections as necessary to determine effective control of sediment prior to discharge to the Municipal Separate Storm Sewer System;

(d) A finish or closeout inspection when all work, including installation of storm management facilities, has been completed; and

(e) An inspection to determine the effectiveness or operational viability of a permanent or long-term storm water quality management practice(s).

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-25 ILLICIT DISCHARGE DETECTION AND ELIMINATION.

(A) *Prohibition of illegal discharges.*

(1) Pursuant to the Kentucky Pollutant Discharge Elimination System (KPDES) Municipal Separate Storm Sewer System (MS4) program, illicit discharges to the MS4 are defined as illegal. Except as hereinafter provided, all non storm water discharges into the MS4 are prohibited and declared to be unlawful.

(2) It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything except storm water or unpolluted water, which is approved by the city based on exemptions listed in subsection (B) below, to the storm water system.

(3) It is unlawful for any person to discharge waters from residential construction activities that are not complying with the Standard of Practice for Residential Construction Storm Water Management as approved and advertised by the city.

(4) In addition to illicit discharges, the discharge of spills and the dumping and/or disposal of materials other than storm water, including, but not limited to, unpermitted (KPDES) industrial and commercial wastes, commercial car wash wastes, sanitary sewage, garbage, yard waste, trash, petroleum products, including used motor vehicle fluids, as well as leaf litter, grass clippings, and animal wastes into the MS4, whether directly or indirectly, are prohibited, unless authorized under a KPDES permit.

(B) *Allowable discharges.*

(1) Unless the city has identified a discharge as an unacceptable source of pollutants to the Waters of the Commonwealth of Kentucky, the following non-storm water discharges into the MS4 are lawful:

- (a) Discharges from emergency fire fighting activities;
- (b) Diverted stream flows;
- (c) Rising ground waters;
- (d) Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR § 35.2005(20));
- (e) Uncontaminated pumped ground water;
- (f) Discharges from potable water sources as required for system maintenance;
- (g) Drinking water line flushing, de-chlorinated through city accepted BMPs;
- (h) Air conditioning condensate;
- (i) Uncontaminated landscape irrigation;
- (j) Uncontaminated irrigation water;
- (k) Lawn watering;
- (l) Uncontaminated springs;
- (m) Uncontaminated water from crawl space pumps;
- (n) Uncontaminated water from footing drains and pumps;

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- (o) Individual residential car washing;
- (p) Flows from riparian habitats and wetlands;
- (q) Swimming pool discharges de-chlorinated through city accepted BMPs;

(r) Controlled flushing storm water conveyances (contained and treated by appropriate BMPs);

(s) Discharges within the constraints of a Kentucky Pollutant Discharges Elimination System (KPDES) permit from the Kentucky Division of Water (KDOW); and

(t) Discharges approved at the discretion of the city representative.

(C) *Accidental discharges.*

(1) In the event of any discharge of a hazardous substance in amounts that could cause a threat to public drinking supplies, a spill having a significant adverse impact as defined by the USEPA and Kentucky state law, or any other discharge that could constitute a threat to human health or the environment, as may be asserted by the city, the owner or operator of the facility shall give notice to the city and the KDOW as soon as practicable, but in no event later than four hours after discovery of the accidental discharge or the discharger becomes aware of the circumstances.

(2) If an emergency response by governmental agencies is needed, the owner or operator should call 911 immediately to report the discharge. A written report must be provided to the city within five days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by the city for good cause shown as determined by the city or its designee on a case-by-case basis, containing the following information:

- (a) A description of the discharge including volumes and concentrations;
- (b) The exact dates and times of discharge; and
- (c) Steps being taken to eliminate and prevent recurrence of the discharge.

(3) The discharger shall take all reasonable steps to minimize any adverse impact to the MS4 or the Waters of the State, including accelerated or additional monitoring necessary to determine the nature and impact of the discharge. It shall not be a defense, for the discharger in an enforcement action, to claim that it would have been necessary to halt or reduce the business or activity of the facility in order to maintain storm water quality and minimize any adverse impact that the discharge may cause.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-26 STORM WATER QUALITY MANAGEMENT PLAN (SWQMP) PERMIT APPLICATION PROCESS.

(A) The landowner shall obtain from the city a SWQMP permit prior to the initiation of any land-disturbing activities that result in the disturbance of 5,000 square feet or 2,000 square feet if part of a larger common plan.

(B) This Storm Water Quality Management Plan (SWQMP) permit alone does not authorize or grant permission to begin development or redevelopment on subject property. It does not supersede other permits required by the city, state, and federal governments.

(C) Project site owners, as applicable in subsection (A), shall submit an application for a SWQMP on forms provided by the city;

(D) Applications must include a Notice of Intent (NOI), Perimeter Control Plan (PCP), Storm Water Pollution Prevention Plan (SWPPP), Post-Construction Storm Water Pollution Prevention Plan (P-SWPPP), and any other necessary information or documentation requested by the city. The NOI requirements are included in subsection (F) below.

(E) The PCP and SWPPP are components of the SWQMP. While both plans may be approved simultaneously, the provisions of a PCP shall be implemented, inspected and accepted by the city prior to implementing the SWPPP and P-SWPPP and before other construction proceeds.

(F) The landowner must notify the city and the Kentucky Division of Water (KDOW) within seven days prior to the commencement of construction activities through the submittal of an updated NOI.

(1) Submittal for a SWQMP permit application shall include a NOI letter, as required by 401 KAR 5:055 and 401 KAR 5:060, with proof of publication of a public notice, construction plans, a Perimeter Control Plan, a Storm Water Pollution Prevention Plan, Post-Construction Storm Water Pollution Prevention Plan, and any other necessary information or documentation requested by the city.

(2) The NOI letter, proof of publication of public notice, and construction plans for the SWQMP permit shall be submitted to the city.

(G) Upon completion of construction activities, stabilization of the project site and removal of all temporary erosion protection and sediment control measures, the applicant shall submit a NOT. The city, or its designated representative, shall inspect the project site to verify that the requirements of the NOT have been met.

(H) The city reserves the right to require a checklist of necessary items to be completed and included with the SWQMP permit application submittal. Upon submittal, the SWQMP application shall be rejected in its entirety should any item on the checklist be incomplete.

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(I) The city reserves the right to collect fees associated with SWQMP permit application, plan review, and inspections from the applicant.
(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-27 CONSTRUCTION SITE RUNOFF MANAGEMENT.

(A) *Perimeter control plan.* The permittee shall secure the perimeter prior to any land disturbance to decrease off-site sedimentation once construction begins.

(1) *Control plan objectives.*

(a) Focus on downstream points and outfall areas and does not necessitate protection of the entire site boundary.

(b) Protect adjacent properties by the use of vegetated strips along lower perimeters, sediment barriers, filters, diversion berms, sediment basins or other means acceptable to the city.

(c) Protect all points of discharge from outlets such as pipes, drains, culverts, conduits and channels.

(d) Minimize erosion and control sedimentation.

(e) Reduce the velocity of flows from the project site.

(2) *Control plan requirements.*

(a) The permittee shall utilize sediment control measures that consider the type of flow, site terrain, soil type and other relevant factors.

(b) Buffer strips may only be utilized for sheet flow.

(c) Supplemental control measures shall be utilized when a single control device or measure proves ineffective.

(d) Location and description of construction entrances and exits that comply, or exceed, the BMP minimum standards. All sites require sufficient temporary construction entrances to ensure that sediment is not tracked off of the construction site.

(B) *Perimeter and outfall inspections.*

(1) The perimeter and outfall protection inspection must be performed prior to the permittee's breaking ground or disturbing soil with exception for installation of sediment control practices at the hydrologic perimeter and outfall(s) of a construction site. The inspection shall include participation by the city, the permittee and the permittee's contractor.

(2) The perimeter and outfall protection inspection may only be performed after the review and acceptance by the city of a Perimeter Control Plan.

(3) Clearing, except that necessary to establish perimeter sediment control devices, shall not begin until perimeter and outfall sediment control devices have been installed and have been stabilized. Activities necessary to establish the perimeter controls are exempt from initial inspection.

(4) The city shall inspect the proposed construction site within seven normal business days after the submittal of the plan and installation of the perimeter protection devices.

(a) The inspector shall either approve the portion of work completed or notify the permittee where the work fails to comply with the approved perimeter protection plan.

(b) Failure by the city to perform the inspection within seven normal business days will allow the permittee to begin land-disturbing activities, but may be subject to subsequent inspections by the city and revisions in the perimeter protection plan.

(c) Inspection of perimeter and outfall protection measures shall consist of an inspection of each type of protective measure to ensure that it was installed according to the approved plan and site-specific conditions.

(d) Measures shown on the plan may be modified at the time of inspection pursuant to agreement between the city and the permittee's engineer or qualified professional.

(C) *Other inspections.* The city may inspect a permitted construction site in order to determine compliance with this article. The city may determine and establish inspection schedules necessary to enforce the provisions of this article within access provided in § 17.5-24.

(D) *Storm Water Quality Management Plan (SWQMP) permit ("storm water permit").*

(1) By accepting the permit, the permittee automatically acknowledges and accepts that the city has the right to perform inspections of the project site.

(2) The permittee shall complete a permit application that includes a Storm Water Pollution Prevention Plan (SWPPP), Perimeter Control Plan (PCP), and Post-Construction Storm Water Pollution Prevention Plan (P-SWPPP) to be completed, sealed and signed by a licensed professional engineer and/or land surveyor as appropriate and submitted to the city representative.

(3) The plan shall include and/or address the following elements:

(a) Area vicinity map showing current zoning, adjoining property owners, and street lines within 100 feet of the project boundaries all drawn at a scale not greater than one inch equals 2,000 feet.

(b) North arrow and its basis.

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- (c) Legend explaining symbols and abbreviations used on the plan.
- (d) “Do Not Disturb” limits for construction activity indicated by a heavy dashed line and labeled as such.
- (e) Boundary of site defined by bearings and distances and indicated by a heavy solid line.
- (f) Drawing(s) at a scale not greater than one inch equals 100 feet. In the case of an unusually large development, a scale of one inch equals 200 feet may be acceptable.
- (g) Acreage of the total site and acreage of the project site (if different).
- (h) Soil classifications.
- (i) Existing and proposed runoff coefficients.
 - (j) Directly connected impervious area (DCIA).
 - (k) Impervious areas as measured in square feet.
 - (l) Benchmark location(s), description(s) and elevation(s) at sea level.
 - (m) Basis of elevation datum.
 - (n) Name, address and telephone number of the owner, developer, permittee and project engineer.
 - (o) Existing and proposed topography at two-foot contour intervals.
 - (p) Mapping accuracy shall conform to National Standards of Mapping.
 - (r) Location of conservation zones, sinkholes, streams, steep slopes, known springs and watercourses.
 - (s) Location of any existing buildings or structures.
 - (t) Location of any pertinent utilities, sanitary sewers, water and storm water facilities on the property or within 50 feet of the site.
 - (u) Elevations, dimensions, locations and the extent of all planned grading indicated with proposed contours.
 - (v) A grading plan for borrow pits, quarries and material-processing facilities based on the findings of soil site investigations.

(w) Design details of temporary and permanent structural controls.

(x) Approximate location of the 100-year floodplain or a statement by a professional engineer or professional land surveyor that the site is not located in an area subject to flooding. The basis for this determination shall be shown.

(y) A detailed cost estimate for installation and maintenance of all storm water management control measures.

(z) Identification of perimeter controls at outfalls and areas where construction site drainage leaves the property boundary or disturbed area(s).

(aa) Arrows indicating drainage flow patterns.

(bb) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.

(cc) Temporary stabilization plans and sequence of implementation including seeding mixture, method of seedbed preparation and kind and quantity of mulching.

(dd) Permanent stabilization plans and sequence of implementation including seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching.

(ee) A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and construction of buildings, final grading and landscaping. Sequencing shall identify the expected date each activity will occur and the expected duration of each. A description should be given describing the relationship between implementation of storm water quality measures and phases of construction activities. Phasing of construction should be performed to limit disturbed areas to 20 acres.

(ff) Anticipated inspection and maintenance requirements for permanent and temporary measures. This shall include the expected frequency of routine inspections and maintenance activities such as removal of sediment and waste concrete.

(gg) Name of receiving waters.

(hh) Management practices or other controls to address the following:

1. Waste concrete management.
2. Material delivery, handling and storage.
3. Sanitary/septic waste management.

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4. Solid waste/trash and debris management.
5. Vehicle and equipment cleaning, fueling and maintenance.
6. Sensitive and vegetated area preservation.
7. Pit and channel dewatering operations.
8. Contaminated soil management as defined and approved by the Kentucky Divisions of Water and Waste Management.
9. Hazardous materials and waste management as defined and approved by the Kentucky Divisions of Water and Waste Management.
10. Pesticides, herbicides and fertilizer use.
11. Long-term storm water quality treatment.
12. Blowing of dust or sediment from the site.

(ii) Plan for stabilizing the entire site at the end of the construction season. If vegetation cannot be established, site shall have a heavy mulch layer (straw or wood chips) applied to control erosion.

(4) *Plan revisions.* The permittee shall notify the city in writing of any substantial field changes made to the approved Storm Water Quality Management Plan. Changes made to the Plan must be approved by the City Engineer.

(5) *Plan review and permit issuance.* The city shall review the SWPPP within a reasonable time frame, typically 30 calendar days, from date of submission and issue or deny the requested permit. Failure to do so will allow the person to proceed with land-disturbing activities in accordance with BMPs and the submitted SWPPP. However, the city still reserves the right to review and require changes it determines appropriate.

(6) *Requirements for individual lots.*

(a) An Erosion and Sediment Control Permit is required for all individual lots and shall be completed and signed prior to the issuance of a building permit for the site.

(b) All storm water management measures necessary to comply with this article must be implemented in accordance with the permitted plan for the larger project and adhere to the general standard or those of a common area plan.

(c) The individual permittee is responsible for the installation and maintenance of all erosion prevention and sediment control measures until the site is stabilized.

(d) The permittee, whether owning the property or acting as the representative of the property owner, shall submit to the city the following information for review and approval prior to the issuance of a building permit:

1. Dimensions, existing drainage patterns and swales, location of the proposed or of any existing buildings and the location of any natural features that are pertinent to this article;
2. Proposed drainage patterns;
3. Location of the construction entrance to the site; and
4. An eight and one-half-inch by 11-inch site plan showing the location of perimeter erosion and sediment control measures prior to land disturbance.

(e) Temporary erosion prevention and sediment control measures may be removed for completion of the finish grade. Permanent stabilization to include either sod or mulched-seeding as appropriate for seasonal conditions shall be completed within 14 days prior to removal of temporary erosion prevention and sediment control measures.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-28 POST-CONSTRUCTION STORM WATER MANAGEMENT.

(A) *Storm water quality management.* The permittee shall complete a permit application that includes a Post-Construction Storm Water Pollution Prevention Plan (P-SWPPP) to be completed, sealed and signed by a licensed professional engineer and/or land surveyor as appropriate and submitted to the city representative.

(B) *Post-Construction Storm Water Pollution Prevention Plan.* A SWQMP permit requires a review and submittal of a Post-Construction Storm Water Pollution Prevention Plan (P-SWPPP). The P-SWPPP shall include the following information:

(1) A description of the proposed land use including amount of impervious area, directly connected impervious area, and nature of the development.

(2) Location, dimensions, detailed specifications, and construction details of all post-construction storm water quality Best Management Practices (BMPs), as defined in the city guidance documents.

(3) A sequence describing when each post-construction storm water quality BMP will be installed.

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(4) A Long-Term Operation and Maintenance Agreement containing maintenance guidelines for all post-construction storm water quality measures to facilitate their proper long-term function. This Agreement shall be made available to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post- construction storm water quality measures.

(5) The P-SWPPP shall include provisions for buffers.

(a) The waterway buffer will be used to define areas where land disturbance activities shall be permitted, but construction of any building or structure shall not be permitted.

(b) A waterway buffer shall be applied to all waterways serving more than 25 acres of tributary area or presented on a United State Geological Survey map as a blue line stream.

(c) The waterway buffer shall be defined as the greater of:

1. Area contained within a boundary established by the floodplain boundary as defined by FEMA or city master planning: or

2. Where a floodplain is not defined or calculated, the buffer will be 25 feet on each side from the top of waterway bank as defined by geomorphic shape (not by the current water surface elevation).

(d) The waterway buffer and floodplain may be used for application of storm water quality devices. This may only be permitted if erosion prevention and sediment control, water quality, and cut-fill policies are adequately addressed as determined by the city according to the provisions of this article.

(e) Exemptions are granted so long as, erosion prevention and sediment control, water quality and cut-fill policies are adequately addressed. Exemptions shall be granted for:

1. Roads and utilities crossing waterways.

2. Pedestrian trails and walkways proximate to waterways.

3. Other exemptions may be made at the discretion of the city representative.

(f) A licensed professional engineer in the Commonwealth of Kentucky shall stamp all construction plans and long-term maintenance documentation. This shall include all proposed improvements or modifications to existing or new storm water infrastructure and other related improvements or modifications.

(g) The city may require the posting of a maintenance bond to secure the structural integrity of said facilities as well as the functioning of said facilities in accordance with the approved P-SWPPP for a term of 24 months from the date of acceptance of dedication. An irrevocable letter of

credit can be used as the financial assurance in lieu of a maintenance bond although the contribution shall be equivalent to the amount that would be estimated for the maintenance bond. The maintenance bond shall be calculated as 20% of the estimated construction cost and may be reduced to 10% after 12 months if there are no concerns by the city representative.

(C) BMP design requirements and criteria.

(1) The city reserves the right to develop or adopt other guidance documents to serve as design and implementation standards. Other guidance documents distributed by the city should be reviewed and considered when preparing the P-SWPPP. These documents may be applied as standards by which designs are to be prepared and controls implemented.

(2) The city shall have authority to implement this article by appropriate regulations, guidance or other related materials. In this regard, technical, administrative, or procedural matters may be modified as needed to meet the objectives defined herein, so long as such modifications as to technical, administrative, or procedural matters are not contrary or beyond the intent of the objectives defined above.

(a) Regulations, guidance or other related materials that may be given authority by this article may include, but are not limited to: Best Management Practice (BMP) manuals, design regulations and requirements, submittal checklists, review checklists, inspection checklists, certifications, storm water management manuals and operation and maintenance manuals.

(b) Materials may include information deemed appropriate by the city including guidance and specifications for the preparation of grading plans, selecting environmentally sound practices for managing storm water, minimum specifications and requirements, more complete definitions and performance standards.

(c) The above-referenced documents may restrict or prevent the use of specific products, techniques or management practices (that are to be accepted by the public or are deemed to have a negative impact on public infrastructure or the MS4) that have been identified as unacceptable for performance, maintenance or other technically based reasons.

(d) Documents referenced above may be updated periodically to reflect the most current and effective practices and shall be made available to the public. However, the failure to update the manual shall not relieve any applicant from the obligation to comply with this article, and shall not prevent the city from imposing the most current and effective practices.

(3) The P-SWPPP shall include provisions for storm water quality BMPs functioning independently or in combination. Acceptable storm water quality BMPs shall be defined by policy and guidance documents as approved by the Storm Water Board.

(4) The P-SWPPP shall include provisions for storm water quality BMPs that are designed to achieve the following design/performance objectives:

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(a) Development shall be designed with management measures that are built and maintained to treat, filter, flocculate, infiltrate, screen, evapo-transpire, harvest and reuse storm water runoff, or otherwise manage the storm water quality produced from an 80 percentile precipitation event (three-quarters of an inch rainfall).

(b) Reduce or buffer increases in storm water runoff temperature caused by contact with impervious surfaces.

(c) Reduce or buffer increases in storm water runoff volume and flow rate caused by increases in directly connected impervious area and overall impervious area.

(d) 1. Storm water detention/ retention facilities shall be designed to address the rate at which flow is released over the entire runoff discharge period and the volume of discharge over the critical design-storm period if defined by city storm water master plans. The outlet structure shall be designed as a v-notch weir or other multiple stage configurations capable of controlling (limiting) the discharge rates for the first flush, two-, ten-, 25- and 100-year design-storm events to pre-developed levels for new developments.

2. Redevelopment shall reduce the discharge from their site according to formula below:

$$Q_{\text{(redeveloped)}} = \frac{Q_{\text{(existing)}} + Q_{\text{(undeveloped)}}}{2.0}$$

$Q_{\text{(redeveloped)}}$ = maximum discharge rate for the re-development

$Q_{\text{(existing)}}$ = current discharge rate of the developed parcel

$Q_{\text{(undeveloped)}}$ = discharge rate of the parcel prior to any development

3. The reduction of the existing discharge rate per the above formula shall be limited to 20%.

(e) 1. Storm water hotspots are areas that often produce higher concentrations of certain pollutants, such as hydrocarbons or heavy metals, than are normally found in urban runoff. These areas will be reviewed for effective removal of the particular pollutant which they discharge. Effective removal shall be deemed as that which existed prior to development of the site or in the case of redevelopment that which existed prior to any development to the site. Review and approval is required prior to commencement of construction.

2. Examples of storm water hotspots include:

A. Gas/fueling stations;

B. Restaurants;

- C. Vehicle repair facilities;
- D. Vehicle washing/steam cleaning facilities;
- E. Auto recycling facilities;
- F. Outdoor material storage areas;
- G. Loading and transfer areas;
- H. Landfills;
- I. Industrial sites;
- J. Industrial rooftops.

(5) Soil bioengineering, “green” and other “soft” slope and stream bank stabilization methods shall receive preference over rip rap, concrete and other hard armoring techniques.

(6) *Retention.* Supportive data must be submitted to justify the type of facility selected. If the facility is designed to retain (volume control) all or a significant portion of runoff (as opposed to temporarily detain), then appropriate soils analyses findings shall be submitted to the city. This submission shall also discuss the impacts the facility will have on local karst topography as found through a geotechnical investigation of the site. The facility may be designed to infiltrate runoff to groundwater rather than transmit it downstream under conditions up to a ten-year storm event. It must be able to bypass all other storms including 100-year event with a discharge rate equivalent to or less than pre-development conditions without negatively impacting the 100-year floodplain above or below the site. If data indicates that the facility can not retain a significant portion of the runoff (95%) then the facility must be designed to detain runoff.

(7) If available, each P-SWPPP shall be evaluated for consistency with the storm water master plan or watershed study for the major watershed or watersheds within which the project site is located. The individual project evaluation will determine if storm water quantity and quality management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which storm water quantity and/or quality controls will be necessary.

(8) The city reserves the right to require superseding or additional treatment criteria or objectives for specific pollutant(s) as necessary to meet overall storm water quality management program objectives or directives under a watershed improvement or Total Maximum Daily Load (TDML) program as administered by the USEPA or Commonwealth of Kentucky.

(9) *On-site BMP coordination with regional BMPs.*

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(a) All properties are expected to implement on-site storm water quality control measures, but the extent of application may be reduced given the availability, proximity and nature of regional storm water quality BMPs.

(b) The extent and type of on-site storm water quality management practices implemented shall be proportionate to the land use, and proximity to regional storm water quality management practices.

(D) *BMP ownership and easements.*

(1) Any storm water management facility or BMP which services individual property owners shall be privately owned. General routine maintenance (controlling vegetative growth and removing debris) shall be provided by the owner(s). The owner shall maintain a perpetual, non-exclusive easement that allows for access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(2) Any storm water management facility or BMP which services an individual residential subdivision in which the facility or BMP is within designated open areas or serves as an amenity with an established homeowners association shall be privately owned and maintained consistent with provisions of this articles. The owner shall maintain a perpetual, nonexclusive easement which allows access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(3) Any storm water management facility or BMP which services commercial and industrial development shall be privately owned and maintained. The owner shall maintain a perpetual, nonexclusive easement which allows access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(4) All regional storm water management control facilities proposed by the owners, if approved and accepted by the city for dedication as a public regional facility, shall be publicly owned and/or maintained. All other storm water management control facilities and BMPs shall be privately owned and/or maintained unless accepted for maintenance by the city.

(5) The city may require dedication of privately owned storm water facilities, which discharge to the city storm water system. This shall be at the approval of the City Council.

(E) *Regional facilities management.*

(1) The objective of a regional storm water management facility, pond or other device, is to address the storm water management concerns in a given watershed with greater economy and efficiency than possible through individual facilities. The intended result is fewer storm water management facilities to maintain in the affected watershed while sustaining efficiency.

(2) The city encourages regional storm water quantity and/or quality management practices, serving 25 to 250 acres of tributary area, which may be consistently and efficiently managed and maintained. These types of practices will be encouraged in order to replace or reduce the implementation of on-site storm water quantity and/or quality management practices, as determined to be appropriate by the city.

(3) Where a regional storm water management facility has been established by one or more local governments, or by an authority operating on behalf of one or more local governments, a development or property may participate in said program in lieu of runoff control required by this article. This may be permitted provided that:

(a) Runoff from the development drains to an approved existing or proposed public regional storm water management facility that will be operational within one year.

(b) Participation in the form of contribution of funds, contribution of land, contribution of storm water management facility construction work, or a combination of these, the total value of which shall be in accordance with a fee schedule adopted by the city.

(c) The city finds that the storm water quality management plans are in compliance with all other applicable requirements and ordinances.

(d) Each fiscal or in-kind contribution from a development owner participating in a regional storm water quality management facility shall be used for acquisition, design, construction or maintenance of one or more such facilities in the same watershed in which the development is located.

(4) Detention facilities may, and are encouraged to, be designed to serve multiple purposes. For example, runoff may be detained under wet-weather conditions, but also serve as common or recreational areas during dry weather conditions. Where multi-purpose facilities are provided, or where flat grades or poorly draining soils are encountered, provisions for adequate low-flow storm water management system may be required. Where the retention/ detention facility is planned to be used as a lake, pond or storm water quality management practice with a permanent pool, water budget calculations shall be performed and submitted to demonstrate that an adequate permanent pool depth is expected during dry summer months.

(F) *Long-Term Operation and Maintenance Agreements.*

(1) Long-Term Operation and Maintenance Agreements shall include a maintenance plan for all storm water quality BMPs in new development or redevelopment that require more than general maintenance (e.g., periodic mowing).

(a) The plan will be developed to ensure that the storm water quality BMP(s) is (are) kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

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(b) The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.

(c) The Agreement shall be noted on the final plat with the appropriate notation on the particular lot(s).

(d) The Agreement shall be included with property ownership title documents and shall be binding on the owner, its administrators, executors, assigns, heirs, and any other successors in interest.

(e) The format for the Long-Term Operational and Maintenance Agreement shall be provided through example by the city, or through guidance documents.

(f) *Storm water detention and retention maintenance.* Care must be taken to ensure that any required facilities do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the Long-Term Operation and Maintenance Agreement.

(g) When a storm water quality BMP serves more than one parcel, a home or property owners' association or binding contract for the purpose of operation and maintenance is required. The owners' association shall be responsible for operation and maintenance as directed by this article.

(2) *Single entity ownership.* Where the permanent storm water runoff control facilities are designed to manage runoff from property in a single entity ownership, the maintenance responsibility for the storm water control facilities shall be with the single entity owner.

(a) A **SINGLE ENTITY** shall be defined as an association, public or private corporation, partnership firm, trust, estate or any other legal entity allowed to own real estate exclusive of an individual lot owner.

(b) The stated responsibilities of the entity shall be documented in the Long-Term Operation and Maintenance Agreement. Terms including owning, operating and maintaining the facilities shall be submitted with plans in application for a SWQMP permit for an adequacy determination. Approval of a SWQMP shall be conditioned upon the approval of these terms. These terms shall be in writing, shall be in recordable form, and shall, in addition to any other terms deemed necessary by the city, contain a provision permitting inspection at any reasonable time by the city of all facilities deemed critical in the public welfare.

(c) Upon approval of the storm water quality BMPs by the city, the facility owner(s) shall demonstrate the ability to guarantee and apply the financial resources necessary for long-term maintenance requirements. The funding mechanism shall be in a form approved by the city. The city will only approve funding mechanism(s) for long-term maintenance responsibilities that can be demonstrated to be permanent or transferable to another entity with equivalent longevity.

(d) In the event that proposed funding is through an owners' association, then it must be demonstrated that the association may not dissolve unless long-term operation and maintenance activities are accepted by another entity with equivalent longevity and adequate funding. Furthermore, the owners' association's responsibility must be stated in the association's declaration, covenants, or by-laws, as appropriate.

(e) Unless made specifically clear in the preliminary stages of the site design and construction plan review procedure, it will be assumed that all storm water detention, retention, treatment or storage facilities and/or devices shall be owned, operated and maintained by a single entity as defined above.

(3) *City ownership.* Where the city has accepted an offer of dedication of the permanent storm water quality BMPs, the city shall be responsible for operation and maintenance. (Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-29 STORM WATER QUALITY MANAGEMENT PLAN (SWQMP) PERMIT INSPECTIONS.

(A) Permittee performed inspections.

(1) Permittee performed inspections (self inspections) shall be performed by a qualified professional.

(2) The city shall develop standards and a checklist to be used by the permittee for the inspections.

(3) Documentation of owner performed inspections and inspection findings shall be kept on site, if appropriate facilities are available.

(4) Documentation of owner performed inspections and inspection findings shall be made available within two business days for construction and seven days for post-construction of a request by the city or designated representative. Failure to timely submit documentation, as requested, will be assumed to indicate that inspections were not performed and may result in corresponding enforcement procedures.

(5) *Construction inspections.* Maintenance inspections shall be performed at control measures at least every seven regular calendar days and within 24 hours of a one-half inch rain event. The permittee shall repair all deficiencies within seven calendar days after deficiencies or failures have been identified.

(6) *Post-construction inspections.* Inspection and maintenance shall be performed at storm water quality BMPs on at least an annual basis and as otherwise determined in the Long-Term Operation and Maintenance Agreement.

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(1) The city, or the city's designated representative, has the authority to randomly and periodically inspect the storm water quality BMPs. The city may make inspections of the site at its discretion and shall either approve the condition of the BMP or shall notify the permittee wherein the condition fails to comply with the approved SWQMP.

(2) The city or its designated representative's inspections and findings will be presented and reviewed with the permittee at the time of inspection (if site personnel are available), and be available in the city public records.

(3) The city shall identify in writing any measures with deficiencies or that are not in compliance with the objectives of this article and the SWQMP permit. A site inspection will be mailed to the responsible person for the site listing all deficiencies for the site. The permittee shall repair all deficiencies within seven calendar days after deficiencies or failures have been identified. (Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-30 QUALIFIED PROFESSIONAL.

A qualified professional is required to perform construction and post-construction inspections and to direct and/or supervise maintenance activities to ensure that the SWQMP permit and Long-Term Operation and Maintenance Agreement provisions are being implemented properly.

(A) Effect. This section shall be effective and enforced on January 1, 2011.

(B) Registration. Qualified professionals performing inspections or overseeing maintenance activities under this article must be registered by the city prior to execution of those actions. All applicants must file an application with the city.

(C) Construction qualified professional prerequisites.

(1) Applicants must demonstrate knowledge and experience in the following areas:

- (a) Construction practices;
- (b) Operational standards;
- (c) Cause and failure indicators; and
- (d) Maintenance measures used to prevent and correct failures.

(2) Applicants who can demonstrate one or more of the following will be considered for registration:

- (a) Successful completion and passage of the Kentucky Erosion Prevention and Sediment Control course and examination through the University of Kentucky Transportation Center.
 - (b) Professional engineer license in good standing in the Commonwealth of Kentucky with demonstrated experience in erosion prevention and sediment control on construction sites.
 - (c) Landscape architect license in good standing in the Commonwealth of Kentucky with demonstrated experience in erosion prevention and sediment control on construction sites.
 - (d) Professional in erosion and sediment control certification in good standing.
 - (e) EPSC Inspector certification in good standing from the Louisville and Jefferson County Metropolitan Sewer District.
 - (f) Similar qualification or certification of any other similar program in the Commonwealth of Kentucky or in the United States so long as that program required a test and the applicant passed the test.
- (3) Documentation demonstrating the above will be required by the city before registration will be granted.
- (4) *Post-construction qualified professional prerequisites.*
- (a) Applicants must demonstrate knowledge and experience in the following areas:
 - 1. Storm water quality treatment practices;
 - 2. Operational standards;
 - 3. Cause and failure indicators; and
 - 4. Maintenance measures used to prevent and correct failures.
 - (b) Applicants who can demonstrate one or more of the following will be considered for registration:
 - 1. Professional engineer license in good standing in the Commonwealth of Kentucky with demonstrated experience in storm water quality treatment BMPs.
 - 2. Landscape architect license in good standing in the Commonwealth of Kentucky with demonstrated experience in storm water quality treatment BMPs.
 - 3. Professional in storm water quality certification in good standing.

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4. Similar qualification or certification of any other similar program in the Commonwealth of Kentucky or in the United States so long as that program required a test and the applicant passed the test.

(5) The city may report to the appropriate licensing, certification or qualification authority for activities not consistent with the policies and procedures identified in this article. This may include reporting activities that include but are not limited to, the submittal of false or misleading information or for repeated incompetence or negligent actions by the registrant.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-31 STORM WATER QUALITY MANAGEMENT PLAN (SWQMP) PERMIT TERMINATION.

(A) The permittee shall submit a Notice of Termination (NOT) of permit letter to the city.

(B) Written acceptance of site conditions shall be made by the city based upon an inspection.

(C) The city shall consider whether conditions are sufficient, appropriate and consistent with the SWQMP.

(D) A permit shall be considered open and active until the city accepts the site conditions, a Long-Term Operation and Maintenance Agreement has been accepted, and after the following as-built requirements have been completed:

(1) Temporary erosion and sediment control measures have been removed.

(2) The remaining, undeveloped acreage that was subject to the permit does not exceed five acres.

(3) The designed public utilities are installed and have been inspected by the appropriate agencies.

(4) The road(s) have been constructed and the binder course of pavement has been placed in accordance with the standards in the Subdivision Regulations (Chapter 19).

(5) The remaining undeveloped acreage that was subject to the permit does not pose a significant threat to the integrity of the infrastructure, adjacent properties or storm water quality.

(6) Permanent storm water quality BMPs and other measures have been implemented and are operational at the designed levels.

(7) Pipes, channels, catch basins, storm water quality treatment devices and other drainage features are clear of sediment, obstructions and debris, and are operating as designed and appropriate for final site conditions.

(8) Disturbed slopes are stabilized.

(9) Detention and retention basins are stabilized at designed volumes and conditions.

(10) The city shall have 21 normal business days to perform an inspection and respond to the request. If the city does not respond within the 21 normal business days, then the request shall be granted automatic approval.

(E) *As-built requirements.*

(1) Prior to issuance of a certificate of occupancy, recording of the final plat or final release of bond, the as-built condition (including: invert elevations, size shape and location) of critical storm water management features must be identified, approved, and provided in a electronic form to the city representative.

(2) The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a professional engineer or land surveyor, as appropriate, licensed in the Commonwealth of Kentucky. This information shall be provided to the city, in the form of an as-built drawing or other electronic form accepted by the city. The as-built certification shall indicate if final conditions are consistent with, or exceed, the SWQMP provisions.

(3) If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does not meet or exceed the SWQMP provisions, the city reserves the right to withhold certification of occupancy or final bond release. Furthermore, other enforcement mechanisms may be applied to the permittee or persons making certifying statements.

(4) The requirements of this subsection do not apply for individual residential lot development.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-32 ENFORCEMENT; PENALTIES; APPEALS.

(A) *Responsibility.* It will be the responsibility of the permittee to ensure compliance with this article and implementation of the SWQMP permit and Long-Term Operation and Maintenance Agreement. However, all responsible persons, regardless of ownership, must comply with the requirements of this article and may be held accountable to the enforcement provisions herein.

(B) *Disconnection of illicit discharges.* The person responsible for any connection in violation of § 17.5-25, with regard to illicit discharges, shall immediately cause the illegal connection to be disconnected and redirected, if necessary, to the appropriate sanitary sewer system upon approval by the operating body of said sanitary sewer system and the Kentucky Division of Water.

(C) *Liability for expenses incurred.* Any person responsible for illicit discharges or noncompliance with BMPs at any residential, industrial and/or construction site(s), and who fails to correct any

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prohibited condition or discontinue any prohibited activity at the order of the city, shall be liable to the city for expenses incurred in abating pollution. This may include expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

(D) *Enforcement.*

(1) The city shall institute appropriate actions or proceedings by law or equity for the enforcement of this article within the areas of jurisdiction previously described. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the city from taking such other lawful action as necessary to prevent or remedy any violation, including application for injunctive relief.

(2) Any of the enforcement remedies and penalties provided in this article are available to be applied independently or in a sequence deemed necessary, shall be available to the city in response to violations of this article. If the person, property or facility has or is required to have a storm water discharge permit from the KDOW, the city may alert the appropriate state authorities of the violation.

(3) *Notice of Violation (NOV).*

(a) 1. In instances when the city, based on observations or investigations, finds that any person owning or occupying a premise has violated or is violating this article or order issued hereunder, the city will issue an NOV. This written Notice of Violation shall be hand delivered, sent by first-class mail or delivered by registered or certified mail.

2. This NOV will contain:

- A. Date and location of site observation(s) or investigation(s).
- B. An itemized list of any deficiencies or failures.
- C. A deadline in which the deficiencies are to be eliminated.

(b) It will be the responsibility of the permittee to determine what corrective actions are needed. If the deadline for eliminating the deficiencies can not be met, it is the responsibility of the permittee to document that the deadline can not be met and request an extension to be evaluated by the city on a case by case basis.

(4) *Permit denial.* At the discretion of the city representative or designated agent, it may withhold or delay any permit application, inspection requests, appeals, or other plan approvals from person(s) that have unresolved enforcement matters.

(5) *Stop work order.*

(a) Persons receiving an NOV will be required to halt all construction activities.

(b) No construction activities, other than those required to address deficiencies/violations, are allowed on a project site when a stop work order has been issued.

(c) The written stop work order shall be sent by certified mail to the permittee or may be hand delivered.

(d) The written stop work order shall specify deficiencies and violations that must be corrected prior to a city inspection for consideration of removing the stop work order.

(e) The permittee shall notify the city in writing of the anticipated date for completion of the corrective action(s) and provide at least two normal business days notice for the city to perform a compliance inspection.

(6) *Permit suspension or revocation.*

(a) In the event compliance cannot be achieved within the terms of a Notice of Violation and/or stop work order, the city may proceed with permit suspension or revocation.

(b) Land-disturbing activities are not allowed on a project site when a permit has been suspended or revoked other than those required to address deficiencies/violations.

(c) The written permit suspension or revocation shall be hand delivered and/or sent by certified mail to the permittee.

(d) A permit suspension requires that the permittee submit a revised portion of SWQMP as indicated by the city for review and acceptance by the city of the specific issue of contention. When a permit suspension is removed, the city shall provide written notice to the permittee.

(e) When a permit is revoked, the permittee must reapply for a permit through the process of requesting a new permit.

(f) A permit revocation requires that the permittee resubmit a SWQMP for a full review and acceptance by the city representative.

(7) *Compliance order.* If a person violates the provisions of this article, the city or its designated representative may give notice to the owner or to any person in responsible charge of the subject property ordering that unlawful conditions existing thereupon be abated within a schedule defined from the date of such notice.

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(a) The enforcement official shall have the authority to establish elements of a compliance SWQMP and require the owner implement such a plan as may be reasonably necessary to fulfill the purposes of this chapter. The enforcement official may establish the requirements of BMPs.

(b) The notice and order may be given, provided that if in the opinion of the city or its designated representative, the unlawful condition is such that it is of imminent danger or peril to the public, then the city or its designated representative shall, with or without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The city, as described further in this subsection, may recover the cost of such actions from the property owner.

(8) *Fines.* A person that has been found to have been in violation of any provision of this article may be assessed a civil penalty not to exceed the amount presented in this subsection.

(a) The penalty shall increase by 25% of the previous penalty amount for every subsequent, but separate offense made by the same person. The penalty shall be in addition to other enforcement actions of this section.

(b) The penalty shall be assessed for each day, beyond schedules applied in compliance orders or other schedules issued to the property owner or other person responsible, for unauthorized activity defined in this section.

(c) The maximum fines will be determined by the type of offense. This indicates the maximum per day that may be imposed for a first offense and does not reflect the increases described above for repeat offenses.

1. Development without or inconsistent with permit. To engage in any development, use, construction, remodeling or other activity of any nature in any way without all required permits or inconsistent with any approved plan, permit, certificate or other form of authorization granted for such activity. Fines shall be a minimum of \$20 but not more than \$500 per offense. The following are examples of offenses that will be cited:

- A. One deficient rock check.
- B. One deficient inlet protection.
- C. One deficient outlet protection.
- D. Silt fence deficiency per lot.
- E. One deficient construction entrance.
- F. Restoration deficiency per lot.
- G. One deficient stock pile stabilization.

H. One similar deficiency.

2. Violation by act or omission - up to \$5,000. To violate, by act or omission, any term, variance, modification, condition or qualification placed by the city or its designated representative upon any required permit, certificate, or other form of authorization of the use, development, or other activity upon land or improvements thereon.

3. Illicit discharge - up to \$5,000. Any person who is found to have improperly disposed of any substance defined as an illicit discharge, not an allowable discharge or causes the city to be in noncompliance with any applicable environmental permit.

(4) Household products - up to \$500. Any person who is found to have improperly disposed of any substance not included in § 17.5-25(B) that was purchased over-the-counter for household use, in quantities considered normal for household purposes, which upon discharge to the MS4 or drainage network would have an adverse impact on water quality or cause the city to be in noncompliance with any applicable environmental permit.

(d) In the event there are penalties assessed by the state against the city caused by a person, said person shall be assessed the equivalent amount of civil penalty. This shall include, but is not limited to, penalties for improper disposal or illegal dumping, or illicit connection into the MS4.

(9) *Administrative fee.* Any person who undertakes any development activity requiring a storm water management plan hereunder without first submitting the plan for review and approval shall pay to the city, in addition to any permit or inspection fee, an administrative fee which reflects the actual cost of the corrective action.

(10) *Order to clean and abate/restore.* Any violator may be required to clean and/or restore land to its condition prior to the violation.

(11) *Cost recovery.* If corrective action is not taken in the time specified the city may take the corrective action. The cost of the corrective action abatement and/or restoration shall be borne by the property owner. If the invoice is not paid within 90 calendar days, the enforcement official shall have the authority to place a lien upon and against the property. Alternatively, if the invoice is not satisfied within 90 calendar days, the enforcement official is authorized to take all legal measures available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a money judgment, by delivery to the assessor or a special assessment against the property.

(12) *Injunctions and/or proceedings at law or in equity.*

(a) Any violation of this article or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

(b) The city shall pursue, through a court of component jurisdiction, any penalties that are not paid in full.

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(13) *Civil actions.* In addition to any other remedies provided in this article, any violation of this article may be enforced by civil action brought by the city's attorney. Monies recovered under this subsection shall be paid to the city to be used exclusively for costs associated with implementing or enforcing the provisions of this article and the storm water quality program. In any such action, the city may seek, as appropriate, any or all of the following remedies:

(a) A temporary and/or permanent injunction;

(b) Assessment of the violator for the costs of any investigation, inspection or monitoring survey which lead to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

(c) Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;

(d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.

(14) *Emergency orders and abatements.* The enforcement official may order the abatement of any discharge from any source to the storm water conveyance system when, in the opinion of the enforcement official, the discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, or welfare of the environment or a violation of a KPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare of the environment or a violation of a KPDES permit, the city may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this subsection.

(15) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, welfare and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by state and local law.

(16) *Remedies not exclusive.* The remedies listed in this article are not exclusive of any remedies available under any applicable federal, state or local law and the city may seek cumulative remedies.

(E) *Appeals.*

(1) In order to have an appeal considered, the applicant shall submit a written request within seven calendar days of the decision made by the city representative to the City of Radcliff Chief Administrative Officer.

(2) A hearing date shall be set within 30 calendar days from receipt of the appeal.

(3) A written, final decision shall be rendered no more than five business days after the hearing in writing.

(Ord. 10-06-1090, passed 6-7-2010)

§ 17.5-33 COMPATIBILITY; SEVERABILITY.

Should any article, section, subsection, clause or provision of this article be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this article as a whole or any part thereof other than the part declared to be unconstitutional or invalid, each article, section, subsection, clause and provision being declared severable. The laws of the Commonwealth of Kentucky shall apply to this article. If any provisions of this article and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

(Ord. 10-06-1090, passed 6-7-2010)

ARTICLE III. STORM WATER SYSTEM DEVELOPMENT CHARGE

§ 17.5-45 PURPOSE.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for storm water upon those development(s) that create the need for or increase the demands on the city's storm water system.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-46 DEFINITIONS.

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

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CAPITAL IMPROVEMENTS. Public facilities or assets used for storm water conveyance, retention or treatment or any combination.

DEVELOPMENT. All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, devoted to exterior display, storage or activities. **DEVELOPMENT** includes redevelopment of property. **DEVELOPMENT** includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved lands.

IMPROVEMENT FEE. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to § 17.5-47 of this article.

LAND AREA. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane, with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.

OWNER. The owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.

PARCEL OF LAND. A lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.

PERMITTEE. The person to whom a building permit, development permit, a permit or plan approval or right-of-way access permit is issued.

QUALIFIED PUBLIC IMPROVEMENTS. A capital improvement that is:

- (1) Required as a condition of development approval;
- (2) (a) Identified in the plan adopted pursuant to the “Improvement Plan” of this article; and either:
 1. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
 2. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- (b) For purposes of this definition, **CONTIGUOUS** means in a public way which abuts the parcel.

REIMBURSEMENT FEE. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to § 17.5-47 of this article.

SYSTEM DEVELOPMENT CHARGE. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of issuance of a development permit or building permit for increased storm water runoff into the storm water system.

(1) A system development charge includes that portion of a storm water system capacity that the development uses.

(2) A system development charge does not include the cost of complying with requirements or conditions imposed by a land use decision or any other city developmental regulations.
(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-47 SYSTEM DEVELOPMENT CHARGE ESTABLISHED.

(A) System development charges shall be established and may be revised by ordinance enacted by the City Council.

(B) Unless otherwise exempted by the provisions of this article or the local or state law, a system development charge is hereby imposed upon all development within the Quiggins Watershed as delineated within the *Quiggins Watershed Flood Control Master Plan*. The Council hereby sets the system development charge for the Quiggins Watershed as detailed in Section 6.0 of the *Quiggins Watershed Flood Control Master Plan* and as summarized below:

(1) Single-family residential development shall be assessed \$0.1957 per square foot of impervious area added as part of their development, construction or improvement.

(2) All others shall be assessed \$0.3915 per cubic foot of additional runoff generated from their site.
(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-48 METHODOLOGY.

The methodology used to establish or modify the system development charge shall promote the objective that all system users shall contribute no more than an equitable share of the cost of improvements constructed, under construction or to be constructed.
(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-49 AUTHORIZED EXPENDITURES.

(A) System development charge fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(B) (1) System development charge fees shall be spent only on capacity-increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities.

(2) The portion of the capital improvements funded by the system development charge must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the system development charge shall be included in the plan adopted by the city pursuant to § 17.5-51 of this article.

(C) Notwithstanding divisions (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this article, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-50 EXPENDITURE RESTRICTIONS.

(A) Systems development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(B) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-51 IMPROVEMENT PLAN.

(A) The Council hereby adopts the following Improvement Plan and it is incorporated into this article by reference: The *Quiggins Watershed Flood Control Master Plan*.

(B) In adopting this plan, the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

(C) A change in the amount of the system development charge is not a modification of the system development charge if the change in amount is based on the periodic application of the Consumer Price Index as published by the Engineering News Record, or any similar index.
(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-52 COLLECTION OF CHARGE.

(A) The system development charge is payable upon the issuance of:

- (1) A building permit;
- (2) A development permit; and
- (3) A development permit for a development not requiring the issuance of a building permit.

(B) If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property.

(C) If development is commenced without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

(D) The Planning Director or his or her designee shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued.

(E) The Planning Director or his or her designee shall not issue the permit until the charge has been paid in full.
(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-53 EXEMPTIONS.

(A) Additions to single-family residential dwellings which increase the impervious area less than 400 square feet are exempt from all portions of the system development charge. Additions to single-family residential dwellings which increase the impervious area greater than 400 square feet shall be charged the system development charge on all impervious area above 400 square feet.

(B) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility is exempt from the system development charge.

(C) Sidewalks, intended for public use, installed as part of any single-family residential development, are exempt from the system development charge calculation. (Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-54 CREDITS.

(A) When a re-development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated, and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another division of this section.

(B) A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

(C) (1) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this division. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.

(2) The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought was not included in the improvement plan pursuant to § 17.5-51 of this article.

(D) When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the system development charge that would otherwise be levied against the project, the credit in excess of the system development charge for the original development project may be applied against system development charges that accrue in subsequent phases of the original development project.

(E) Notwithstanding divisions (A) through (D) above, when establishing a methodology for a system development charge, the city may provide for a credit against the system development charge for capital

improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.

(F) Credits shall not be transferable from one development to another.

(G) Credits shall not be transferable from one type of system development charge to another.

(H) Credits shall be used within ten years from the date the credit is given.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-55 SEGREGATION AND USE OF REVENUE.

(A) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the city. The portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than set forth in § 17.5-49 of this article.

(B) The appropriate city official shall provide the City Council with an annual accounting, by July 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part with system development charge revenues shall be included in the annual accounting.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-56 REFUNDS.

(A) Refund may be given by the Engineering Department upon finding that there was a clerical error in the calculation of the SDC.

(B) Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation at the time of submission of an application for a building permit.

(C) The city shall refund to the applicant any SDC revenues not expended within ten years of receipt.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-57 PENALTY.

Violation of this article constitutes a violation of the city of this Code of Ordinances and may be prosecuted under the provisions thereof as now enacted or hereafter amended. The prosecution shall not be exclusive but shall be in addition to any other remedy the city may have available to it to enforce compliance with this article. The penalty for such ordinance violations shall be a fine not more than \$500 or by confinement in the county jail for not more than one year, or by both the fine and confinement, at the discretion of the court. Each day that a violation exists is a separate offense. Violation Enforcement Officers authorized to issue citations for commission of violation(s) of this article shall include the City Code Enforcement Officer, Police Officer and City Engineer. (Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-58 CONSTRUCTION.

For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply.

(A) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table or illustrative table, the text shall control.

(B) The word “shall” is always mandatory and not discretionary; the word “may” is permissive.

(C) Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(D) The phrase “used for” includes “arranged for”, “designed for”, “maintained for” or “occupied for”.

(E) Where a regulation involves two or more connected items, conditions, provisions or events:

(1) “And” indicates that all the connected terms, conditions, provisions or events shall apply;
and

(2) “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(F) The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind or character.

(Ord. 09-07-1065, passed 7-13-2009)

§ 17.5-59 SEVERABILITY.

(A) The provisions of this article are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this article shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this article shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the Council's intent that this article would have been adopted had such unconstitutional provision not been included herein.

(B) The invalidity of any section, clause, sentence or provision of this article shall not affect the validity of any other part of this article, which can be given effect without the invalid part or parts.
(Ord. 09-07-1065, passed 7-13-2009)

CHAPTER 18: STREETS AND SIDEWALKS

Section

Article I. In General

CHAPTER 18: STREETS AND SIDEWALKS

- 18-1. Acceptance of streets
- 18-2. House numbering

Article II. Street Improvements

- 18-16. Culverts and drainage
- 18-17. Property line sidewalks
- 18-18. Ditchlines
- 18-19. Building permit restrictions

Article III. Excavations

- 18-28. Provisions declared supplemental
- 18-29. Permit required
- 18-30. Application for permit; fee
- 18-31. Regulations authorized
- 18-32. Assets or insurance required
- 18-33. Filling and surfacing
- 18-34. Permit revocation

Article IV. Parades and Assemblies

- 18-45. Definitions
- 18-46. Permit required
- 18-47. Application required
- 18-48. General provisions
- 18-49. Display of permit
- 18-50. Parking
- 18-51. Penalty for violation of article

ARTICLE I. IN GENERAL**§ 18-1 ACCEPTANCE OF STREETS.**

No street which has been dedicated to the city shall be accepted by it unless the street meets the requirements of the city's subdivision ordinance or subdivision regulations.
(Ord. passed 8-15-1961)

§ 18-2 HOUSE NUMBERING.

(A) It shall be unlawful for the owner of any house, apartment, mobile home or other place of residence or any place of business in the city to maintain same without placing or causing to be placed thereon identifying arabic numerals which shall be clearly visible from the street passing immediately in front of the place of residence or business.

(B) The identifying arabic numerals shall be that number designated by the United States Post Office and/or the city as the post office address except that mobile home lots within a mobile home park shall have a separate lot number notwithstanding the street address assigned to the mobile home park. All lot numbers shall be clear and visible from the street passing immediately in front of the place of residence and be of a contrasting color as to the background upon which they are placed.

(C) The identifying arabic numerals shall be a minimum of four inches in height and be clearly visible from the street passing immediately in front of the place of residence and be of a contrasting color as to the background upon which they are placed.

(D) The identifying arabic numerals shall be a minimum of six inches in height and be clearly visible from the street passing immediately in front of the place of commercial or industrial business and be of a contrasting color as to the background upon which they are placed.

(E) The identifying arabic numerals in the case of newly constructed homes shall be written upon building permits and placed temporarily within a window visible from the street passing immediately in front of the residence. Upon occupancy of the home, the homeowner has a period of five working days to permanently affix proper numbering to the structure.

(F) Any existing building which has Arabic numerals clearly visible from the street passing immediately in front of the building, even though the Arabic numerals do not meet the standards of height enumerated in this section shall not be required to place new numbers on the building in accordance with this section. The Planning and Zoning Office shall have a total and full discretion in its decision as to whether the old numerals meet the requirement of visibility from the street.

(G) The penalty for violation of this section, if not corrected within 15 days, shall be a fine of not less than \$20, nor more than \$250. Each day of violation shall be a separate offense. The maximum cumulative fine shall not exceed \$250. Any person violating this chapter may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city. If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to ensure compliance with this chapter or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.
(Ord. passed 6-26-1972; Ord. passed 3-21-1991; Ord. passed 3-16-1993)

ARTICLE II. STREET IMPROVEMENTS

§ 18-16 CULVERTS AND DRAINAGE.

(A) Culverts for all driveways connecting with a public street, wherever any drainage culvert is required, shall be a minimum of 24 feet in length, 12 inches in diameter; or equivalent; and installed so that the top of the culvert will be inches below the final grade of the street pavement crown.

(B) Where a drainage culvert is not required a concrete swale shall be constructed such that the exposed surface of the swale bottom shall be a minimum of six inches below the final grade of the street pavement crown. The bottom of the swale shall be level with the natural swale grade and in no way obstruct the flow of drainage water.

(C) The dimensions described in division (A) above are minimums in all cases and shall be increased a sufficient amount wherever necessary to accommodate the flow of drainage water at the point of installation.

(D) Where a drainage culvert is utilized and properly installed the fill material whether gravel, bituminous concrete or portland cement shall be constructed to restrict the flow of water from driveways into and onto the adjoining street pavement by providing an appropriate swale or depression in the covering surface. The swale or depression should slope from the center of the driveway to the edge over the culvert.
(Ord. passed 1-16-1973)

§ 18-17 PROPERTY LINE SIDEWALKS.

(A) As used in this section, *SIDEWALK* shall mean a property line sidewalk.

(B) Sidewalks shall be constructed parallel to the adjacent public street.

Radcliff - Streets and Sidewalks

(C) Sidewalks shall be located so that the edge nearest the street is at a horizontal distance of not less than feet from the lip of the adjacent drainage ditch. The size of the drainage ditch will not negate the requirement for this two-foot setback.

(D) Where curb and gutter is installed, the sidewalks shall be located so that the edge nearest the street is at a horizontal distance of not less than two feet from the back edge of the curb.

(E) The finished elevation of the sidewalks shall coincide with the finished elevation of the adjacent public street. The elevation of the sidewalks shall not be lower than nor more than six inches higher than the final elevation of the crown of the adjacent street at the centerline.

(F) Sidewalks shall be constructed on compacted soil or other compatible material and a minimum of 48 inches in width.

(G) No more than one-half the thickness of the sidewalks shall be above the final grade elevation of the ground immediately adjacent thereto on either side.
(Ord. passed 1-16-1973)

§ 18-18 DITCHLINES.

On all new construction subsequent to the effective date of the ordinance upon which this section is based, the builder and/or developer responsible for the construction of street side drainage ditchlines is required to provide a stand of grass in the ditchlines before they will be accepted by the city.
(Ord. passed 1-16-1973)

§ 18-19 BUILDING PERMIT RESTRICTIONS.

(A) In addition to all other requirements for issuance of a building permit on all new construction, the following must be accomplished before a building permit is approved.

(1) Drainage culvert or swale in accordance with this article shall be set or provision for same be made during construction and set by date of occupation of the associated structure.

(2) The driveway must be at least graveled from the pavement edge to the property and rights-of-way line when the culvert is installed. When a concrete swale is utilized the concrete must be four inches thick with six inches square reinforcing mesh and must extend from the pavement edge to the property or rights-of-way line.

(3) The rough grade of the sidewalk must be established and a plan for even transition of the sidewalk to driveway area be presented and constructed when the driveway is built.

(4) Shoulder and ditchline must be established and not altered to restrict the flow of water during construction. Shoulders will be a minimum of two feet in width from edge of pavement to lip of drainage ditch, the finished elevation of shoulders will coincide with finished elevation of pavement and seeded in grass.

(B) The Building Inspector will attach a copy of this article to every application for a building permit.
(Ord. passed 1-16-1973)

ARTICLE III. EXCAVATIONS

§ 18-28 PROVISIONS DECLARED SUPPLEMENTAL.

The provisions of this article shall be in addition and supplemental to all other provisions of this code and ordinances.

§ 18-29 PERMIT REQUIRED.

It shall be unlawful for any person, except city employees in the course of his or her employment, to open, dig into, remove the surface from, excavate or bore or tunnel under any street, sidewalk, alley, public way or place without first obtaining a permit therefor from the city's Inspector.

§ 18-30 APPLICATION FOR PERMIT; FEE.

The application for a permit required by this article shall contain such information as the City Inspector deems necessary, and shall be accompanied by a fee in the amount of \$5.

§ 18-31 REGULATIONS AUTHORIZED.

In granting a permit required by this article, the City Inspector may impose reasonable regulations, including, but not limited to:

- (A) The manner of making the excavation, boring or tunneling;
- (B) The location of the excavation, boring or tunneling;
- (C) Protection of underground utility installations;

- (D) The duration of the excavation, boring or tunneling;
- (E) Required safety precautions, such as barricades, lighting, warning devices and the like;
- (F) The extent and size of the excavation, boring or tunneling; and
- (G) Steps to be taken to protect nearby property owners.

§ 18-32 ASSETS OR INSURANCE REQUIRED.

When required by the City Inspector the applicant for a permit under this article shall submit satisfactory evidence that he or she has sufficient assets or insurance to indemnify the city for any costs, losses or liabilities that it may incur by reason of the excavation, and to satisfy any judgments or liabilities arising out of the excavation.

§ 18-33 FILLING AND SURFACING.

(A) It shall be the duty of the person making any excavation or doing any boring or tunneling hereunder to fill the excavation and restore the surface to a condition at least equal to the surface prior to the excavation, or, in the case of boring or tunneling, to take such steps or precautions as are necessary to assure that there will be no sinking or shifting of the surface.

(B) If so required by the City Inspector, any person making an excavation or doing boring or tunneling shall furnish a deposit, bond or other security sufficient to assure compliance with this section; provided, however, that, the city may elect to fill and resurface the excavation or take the necessary precautions and charge the cost thereof against the person making the excavation or doing the boring or tunneling.

§ 18-34 PERMIT REVOCATION.

(A) Any person violating any provision of this article shall be fined an amount not less than \$20, nor more than \$250, for each violation. Each day the violation exists or occurs shall be a separate offense. Any person violating this article may also be found guilty of a civil offense. The civil fine shall be not less than \$20, nor more than \$250. The civil fine shall be paid directly to the city.

(B) If the fine is not paid within 30 days from the date of notification, then the city may recover the fine in a civil action in a court of proper jurisdiction. The city may also obtain injunctions or abatement orders to insure compliance with this article or pursue administrative remedies when appropriate, including injunctions and abatement proceedings.

(C) In addition to any other penalty imposed by law, any person violating any provision of this article shall have this excavation permit revoked.
(Ord. passed 3-16-1993)

ARTICLE IV. PARADES AND ASSEMBLIES

§ 18-45 DEFINITIONS.

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

MEETING. An assembly for a common purpose.

PARADE. Any parade, march, ceremony, show, exhibition, pageant or procession of any kind, or any similar display in or upon any street, sidewalk, park or other public place in the city.
(Ord. passed 6-21-1977)

§ 18-46 PERMIT REQUIRED.

(A) No person, partnership, corporation or political subdivision shall engage, participate in, aid, form or authorize any parade unless a parade permit shall have been obtained from the city.

(B) No person, partnership, corporation or political subdivision shall engage in, participate in, aid, form or authorize a meeting involving 500 or more persons unless a public meeting permit shall have been obtained from city.

(C) This chapter shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities providing the conduct is under the immediate direction and supervision of the proper school authorities and the conduct has been authorized by the proper school authorities;

(3) Meetings held at the City Hall where the meetings have been authorized by the city;

(4) Meetings held in churches where the meetings are reasonably related to the ordinary purposes of the church and where the meetings have been authorized;

(5) Meetings held in schools where the meetings are reasonably related to school purposes and school activities and the meetings are authorized by proper school authorities; and

(6) A governmental agency acting within the scope of its authority provided it does not have concurrent authority with the city.
(Ord. passed 6-21-1977)

§ 18-47 APPLICATION REQUIRED.

(A) A person, partnership, corporation or political subdivision seeking issuance of a parade or meeting permit shall file an application with the City Clerk on forms provided by the city.

(B) The application shall be filed with the City Clerk not less than 20 days, nor more than 30 days, before the date of the parade or meeting:

(1) The name, address and telephone number of the person, partnership, corporation or political subdivision seeking to conduct the parade or meeting;

(2) If the parade or meeting is proposed to be conducted for or on behalf of any organization, the name, address and telephone number of the organization;

(3) The name, address and telephone number of the person who will be in charge of the parade or meeting and who will be responsible for its conduct;

(4) Date of the parade or meeting and the hours that the parade or meeting will be in progress;

(5) The route a parade will follow or the address of the meeting. The route shall include the starting and termination points;

(6) The approximate number of persons, animals, vehicles or other equipment which will constitute the parade; the approximate number of persons that will constitute the meeting; and the description of animals, vehicles or equipment as the city may deem necessary;

(7) The part or parts of the width of any street that will be occupied by the parade; the part or parts of any building or buildings or grounds the meeting will occupy; and

(8) In the case of a parade, the assembly and disbursal areas for the parade and the times during which the parade units will be assembling and disbursing; and additional information as the city shall deem necessary dependent upon the facts and conditions of any parade or meeting.

(C) At the time of filing of the application, there shall be a fee of \$5 paid for the issuance of the parade and/or meeting permit.
(Ord. passed 6-21-1977)

§ 18-48 GENERAL PROVISIONS.

(A) Application for a parade or meeting permit shall be presented by the City Clerk to the Chief of Police, and the Chief of Police shall decide whether or not the permit shall be issued. If the Chief of Police determines that the permit should not be issued, then the application for permit must be presented to the City Council for its review and determination as to whether the permit should be issued or denied. The City Council's action shall be open to the public and the applicant shall be given notification of the meeting place and time at least three days in advance and have the right to address the City Council. The Council shall not unreasonably withhold issuance of a permit considering the right of the people to peacefully assemble. However, the City Council, under its public health, safety and welfare powers, shall be and hereby is empowered to:

(1) Take into consideration the effect of the parade or meeting on the health, safety and welfare of the citizens of this community; and

(2) Take into consideration the extraordinary expenses to be incurred by the city as a result of the need for extraordinary fire, police or auxiliary police activities and police, health, fire and other safety regulations.

(B) The action taken on the permit by the City Council shall be mailed to the applicant within three working days after the date upon which the application was considered.

(C) Each parade permit or meeting permit shall state the following information:

(1) Starting time, starting point and assembly area;

(2) Parade route, including the part or parts of the streets or other public places over which the parade may travel;

(3) The ending point, ending time and disbursal area;

(4) A description of the place where a meeting is to be held; and

(5) Such other information as the City Council shall find reasonably necessary in order to enforce the provisions of this article.

(D) Each legal entity issued a permit hereunder shall comply with all applicable laws, ordinances and regulation; and nothing herein shall be construed to supersede any other applicable laws, ordinances or regulations.

(Ord. passed 6-21-1977; Ord. passed 6-17-1986)

§ 18-49 DISPLAY OF PERMIT.

A parade and/or meeting permit shall be available for inspection along the parade route and/or at the meeting.

(Ord. passed 6-21-1977)

§ 18-50 PARKING.

The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or other public thoroughfare or part thereof constituting a part of the route of a parade. The Chief of Police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on street or other public thoroughfare unposted in violation of this article.

(Ord. passed 6-21-1977)

§ 18-51 PENALTY FOR VIOLATION OF ARTICLE.

Any violation of any provision of this article shall be punishable by fine, and the fine shall not be less than \$5, nor more than \$500. Each separate action shall constitute a separate offense.

(Ord. passed 6-21-1977)

Editor's note:

Ordinance enacted 6-21-1977, did not specifically amend this code, hence inclusion of §§ 1 through 7 as Ch. 18, Art. IV, §§ 18-45, 8-51, was at the discretion of the editor.

CHAPTER 19: SUBDIVISIONS

Section

Article I. In General
CHAPTER 19: SUBDIVISIONS

- 19-1. Regulations adopted
- 19-2. Bond
- 19-3. Filing fees

ARTICLE I. IN GENERAL

§ 19-1 REGULATIONS ADOPTED.

There is hereby adopted by the city that publication known as “The Land Subdivision Regulations of Radcliff, Kentucky”, also known as the “Subdivision Regulations”. The publication is hereby made a part of the public records of the city.

Statutory reference:

Power of city to adopt by reference, see KRS 83A.060(5)

§ 19-2 BOND.

Bond shall be required as per the subdivision regulations.
(Ord. passed 1-19-2001)

§ 19-3 FILING FEES.

To partially defray the cost of subdivision review procedures and other associated administrative costs, there shall be paid a fee as established by the Mayor and city.
(Ord. passed 1-19-2001)

CHAPTER 20: ADULT ENTERTAINMENT ACTIVITIES

CHAPTER 20: ADULT ENTERTAINMENT ACTIVITIES

Section

General Provisions

- 20-1. Findings, declaration of public policy and purpose
- 20-2. Definitions
- 20-3. Administration
- 20-4. Effect and limitation
- 20-5 through 20-14. Reserved

Restrictions and Operating Regulations

- 20-15. Signage
- 20-16. Material not to be subject to public view
- 20-17. Employee age requirement
- 20-18. Restricted hours
- 20-19. Construction requirements
- 20-20. Location restrictions
- 20-21 through 20-29. Reserved
- 20-30. Sale of alcoholic beverages prohibited
- 20-31 through 20-34. Reserved
- 20-35. Unlawful activities

Licensing Provisions

- 20-36. License application; contents
- 20-37. Information to be current; director to be notified of changes
- 20-38. Issuance of license
- 20-39. Inspections
- 20-40. Prohibited activities
- 20-41. License year; license fees
- 20-42. Employee license required
- 20-43. License denial, suspension, revocation; hearing and appeal
- 20-44. Reserved
- 20-45. Scinter necessary to prove liability
- 20-46. Failure of official to meet time frame not to risk applicant or licensee rights

- 20-99. Penalty

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GENERAL PROVISIONS

§ 20-1 FINDINGS, DECLARATION OF PUBLIC POLICY AND PURPOSE.

(A) The Council finds it has been the experience of other communities, as well as this one, that certain adult entertainment activities which are located near areas zoned for residential use, near schools and public parks, and near malls and similar open spaces that cater to use by family groups and children adversely affect the viability of such nearby properties for their described purposes.

(B) Local governments in the City of Radcliff, the Commonwealth of Kentucky and the United States government have spent millions of dollars on community development and neighborhood enhancement projects within the recent past to eliminate blight and to prevent the further deterioration of city neighborhoods.

(C) (1) The Council relies on such evidence of the adverse secondary effects of adult entertainment uses that is within the common knowledge of municipalities and is widely reported in judicial opinions, media reports, land use studies, and crime impact reports made available to the Council, several of which are set forth herein. Additionally, the Council relies on repeated judicial findings validating municipalities' reasonable reliance on this body of secondary effects evidence to support time, place, and manner regulations of sexually oriented businesses. The Council relies upon and incorporates the findings of secondary effects discussed in the following non-exhaustive list of cases: *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Currence v. City of Cincinnati*, 2002 U.S. App. LEXIS 1258; *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Term. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja vu v. City Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Deja vu of Nashville, Inc., et al. v. Citypolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Z.J. Gifts D-2, LLC v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *World Wide Video of Spokane, Inc. v. City of Spokane*, 227 F. Supp. 2d 1143 (E.D. Wash. 2002); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ct. App. Ky. 2001); *Mr. B's Bar & Lounge, Inc. v. Louisville*, 630 S.W.2d 564 (Ct. App. Ky. 1981).

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Adult Entertainment Activities

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(2) The Council further relies on reports concerning secondary effects occurring in and

around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas -1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Tucson, Arizona - 1990; Testimony, Warner-Robins, Georgia - 2000; Newport News, Virginia - 1996; St. Cloud, Minnesota - 1994; New York Times Square study - 1994; Minnesota, State of - 1989; Phoenix, Arizona - 1995-1998; and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota. Based on cases and reports such as these, the Council finds:

(a) Sexually oriented adult entertainment businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

(b) Sexual acts, including masturbation, oral and anal sex, sometimes occur at unregulated adult entertainment businesses, especially those which provide private or semi-private booths, rooms, or cubicles for view films, videos, or live sexually explicit shows, which acts constitute a public nuisance and pose a risk to public health through the spread of sexually transmitted diseases.

(c) Adult entertainment businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other certain uses, such as other sexually oriented businesses and establishments licensed to sell alcoholic beverages to minimize the secondary effects associated with such uses and to prevent a concentration of sexually oriented businesses and such uses.

(d) Each of the foregoing negative secondary effects constitutes a harm which the Council has a substantial government interest in abating and/or preventing in the future.

(D) Adult entertainment activity tends to attract an undesirable clientele which discourages neighboring residents from undertaking civic improvements, causes residents and businesses to move elsewhere and frustrates attempts to attract new residences and businesses to come into an area, all of which factors contribute to a diminution of property values and to a general deterioration of neighborhoods.

(E) The small closet-like rooms or "booths" at adult amusement arcades in the city and other communities have encouraged persons to loiter for the purposes of engaging in unlawful, often anonymous, sexual conduct and have encouraged lewd conduct in public places, thereby creating public nuisances and generally unsanitary and unhealthful conditions that create dangers to the public health, welfare and safety.

(F) The concentration of sexually explicit movies and books and sexual paraphernalia in adult entertainment establishments which also house sexually explicit movies, as well as hotel rooms rented by the hour to "couples" afforded free sexually explicit movies in the hotel room, have provided

prostitutes an appealing and visible meeting place to ply their trade and have created public nuisances in otherwise respectable neighborhoods.

(G) Children, the family environment and residential neighborhoods suffer injury from the deleterious effects and harmful consequences resulting from the distribution of, and exposure to, certain sexually explicit items and devices. This is particularly so when such items and devices are permitted to leave a business's premises and litter the immediate family environment, neighborhood and certain areas where children are likely to be.

(H) The noise generated by patrons coming and going from adult entertainment establishments causes a substantial disruption to nearby residents and modest curtailment of the hours during which entertainment is offered to patrons of such establishments would afford some relief to persons living in those nearby residences without significantly interfering with the availability of adult entertainment.

(I) Nationally, there is extensive involvement of organized crime in the business of adult bookstores and the disclosure of persons who own, as well as the names of those persons who operate adult bookstores and other adult entertainment establishments will aid law enforcement officials in the enforcement of the federal Racketeer Influences and Corrupt Organizations Act (RICO) and the enforcement of the laws of the Commonwealth of Kentucky, among others, prohibiting the distribution of obscene matter, the use of minors to distribute obscene matter, the advertising of obscene material, the distribution of obscene material to minors, promoting the sale of obscenity, the use of a minor in a sexual performance, the distribution of material portraying a sexual performance by a minor, the promoting of material portraying a sexual performance by a minor and the advertising of material portraying a sexual performance by a minor and the use of minors to distribute materials portraying a sexual performance by a minor.

(J) The Council declares as a matter of public policy that in order to preserve surrounding neighborhoods, to prevent blight and the deterioration of the neighborhoods of the city, protect property values, promote the return of residents and businesses to the neighborhoods, protect children from the deleterious effects of exposure to sexually explicit material and decrease the incidence of crime and juvenile delinquency, the licensing and regulation of adult entertainment establishments is a public necessity and is required in the interest of public health, safety and welfare as well as the economic and aesthetic well-being of the people.

(K) Purposes:

(1) It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented

materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material;

(2) To prevent the unsanitary conditions which exist at "adult amusement arcades" and to prevent health risks, including AIDS and other sexually transmitted diseases, caused by illicit and unlawful sexual relations in such public establishments;

(3) To protect children and the family environment from the deleterious and harmful effects of exposure to certain sexually explicit items and devices; and

(4) To obtain the identity of persons licensed and to be licensed for the operation of establishments selling, showing, renting or offering certain sexually explicit material or entertainment to insure proper identification of those persons responsible for the operation of such businesses so as to assist in the proper enforcement of this chapter.

(L) It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to, state laws pertaining to the advertising, promotion, distribution or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance or promotion of sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-2 DEFINITIONS.

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

ADULT ENTERTAINMENT ACTIVITY or ACTIVITIES or ADULT ENTERTAINMENT ESTABLISHMENT. Regular commercial participation in one or more of the following defined activities:

(1) ***ADULT AMUSEMENT ARCADE.*** An establishment having as one of its principal uses one or more of the following: customer-operated motion picture devices, peep shows, viewing areas and/or similar devices either coin, token or slug operated or which, in consideration of an entrance fee, display matter distinguished or characterized by an emphasis on displays of sexual activities, as hereinafter defined, or which other male or female persons expose to the view of the customer the bare female breast below a point immediately above the top of the areola, human genitals, pubic region or buttocks, even if partially or completely covered by translucent material, or human or simulated male genitals in a discernibly turgid state, even if completely or opaquely covered.

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(2) ***ADULT BOOK STORE.*** An establishment having as one of its principal uses the sale, rent or display of pictures, books, periodicals, magazines, appliances and similar material which are distinguished or characterized by their emphasis on displays of sexual activities.

(3) ***ADULT MOTION PICTURE THEATER.*** An establishment having as one of its principal uses the presentation of motion pictures, slide projections and other similar material having as

a dominant theme or characterized or distinguished by an emphasis on matter displaying, describing or relating to sexual activities, as hereinafter defined, for observation by persons therein.

(4) **ADULT STAGE SHOW THEATER.** An establishment having as one of its principal uses the regular presentation of live performances of humans or animals having as a dominant theme or characterized or distinguished by an emphasis on matter displaying semi-nudity or sexual activities for observation by persons therein.

(5) **ADULT VIDEO CASSETTE RENTAL CENTER.** A commercial establishment which has as one of its principal business uses the rental or sale of video cassettes or other video recordings which display material distinguished or characterized by an emphasis on displays of sexual activities.

(6) **CABARET.** An establishment which regularly features as one of its principal uses persons who appear semi-nude before patrons.

(7) **COMMERCIAL SEXUAL ENTERTAINMENT CENTER.** Any commercial establishment not otherwise described herein which as one of its principal uses regularly offers matter, services or entertainment appealing to adult sexual interests if the establishment or its entertainment, services or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such adult sexual interests.

(8) **SELF-DESIGNATED ADULT ENTERTAINMENT CENTER.** Any establishment which designates all or a portion of its premises as for adults only and has a policy of excluding minors from its premises or from a portion of its premises and which advertises so as to convey the impression that the services, entertainment, matter or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by displays of human genitals or sexual activities.

CITY GOVERNMENT. The City of Radcliff, Kentucky.

DIRECTOR. The Radcliff City Clerk or his/her designee.

EMPLOYEE. Any person hired by or suffered or permitted to work in an establishment engaging in adult entertainment activities whether that person receives remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment or from any other source whether by contract of employment or otherwise, for work or services performed for the benefit of the adult entertainment establishment. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods, such as foods, to the premises.

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ESTABLISHMENT. A business entity or endeavor, fixed, mobile or traveling, including its owners, operators, directors, shareholders, partners, employees and possessions.

HEARING OFFICER. The Code Enforcement Board as established pursuant to Ordinance of the City Council of the City of Radcliff, Kentucky.

LICENSEE. A person in whose name a license to operate an adult entertainment establishment

has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment establishment license. In case of an "employee," it shall mean the person in whose name the adult entertainment employee license has been issued.

MATERIALS. Any book, magazine, newspapers, or other printed or written matter, or any picture, drawing, photograph, motion picture, video cassette film, digital video, or other pictorial representation or mechanical, chemical, digital, or electrical reproduction or any other articles, equipment, machines or materials.

NUDITY OR STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATOR. Any individual, partnership, corporation or business entity that establishes and/or maintains a business as its owner or manager and may also mean **LICENSEE** as defined hereinabove.

PERSON. Any individual, partnership, corporation or business entity.

PRINCIPAL OWNER. Any person owning, directly or beneficially, 20% of a corporation's equity securities, 20% or more of the membership interests in a limited liability company, or, in the case of any other legal entity, 20% or more of the ownership interests in the entity.

PRINCIPAL USE. A substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other principal uses unrelated to adult entertainment shall not relieve the business from the provisions of this chapter applicable to adult entertainment establishments. Principal use shall exist in the following circumstances:

(1) Where a business establishment dedicates, or permits the use of, at least 25% of the utilized square footage of its premises for adult entertainment activity or activities; or

(2) Where at least 25% of the gross receipts of a business establishment, excluding food and beverage receipts, result from adult entertainment activity or activities.

REAL ESTATE OWNER. Any individual, partnership, corporation or business entity that has legal title to real estate, with or without accompanying actual possession thereof, or has the beneficial ownership of any real estate and a right to present use of enjoyment thereof, including a mortgage in possession.

REGULARLY. As used in the phrases herein such as "regularly features" and "regularly offers," the term **REGULARLY** means a consistent or repeated course of conduct engaged in or permitted by the operator of the business.

SEMI-NUDE OR STATE OF SEMI-NUDITY. A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed

in whole or in part.

SEXUAL ACTIVITIES. Partial or complete male and/or female nudity in conjunction with:

- (1) Displays of human genitals in a state of sexual stimulation;
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Holding or other erotic touching of human genitals, pubic region, buttocks or breasts.

SPECIFIED CRIMINAL ACTIVITIES. Any of the following offenses:

(1) KRS 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); KRS 510.070, 510.080, or 510.090 (sodomy in the first, second, or third degree); KRS 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third degree); KRS 510.140 (sexual misconduct); 510.150 (indecent exposure); KRS 517.050 (falsifying business records); KRS 529.020, 529.030, 529.040, or 529.050 (prostitution, promoting prostitution in the first, second, or third degree); KRS 529.070 (permitting prostitution); KRS 531.020, 531.030, 531.040 (distributing obscene matter, distributing obscene matter to minors, using minors to distribute obscene matter); KRS 218A.140 *et seq.* (offenses relating to controlled substances); any offense listed in KRS 531.300 through 531.370 (sexual exploitation of minors offenses); engaging in organized crime (KRS 506.120) relating to a sexually oriented business; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Kentucky; for which:

(a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

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(c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-3 ADMINISTRATION.

The Director is empowered to enact from time to time such rules and regulations deemed necessary for the orderly and complete administration of this chapter. All regulations shall be submitted to the Mayor and shall become effective within 30 days of submission unless disapproved in writing by the Mayor prior to that date. All licensees and persons with license applications pending shall be mailed copies of all such regulations and they shall be published one time in the newspaper as soon as practical after they become effective.
(Ord. 11-09-1118, passed 9-20-2011)

§ 20-4 EFFECT AND LIMITATION.

It is not the purpose of this section to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to state laws pertaining to the advertising, promotion, distribution, or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to use of a minor in a sexual performance or promotion of a sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.
(Ord. 11-09-1118, passed 9-20-2011)

§§ 20-5 THROUGH 20-14 RESERVED.

RESTRICTIONS AND OPERATING REGULATIONS

§ 20-15 SIGNAGE.

An adult entertainment establishment, except as otherwise provided by laws which may be more restrictive, may not have more than one sign outside, flush to the wall, facial style, not to exceed in size

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ten feet in length (horizontal to the ground) and three feet in width (vertical to the ground) with no flashing lights and with no pictorial matter which is distinguished or characterized by an emphasis on displays of sexual activities.
(Ord. 11-09-1118, passed 9-20-2011)

§ 20-16 MATERIAL NOT TO BE SUBJECT TO PUBLIC VIEW.

An adult entertainment establishment may not display pictorial representations of sexual activities in such manner as to be subject to public view from outside the business premises, including but not limited to view from public sidewalks, streets, arcades, hallways or passageways.
(Ord. 11-09-1118, passed 9-20-2011)

§ 20-17 EMPLOYEE AGE REQUIREMENT.

(A) An operator or employee of an adult entertainment establishment shall not permit a person less than 18 years of age to be employed by or to enter the establishment.

(B) An adult entertainment establishment shall, at all times, cause the entrance of the establishment to be so attended as to insure compliance with the requirements contained in division (A) above.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-18 RESTRICTED HOURS.

No adult entertainment establishment shall be or remain open for business between the hours of 1:00 a.m. and 4:00 a.m. on any day, Monday through Saturday, and at any time on Sundays.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-19 CONSTRUCTION REQUIREMENTS.

(A) An adult amusement arcade, except as otherwise provided by laws which may be more restrictive, shall meet the requirements set forth in this section.

(B) Any wall or partition which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one hour fire-restrictive material and shall contain no holes, openings or other perforations. No operator or employee shall allow openings of any kind to exist between viewing rooms or booths nor shall any person make or attempt to make an opening of any kind between viewing booths or rooms.

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(C) A person who operates or causes to be operated an adult amusement arcade which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette or other video reproduction which display specified sexual activities as defined in § 20-1 shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's or cashier's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. The view required in this chapter must be by direct line of sight from the manager's or cashier's station.

(2) It shall be the duty of the operator and any employees present in the premises to ensure that the view area specified in division (C)(1) above remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times. It shall be the duty of the operator to ensure

that there is at least one employee on duty and situated in a public area adjacent to the adult arcades, where the view area specified in division (C)(1) is visible, at all times that any patron is present in the adult arcades.

(3) No viewing room may be occupied by more than one person at a time.

(4) All floor coverings in viewing booths shall be non-porous, easily cleanable surfaces, with no rugs or carpentry. All wall surfaces and ceiling surfaces shall be constructed of, or permanently covered by nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

(D) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles measured at the floor level at all times any patron is present in the premises.

(E) All persons regulated pursuant to this section must comply with the terms and conditions hereof within 60 days after the effective date of this chapter.
(Ord. 11-09-1118, passed 9-20-2011)

§ 20-20 LOCATION RESTRICTIONS.

(A) The public entrance to an establishment engaging in adult entertainment activities shall not be located within 750 feet of any building containing a public or private elementary, middle or secondary school, institution or higher education or business college, or any park-mall or park-like area of open space under the control of a governmental agency, or any building used for a place of religious worship, or any building used for a governmental function or public library. Such distance shall be measured along a straight line from the nearest property line of the property on which the building or public park-like area is located to the entrance to such establishment engaging in an adult entertainment activity.

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(B) The public entrance to an establishment engaging in adult entertainment activities may not be located within 750 feet of an area zoned or used for residential purposes. Such distance shall be measured along a straight line from the boundary line of the nearest area zoned or used for residential purposes to the entrance to such establishment engaging in an adult entertainment activity. All adult entertainment establishments shall comply with all other pertinent zoning regulations of the City Government.

(C) The public entrance to an establishment engaging in adult entertainment activities shall not be located within 750 feet of the public entrance of another adult entertainment activity establishment.

(D) The public entrance to an establishment engaging in adult entertainment shall not be located within 750 feet of the public entrance of an establishment licensed to serve alcoholic beverages.

(E) The requirements of this section shall not apply to establishments engaged in adult entertainment activities that were in existence as of the effective date of this chapter.
(Ord. 11-09-1118, passed 9-20-2011)

§§ 20-21 THROUGH 20-29 RESERVED.

§ 20-30 SALE OF ALCOHOLIC BEVERAGES PROHIBITED.

An adult entertainment establishment shall not make application for and shall not be granted any license to sell alcoholic beverages otherwise issued pursuant to Chapter 4.1 or any other applicable ordinance, statute, or regulation. The sale, use, or consumption of alcoholic beverages on the premises of an adult entertainment establishment is prohibited, provided that, any adult entertainment establishment which holds a license to sell alcoholic beverages on the effective date of this chapter may continue to serve alcoholic beverages until the expiration date of its annual license at which time it shall not make application for or be granted another such license. Nothing herein shall exempt an adult entertainment establishment from § 20-18.

(Ord. 11-09-1118, passed 9-20-2011)

§§ 20-31 THROUGH 20-34 RESERVED.

§ 20-35 UNLAWFUL ACTIVITIES.

Nothing contained in this chapter is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or local ordinance. It is unlawful for an operator to knowingly violate the following regulations or to allow, either knowingly or recklessly, an employee or a patron to violate the following regulations.

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(A) It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in an adult entertainment establishment, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(B) It shall be a violation of this chapter for an employee to knowingly or intentionally, in an adult entertainment establishment, appear in a semi-nude condition unless the employee, while semi-nude, remains at least six feet from any patron or customer and on a fixed stage at least 18 inches from the floor. The six foot requirement is measured from the edge of the stage where the semi-nude employee is located to the patron seating or standing area, or, if patrons are allowed to sit at the stage, from the edge of the stage to a line or other barrier six feet from the edge beyond which employees are allowed to appear semi-nude.

(C) It shall be a violation of this chapter for any employee, while semi-nude in an adult business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for

any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in an adult entertainment establishment.

(D) It shall be a violation of this chapter for any employee, who regularly appears semi-nude in an adult entertainment establishment, to knowingly or intentionally touch a customer or the clothing of a customer while the employee is performing or while the employee is semi-nude or in a state of semi-nudity

(Ord. 11-09-1118, passed 9-20-2011)

LICENSING PROVISIONS

§ 20-36 LICENSE APPLICATION; CONTENTS.

(A) The principal owner(s) or the operator(s) of an establishment intending to engage, or engaging under a previously issued license in an adult entertainment activity, shall make application for a license with the Director in accordance with this chapter.

(B) Such application shall be in writing, notarized, and shall be in the form prescribed by the Director. The application will be deemed complete when it contains the following information:

(1) The name, business location address, business mailing address and phone number of the establishment and the name and business address of the prospective licensee.

(2) The applicant's full true name, mailing address, date of birth, and a copy of a government-issued photo identification card or set of fingerprints.

(a) If the applicant is one or more natural persons, then all principal owners shall comply.

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(b) If the applicant is other than an individual, such as a limited liability company, corporation or partnership, each officer, director, general partner, member, principal owner and each other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant and comply with the requirements of this section.

(3) The name and address of the prospective licensee's designated agent for service of process.

(4) In the event the applicant or licensee is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that an adult entertainment establishment is to be located on the real property upon issuance of the license. The application shall furnish the name and the address of the owner of record of the real property and a copy of the lease or rental agreement or memorandum thereof.

(5) A designation of the adult entertainment activities, as defined in § 20-2(1) through § 20-2(8), in which the applicant seeks to engage at the specified location.

(6) All convictions for specified criminal activities, as defined in this chapter, of the applicant or applicants whose names are required pursuant to this section.

(7) The name and mailing address of any person to whom the applicant wants mail notice to be given in case of violation or other matters affecting any license hereunder.

(8) A drawing or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The drawing or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(9) The name and addresses of any rental agent of the property on which the establishment is located.

(10) A photograph or drawing of any signs displayed or proposed to be displayed on the exterior of the establishment and a statement of the dimensions of the signs.

(11) Proof of compliance with city occupational license fee laws.

(12) A certificate of occupancy where required and, in all other cases, a letter of compliance issued by the City Zoning Inspector certifying that the business is in compliance with applicable zoning laws or has nonconforming use rights and that the proposed use will not constitute an enlargement or expansion of the scope of the nonconforming rights;

(13) A certificate from the Fire Chief or his or her designee that all applicable fire regulations have been met.

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(14) A statement from the City Building Inspector that the premises comply with applicable provisions of the Uniform Kentucky Building Code, as adopted by the city; and

(15) A statement from the county's Board of Health that the premises are adequately ventilated and contain public restrooms which satisfy the requirements of 902 KAR 10:010. (Ord. 11-09-1118, passed 9-20-2011)

§ 20-37 INFORMATION TO BE CURRENT; DIRECTOR TO BE NOTIFIED OF CHANGES.

The information required by § 20-36 shall be kept current by the licensee at all times even after the granting of a license by the Director. It shall be the responsibility of the operator or other person designated in the license application to notify the Director no later than the close of the fifth business day after the effective date of any changes, alterations or modifications in any information contained in the application including, but not limited to: name of the establishment; any change in the corporate or partnership information submitted as part of the application; names and mailing addresses of

employees; name and address of designated agent for service of process; designation of the activity or activities to be engaged in at the establishment, as defined in § 20-2(1) through § 20-2(8); and the name and mailing address of any person the applicant wants mail notice to be given in case of violation or other matters affecting the license.
(Ord. 11-09-1118, passed 9-20-2011)

§ 20-38 ISSUANCE OF LICENSE.

(A) Upon the filing of a completed application for an adult entertainment establishment license or employee license under § 20-42, the Director shall issue a temporary license to the applicant, which temporary license shall expire 15 days after the final decision of the Director to deny or grant the license. Within 20 business days after the receipt of a completed application, the Director shall cause the premises to be inspected for compliance with the city zoning, building, safety, health and fire codes. If inspections are not made within the specified 20 days, unless such failure is due to the applicant's or the real estate owner's disallowance of said inspections, the property shall be deemed to comply with the codes specified in the previous sentence. Within 20 business days after the receipt of a completed application, the Director shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The Director shall approve the issuance of a license unless one or more of the following is found to be true:

(1) An applicant is less than 18 years of age.

(2) An applicant is delinquent in the payment to City Government of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to an adult entertainment establishment.

(3) An applicant has failed to provide information or true and correct information required of the applicant for issuance of the license.

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(4) An applicant, including any principal owner of the adult entertainment establishment, has been convicted of a specified criminal activity, as defined in this chapter.

(5) The license fee required by § 20-41 has not been paid.

(6) The proposed adult entertainment establishment is located in a zoning district other than a district in which adult entertainment businesses are allowed to operate under the applicable zoning regulations of City Government or is not in compliance with the location restrictions established for adult entertainment establishments under this chapter.

(7) The applicant's premises have been found by the Director or his or her designees to not be in compliance with the city zoning, building, safety, health or fire codes.

(B) An applicant that is ineligible for a license due to division (A)(4) above, may qualify for an adult entertainment establishment license only when the time period required by the applicable division in § 20-43 has elapsed.

(C) The license, if granted, shall state on its face the name of the persons or persons to whom it is

granted, the number of the license issued to that applicant, the expiration date, and the address of the adult entertainment establishment. An adult entertainment establishment employee license shall contain a photograph of the licensee. The adult entertainment establishment license shall be posted in a conspicuous place at or near the entrance to such business so that it may be easily read at any time. An adult entertainment establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized City Government enforcement official. Such officer or official, pursuant to this chapter, shall request verification of an employee's license only when reasonable and necessary to advance the purposes of this chapter. (Ord. 11-09-1118, passed 9-20-2011)

§ 20-39 INSPECTIONS.

The application for or the grant of a license to operate an adult entertainment establishment is deemed to permit periodic inspections of the public areas of any such establishment during such establishment's business hours for the purpose of verifying compliance with the terms and conditions of this chapter. This section shall be reasonably construed and applied by enforcement personnel. (Ord. 11-09-1118, passed 9-20-2011)

§ 20-40 PROHIBITED ACTIVITIES.

(A) Immediately upon the effective date of this chapter, no person shall operate, own or be employed at an unlicensed adult entertainment establishment, such conduct having been prohibited under Ordinance § 20-4, enacted February 28, 1998, as amended, and the previous version of Chapter 20, as amended. All licenses presently held by adult entertainment establishments shall remain in

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full force and effect without the necessity of reapplication until the annual renewal date set forth in § 20-41. However, current licenses shall be subject to regulation by the terms of this chapter and shall be in full compliance with this chapter within 60 days after the effective date hereof, provided that adult entertainment establishments which are currently licensed and have obtained non-conforming use status per KRS 100.253 shall be exempt from § 20-20. All pending applications at the time of the effective date hereof and new applications received thereafter shall be subject immediately to the terms of this chapter.

(B) No owner shall permit adult entertainment activities to operate on his property without such adult entertainment activities being properly licensed except as permitted under division (A) above.

(C) No person shall permit himself to be an operator or an employee at an adult entertainment activity which has not been validly licensed hereunder, except as permitted under division (A) above.

(D) No person shall own, operate or be employed at an establishment engaged in adult entertainment activities unless all employees of the establishment have obtained the license required by § 20-42.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-41 LICENSE YEAR; LICENSE FEES.

All adult entertainment establishment licenses shall be for the fiscal year, July 1 to June 30, or the remaining portion of such fiscal year. The annual license fee shall be \$1,000 and payable to the city at the time of application. For new applications, annual fees shall be prorated at the rate of \$100 per month for the remaining full months of a fiscal year but shall not exceed \$1,000. Application for renewal of a license shall be made at least 90 days, but not more than 120 days, before the expiration of the current license and shall be accompanied by the annual fee of \$1,000. The renewal application shall also contain any changes in the information required by § 20-36 which have occurred since the previous application. If the renewal application and/or the annual fee are not tendered in a timely fashion, the Director shall serve notice to the licensee that the failure to submit the renewal application and/or the annual fee within ten business days will be deemed an abandonment of the license as of the above-referenced renewal deadline. Service of the notice required by this section shall be deemed complete upon certified mailing, return receipt requested, or personal delivery. (Ord. 11-09-1118, passed 9-20-2011)

§ 20-42 EMPLOYEE LICENSE REQUIRED.

(A) Any person intending to be an employee at an adult entertainment establishment shall make application for an employee license with the Director in accordance with this section. The application shall be in writing, notarized, and shall be in the form prescribed by the Director and shall be deemed complete when it contains the following items:

- (1) The legal name of the applicant;

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- (2) Any and all aliases or names used or to be used by the applicant in the course of prior, current or prospective appearances or performances as a dancer, performer or entertainer;

- (3) The applicant's mailing address where the applicant may be contacted by the Director;

- (4) The applicant's date of birth;

- (5) A set of the applicant's fingerprints suitable or a copy of a government-issued photo identification card;

- (6) A recent photograph of the applicant; and

- (7) Any information required under this section deemed to be private and/or confidential within the meaning of KRS 61.878, or within the constitutional right to privacy, shall not be disclosed to any person other than law enforcement agencies or other governmental agency.

(B) The applicant shall submit an annual license fee of \$25 with the application for an employee license and the Director shall immediately issue a temporary employee license pending a final decision by the Director to grant or deny the employee license. Within 20 working days of the application, the Director shall determine whether the applicant has been convicted of a specified criminal activity, as

defined in this chapter. If no record of such conviction is found, the Director shall issue an annual employee license. The license so granted shall expire on June 30 of each year and shall be annually reissued by the Director upon application therefor by the employee unless the Director confirms that the applicant has been convicted of any of the above-described offenses. In the event the Director confirms a conviction of a proscribed offense, he/she shall issue the applicant a notice of intent to deny the employee license. Application for a renewal license shall be made at least 90 days, and not more than 120 days, prior to expiration of the employee's current license. Within 30 days after the effective date of this chapter, no person shall be an employee at an adult entertainment establishment without having obtained the license required by this section.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-43 LICENSE DENIAL, SUSPENSION, REVOCATION; HEARING AND APPEAL.

(A) The Director shall issue a written letter of intent to suspend an adult entertainment license or an employee license, as applicable, for a period not to exceed 30 days if it determines that the licensee knowingly or recklessly violated or is not in compliance with any section of this chapter, or, knowingly refused to allow an inspection of the licensed premises as authorized by this chapter.

(B) The Director shall issue a written statement of intent to revoke an adult entertainment establishment license or an employee license, as applicable, if the licensee knowingly or recklessly commits two or more violations specified in this chapter within a 12-month period.

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(C) The Director shall issue a written statement of intent to revoke an adult entertainment establishment license or an employee license, as applicable, if:

(1) The licensee knowingly gave false information in the material submitted during the application process;

(2) The licensee has knowingly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The licensee has knowingly engaged in or allowed prostitution on the premises;

(4) The licensee has knowingly operated the adult entertainment establishment during a period of time when the licensee's license was suspended;

(5) The licensee has knowingly engaged in or allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed the foregoing sexual activities to occur either in exchange for money or in a place within public view.

(D) The fact that a conviction is being appealed shall have no effect on the revocation of the license, provided however, that any reversal of a conviction shall automatically eliminate that conviction from consideration in this chapter.

(E) When, after the notice and hearing procedure described in division (F) below, the Director revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult entertainment establishment license or an employee license for one year from the date revocation becomes effective, provided that, if the conditions of division (G) of this section are met, a provisional license will be granted pursuant to that subsection.

(F) If facts exist for denial, suspension, or revocation of an adult entertainment establishment license or an employee license issued under this chapter, the Director shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Director, and will provide the address of the Hearing Officer to which the respondent should direct his or her response. Within five working days of receipt of such notice, the respondent may provide to the Hearing Officer, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three working days of the receipt of respondent's written response, the Hearing Officer shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

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(1) Within ten working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine adverse witnesses. Such proceeding shall be transcribed or recorded. Within ten working days after any hearing, the Hearing Officer shall issue a written decision on the matter and mail such decision to the respondent by certified mail no later than three working days after the date of such decision.

(2) If a response is not received by the Hearing Officer in the time stated or, if after hearing, the Hearing Officer finds that grounds as specified in this chapter exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five working days after the Hearing Officer sends, by certified mail, the written decision and notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

(G) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose licenses has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction within 15 working days of the date the adverse decision becomes final. Until the time for an appeal has passed, any temporary license issued to the aggrieved party under this chapter shall remain in effect throughout the administrative proceedings described in this section. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the enforcement of the denial, suspension or revocation, the Director shall immediately issue the aggrieved party a provisional license and shall file the record of the administrative proceeding with the reviewing court within ten business days after he/she receives notice of said action. The provisional license shall allow the aggrieved party to

continue operation of the adult entertainment establishment or to continue employment as an adult entertainment employee, as the case may be, and will expire upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the enforcement of the Director's decision.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-44 RESERVED.

§ 20-45 SCIENTER NECESSARY TO PROVE LIABILITY.

This chapter does not impose strict liability for violations of its provisions. Where any provision or offense herein fails to state a necessary level of culpability to establish a violation or liability, the offense shall be established upon a showing that the person acted knowingly or recklessly with regard to the predicate act. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee shall be imputed to the adult entertainment licensee for the purpose of establishing a violation of this chapter, or for purposes of license denial, modification, or revocation only if a licensee allowed, either knowingly or by reckless failure to supervise, a violation of this chapter to occur. It shall be a defense to liability that the adult entertainment establishment licensee was powerless to prevent the violation.

(Ord. 11-09-1118, passed 9-20-2011)

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§ 20-46 FAILURE OF OFFICIAL TO MEET TIME FRAME NOT TO RISK APPLICANT OR LICENSEE RIGHTS.

In the event that a government official is required to take an act or do a thing pursuant to this chapter within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the official under this chapter, but not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City Government of an applicant or licensee's application for an adult entertainment establishment license or an adult entertainment establishment employee license (including a renewal), the applicant or licensee shall be deemed to have satisfied the condition(s) for which approval was sought.

(Ord. 11-09-1118, passed 9-20-2011)

§ 20-99 PENALTY.

(A) Any person who violates any provision of this chapter shall be subject to a civil penalty of not less than \$100 nor more than \$1,000 as imposed by the Director. Each day that a violation continues after notice has been served shall be deemed a separate offense. Any person cited pursuant to this division (A) and assessed a civil penalty shall have the right to appeal such penalty to the Hearing Officer.

(B) Notwithstanding division (A) above, any person who violates any provision of this chapter or who knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of

a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 nor more than \$500 or imprisonment not to exceed 90 days, or both, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after a prior citation and in such case each citation shall constitute a separate offense.

(C) In addition to the penalties provided herein for violations of this chapter, the Director is authorized to pursue remedial civil actions for violations of this chapter by civil complaint or petition for injunctive relief, declaration of rights or other appropriate proceedings filed in the Hardin County, Kentucky Circuit Court.

(Ord. 11-09-1118, passed 9-20-2011)

CHAPTER 21: PAWN SHOPS, JUNK, SECOND HAND AND SCRAP DEALERS

CHAPTER 21: PAWN SHOPS, JUNK, SECOND HAND AND SCRAP DEALERS

Section

- 21-1. Definitions
- 21-2. Compliance required
- 21-3. Transaction record of purchases
- 21-4. Transacting business with minors
- 21-5. Examination of books
- 21-6. Regulated property sale limitations

21-99. Penalty

_ 21-1 DEFINITIONS.

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

CITY OF RADCLIFF. The corporate limits of the City of Radcliff, Kentucky.

COMMODITY METALS. Any metal containing primarily brass, copper, copper alloy, aluminum, stainless steel, or magnesium, or any other metal trading on the commodity markets that trades in pounds, rather than ounces, except aluminum single serving beverage cans shall not be considered commodity metals.

FERROUS METALS. Any metal consisting primarily of iron or steel.

INVESTMENT PURPOSES. The purchase of regulated property by persons and the retention of that property in the same form as purchased, for resale to persons who are purchasing the

property primarily as an investment.

MINOR. Any person under the age of 18 years.

MOTOR VEHICLE DEALERS. Any person who exclusively deals in new or used cars.

PERSON. Any individual, owner, agent, partnership, corporation or other business entity.

PRECIOUS METALS. Any metal that is valued for its character, rarity, beauty, quality, or worth, including, but not limited to gold, silver, platinum or any other such metals, whether as separate items or in combination as a piece of jewelry.

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PURCHASE. To obtain regulated property by paying money or giving other valuable consideration in a voluntary transaction. However, *PURCHASES* under this chapter do not include transactions in which regulated property is obtained by the loan of money or on condition of selling regulated property back to the individual from whom it came at a stipulated price.

REGULATED PROPERTY. The following property, which is used or secondhand:

(1) Commodity and precious metals.

(2) Gems, including but not limited to, any gem that is valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or any other such gems or stones, whether as a separate item or in combination as a piece of jewelry.

(3) Jewelry containing metals or gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, bracelets, or chains.

(4) Watches, including but not limited to, pocket watches, wrist watches, or stop watches.

(5) Sterling silver, including but not limited to, flatware, candleholders, coffee and tea sets, ornamental objects, champagne flutes, wineglasses, or serving pieces such as platters, bowls, trays, water pitchers, open bakets, ice buckets, shell dishes or salt and pepper shakers.

(6) Audio equipment and accessories, including but not limited to, tape players, tape decks or players, compact/digital disc players and compact discs, sound metering devices, tuners, amplifiers, speakers, transceivers, equalizers, receivers, phonographs, turntables, stereos, radios, clock radios, satellite radios, car stereos, car speakers, radar detectors, broadcasting equipment or citizen band radios/transceivers.

(7) Video and digital equipment and accessories, including but not limited to, televisions, videotape or digital videodisc recorders, videotape or digital videodisc players, video cameras, video monitors, video games, digital video discs or video game consoles.

(8) Photographic and optical equipment and any accompanying bags, including but not limited to, cameras, camera lenses, camera filters, camera motor drives, light meters, flash equipment, movie projectors, slide projectors, photography processing equipment, photography enlarging equipment, binoculars, telescopes, opera glasses, microscopes, surveying equipment, rifle scopes, spotting scopes, or electronic sighting equipment.

(9) Electrical office equipment, including but not limited to, telefax machines, laser printers, copiers, duplicators, typewriters, calculators, cash registers, transcribers, dictaphones, computers, modems, monitors, or any computer equipment or accessories having uniquely identifiable parts.

(10) Power yard and garden tools, including but not limited to, garden tractors, lawn mowers, rototillers, lawn sweepers, weed or brush cutters, edgers, trimmers, blowers, chippers, shredders, or ladders.

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(11) Power equipment and tools, including but not limited to, air hammers, air tools, nail

guns, power staplers, power saws, power sanders, chainsaws, power planers, power drills, routers, lathes, joiners, shop vacuums, paint sprayers and accessory equipment, generators, air compressors, pressure washers or logging equipment.

(12) Automotive and hand tools, including but not limited to, wrench sets, sockets sets, screw driver sets, pliers, vise grips, tool boxes, auto body hammers, jacks or timing lights.

(13) Telephones or telephone equipment, including but not limited to, office telephones, portable home telephones, mobile telephones, cellular telephones or answering machines.

(14) Sporting equipment, including but not limited to, bicycles, golf clubs and bags, pool cues or cases, skis, ski boots, snowboards, fishing rods or reels, or skates.

(15) Outboard motors and boating accessories, including but not limited to, outdrives, props, inboard engines, boat covers, tops or unlicensed boat trailers.

(16) Microwave ovens.

(17) Motor vehicles, other than as set forth in division (18)(a), below.

(18) Regulated property does not include any of the following property:

(a) Motor vehicles dealt in by motor vehicle dealers;

(b) Boats;

(c) Books, magazines, beta and VHS video tapes, and comic books;

(d) Glassware, objects d'art, or sports cards and sports memorabilia;

(e) Furniture;

(f) Refrigerators, stoves, washers, dryers and other similar major household appliances;

(g) Property purchased at an auction;

(h) Property purchased from another person, who is in a business, as described in _
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(i) Postage stamps, stamp collections and philatelic items;

(j) Clothing;

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(k) Ferrous metals, including items listed in divisions (6) through (16) above, when purchased by a scrap processor and which items are in such condition that their highest and primary value is either in sale or transfer as scrap metal;

(l) Commodity or ferrous metals purchased by a scrap processor from a manufacturing, industrial or other commercial vendor that generates such metals in the ordinary course of business; or

(m) A total of four or less compact discs, digital video discs, and/or video games purchased in any combination from a single seller in a 24-hour period.

SCRAP PROCESSORS. Any person who utilizes torches, sheers, balers, presses, or shredders to manufacture scrap metal for remelting purposes only.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-2 COMPLIANCE REQUIRED.

Every person engaged in, conducting or carrying on any business in Radcliff, Kentucky, wherein he or she regularly purchases, in the course of his or her business, regulated property from another person shall comply with all the provisions of this chapter.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-3 TRANSACTION RECORD OF PURCHASES.

(A) Every person carrying on any business as set forth in _ 21-2 above, shall keep a transaction record for each purchase, which shall contain the name of the person on behalf of the business, as set forth in _ 21-2 above, who actually made the purchase, the name of the person or persons and his or her signature from whom any regulated property is purchased, an electronically retained copy of a government-issued photo identification, including the information obtained from scanning the bar code on the back of a government-issued photo identification of the person or persons from whom any regulated property is purchased, the date when the property was received and bought, the residence or place of business of such person or persons from whom the regulated property is purchased, and a full description of the items purchased. The transaction record shall be in plain, legible English text. Except for scrap metal processors purchasing commodity and precious metals, if any item of regulated property purchased has engraved thereon any numbers, words, or initials, other than the name of the manufacturer or maker of the item, or contains any setting of any kind, the description recorded on the transaction record shall show the numbers, initials or other unique identifying marks. In the case of a motor vehicle, the vehicle identification number shall be recorded on the transaction record including license plate number and make, model and description of the motor vehicle

(B) All transactions which qualify under this chapter shall be registered with Leads on Line within 24 hours of the receipt of the property. If so registered a hard copy retention shall not be required.

(C) It shall be the duty of any such person to allow any police officer designated by the Chief of Police during regular business hours to examine and inspect transaction records, and if sufficient information cannot be gained from an inspection of transaction records, it shall be the duty of any person to permit and allow the officer to examine any and all regulated property mentioned herein belonging to or purchased by such person. A transaction record and digital photograph, in accordance with _ 21-6, if applicable, for a purchase shall be maintained together on the premises for at least one year after the date of such purchase.

(D) Every person carrying on business as set forth in _ 21-2 above shall give a plain written or printed receipt of the regulated property purchased.

(E) All described records shall be retained.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-4 TRANACTING BUSINESS WITH MINORS.

No person carrying on any business as set forth in this chapter shall at any time or under any circumstances purchase from a minor any regulated property as defined in _ 21-1 above unless having been presented a certificate of trade as signed by a parent or legal guardian, provided such parent or legal guardian has been physically present at a prior transaction.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-5 EXAMINATION OF BOOKS.

Any sworn law enforcement officer may examine during regular business hours the books of any person doing business as set forth in this chapter, or his or her clerk, if they deem it necessary when in search of stolen property. Any person who has in his or her possession a receipt from selling regulated property to a person carrying on a business as described in this chapter, shall, when accompanied by a sworn law enforcement officer, be permitted to examine regulated property purporting to be sold by that receipt. No property shall be removed from the possession

of any person doing business as set forth in _ 21-2 above without due process of law as required by the existing laws of the Commonwealth of Kentucky, or the laws and ordinances of the City of Radcliff.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-6 REGULATED PROPERTY SALE LIMITATIONS.

No regulated property purchased by a person carrying on a business as described in _ 21-2 above shall be sold, altered or destroyed for a period of ten full days after the date of purchase or ten days after registration of the property with Leads On Line, which ever occurs later. The regulated property must be kept uncommingled, along with a copy of the transaction record, as set forth in _ 21-3 above, on the

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premises of the business location during the holding period for purposes of inspection, if necessary, as provided by this chapter. This section shall not apply if a digital photograph, which accurately depicts the regulated property items of the transaction, is taken and retained together with the transaction record, as provided by _ 21-3 above, for at least one year from the date of purchase.

(Ord. 11-09-1119, passed 9-20-2011)

_ 21-99 PENALTY.

(A) (1) Any person who shall neglect or refuse to comply with or violates the provisions of _ 21-3 shall be fined not less than \$100 nor more than \$500 for each offense or incarcerated up to 90 days or both. Each day such person, firm or corporation shall neglect or refuse to comply with

or violate any of the provisions of that section shall constitute a separate offense.

(2) Any person convicted of a second or subsequent offense under _ 21-3 shall be fined not less than \$500 or more than \$1,000 or incarcerated up to 180 days or both.

(B) Any person who shall violate _ 21-4 shall be fined \$100, imprisoned not more than 50 days or both. For a second offense any person shall be fined not less than \$500 nor more than \$1,000 or incarcerated up to 180 days or both.

(C) Any person who shall violate _ 21-5 shall be fined not less than \$100 nor more than \$500.

(D) Any person who shall violate _ 21-6 shall be fined not less than \$100 nor more than \$500.

(E) Any person so convicted shall be subject to any and all other administrative penalties, including and not limited to revocation of the business license.

(Ord. 11-09-1119, passed 9-20-2011)

CHAPTER 22: HAZARDOUS MATERIAL

CHAPTER 22: HAZARDOUS MATERIAL

Section

- 22-1. Purpose
- 22-2. Definitions
- 22-3. Cost of recovery standards
- 22-4. Lien created, seizure, impoundment
- 22-5. Response standards

_ 22-1 PURPOSE.

Pursuant to the authority of KRS 39B.010, KRS 39B.070(2), 106 KAR 1:230, and KAR 1:240 *et seq.*, this chapter is adopted by the City Council of Radcliff, Kentucky, for the purpose of requiring the timely payment or reimbursement by any parties responsible for a release or threatened release of any hazardous material in the city, of all costs incurred by the city, including the city's mutual aid providers, and other local safety or emergency services agencies, in responding to a release or threatened release of any hazardous material.

(Ord. 10-10-1102, passed 10-12-2010)

_ 22-2 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

COSTS. All expenses incurred by the city or any agent of the city, including the city's mutual aid providers, and other local public safety or emergency services agencies in responding to a release or threatened release of a hazardous material. The term includes, but is not limited to,

expenses for salaries and personnel benefits of employees who respond to a hazardous material release or threatened release, including lost wages of volunteer personnel; the expenses incurred to replace materials, supplies, vehicles, and equipment expended or contaminated or damaged in response to a release or threatened release of a hazardous material; expenses incurred to properly clean-up, restore, or dispose of contaminated vehicles, equipment, supplies, and materials involved in response to a release or threatened release of a hazardous material; the logistical expenses incurred for food, lodging, utilities, fuel services, sanitation, medical surveillance or treatment, evacuation, and rental; and other personnel, health, medical, safety, operating, support, logistical, maintenance, or administrative expenditures made to support the response to a release or threatened release of a hazardous material, including any legal expenses incurred in recovering costs as described in this chapter.

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FIXED FACILITY. Any building, structure, installation, storage container, equipment, pipe, or pipeline (including any pipe into a sewer or publicly-owned treatment system), well, pit, pond, lagoon, impoundment, reservoir, ditch, landfill, site, or immobile vessel where a hazardous material is stored, deposited, disposed of, abandoned, placed, or otherwise is located. Consumer products as defined in 15 U.S.C. 2052, in consumer use and vessels, are not included.

HANDLER. A person that stores, maintains, treats, processes, uses, generates, disposes of, transports, controls, manages, or otherwise possesses a hazardous material.

HAZARDOUS MATERIAL. A substance (gas, liquid, solid, or semi-solid) capable of creating harm to people, property, and the environment, including but not limited to, any element, commodity, compound, chemical, substance, mixture, corrosive, radioactive, oxidizer, organic peroxide, etiological or biological agent, carcinogenic, or highly reactive substance when mixed with other substances.

MOBILE CARRIER. Motor vehicles, cargo tanks, box trailers, rolling stock, rail tank cars,

locomotive engines, aircraft, barges, boats, or other motorized vehicles or commodity containers used in transportation of a hazardous material.

OWNER/OPERATOR. A person who owns or operates a fixed facility or a person that owns or operates a mobile carrier as well as any person vested with proprietary or decision-making authority over a fixed facility or mobile carrier.

PERSON. An individual, trust, firm, business, corporation, joint stock, company, partnership, consortium, association, cooperative, joint venture, city, county, special district, a state or any department or agency thereof, the United States of America or any department or agency thereof, or other commercial or legal entities.

RELEASE. Any accidentally or intentional, unauthorized or non-permitted spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, dumping, or disposing of a hazardous material into or on any site, surface, land, air, water, well, river, lake, reservoir, stream, creek, ditch, sewer, pipe, drainage basin or other area.

RESPONSE. Any actions taken to ensure the preservation and protection of public health, safety, welfare and the environment, including but not limited to, any mitigation, logistical, remedial, and supporting measures required to safeguard emergency responders, the public, and the environment.

RESPONSIBLE PARTY. Any person possessing or controlling a hazardous material at the time of a release, or threatened release, of the hazardous material.

THREATENED RELEASE. A factor or circumstance that presents a substantial threat of a release. (Ord. 10-10-1102, passed 10-12-2010)

Any person, owner/proprietor, handler, or other responsible party, that causes or is otherwise responsible for a release or threatened release of a hazardous material that requires or results in a response to the release or threatened release and the expenditure of public funds in executing the response to the release by the city or any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and other local public safety or emergency services agencies in the city, shall be liable to the city for all recoverable costs as outlined hereinbelow and incurred by the city, the regional WMD/hazardous materials response teams, mutual aid providers, and other local public safety or emergency services agencies in the city to include any protective, mitigation, remedial and recovery actions taken in the response.

(A) In the event of a release of a hazardous material, or a threatened release of a hazardous material, being transported in or otherwise involved in transportation or transit in the city, the handler, the shipper or carrier, the owner/operator of the hazardous material, and any other responsible party, jointly and severally, shall be responsible for all costs incurred by the city and any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city in responding to the release or threatened release.

(B) In the event of a release of a hazardous material, or a threatened release of a hazardous material, at a fixed facility, the handler or the owner/operator of the hazardous material, and any other responsible party, shall be responsible for all costs incurred by the city or any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city and in responding to the release or threatened release.

(C) At the direction of the City Council, the Director of the City Emergency Management, on behalf of the city, is hereby authorized and directed to prepare and submit all bills of claim to any owner/operator, carrier, shipper, handler, or other responsible party for payment or reimbursement of all recoverable costs incurred as described in this chapter.

(D) At the direction of the City Council, the City Attorney is hereby authorized and directed to initiate such proceedings, in the name of the city, in any court having jurisdiction over such matters as are necessary to recover the costs incurred as described in this chapter.

(Ord. 10-10-1102, passed 10-12-2010)

_ 22-4 LIEN CREATED, SEIZURE, IMPOUNDMENT.

(A) All releases or threatened releases of any hazardous material, including a release or threatened release of a hazardous material involved in transportation, or transit or a release or threatened release of a hazardous material at a fixed facility, shall be considered a public health hazard in the city. For the

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purpose of securing all recoverable costs incurred in executing a response to any hazardous material release or threatened release by the city and any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city, the city shall have, and there is hereby created a lien against the real or personal property in the city possessed by the owner/operator, handler, or any other responsible party or person. The affidavit of the Mayor of the city shall constitute prima facie evidence of the amount of the lien and it 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 at the rate of 12% until paid. The lien created shall take priority over all other subsequent liens, except those asserted by any city or other taxing district which has priority under KRS 134.420, and may be enforced by judicial proceeding. The owner of property upon which a lien has been attached under this ordinance shall also be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city shall have the same remedies as provided for the recovery of a debt owed.

(B) The lien shall be enforced upon the filing of an action in the County Circuit Court naming all persons with a security or other interest in the real or personal property to which the lien is attached.

(C) As to any moveable personal property or mobile carrier located in Hardin County, Kentucky, including, but not limited to, any titled motor vehicle, trailers, attached thereto, vessels, cargo tanks, locomotive engine, rail tank cars, rolling stock, and other equipment used to store or transport a hazardous material, the city may effectuate or order the seizure or impoundment of such property pending enforcement of the lien by the County Circuit Court. In addition, the Radcliff Police Department may order impoundment to preserve such property as evidence. (Ord. 10-10-1102, passed 10-12-2010)

22-5 RESPONSE STANDARDS.

(A) Response to hazardous material release or threatened release within the geographical boundaries of the city by the city and any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city shall be conducted in accordance with the provisions of the City Emergency Operations Plan, response agency standard operating procedures, and the terms of written mutual aid agreements approved by the City Council. The owner/operator or handler of the hazardous material involved in a release or threatened release, or other responsible party, shall assume responsibility to the city and any agent of the city, including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city for all costs incurred in responding to the release or threatened release, including costs associated with execution or implementation of the City Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreement approved by the City Council.

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(B) In the event the city, including the regional WMD/hazardous materials response teams,

mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city responded to a release or threatened release outside of the geographical boundaries of the city under the terms and condition of written mutual aid agreements approved by the City Council, the owner/operator, or handler of the hazardous material involved in the release or threatened release, or other responsible party, shall assume responsibility to the city including the regional WMD/hazardous materials response teams, mutual aid providers, and any other dispatched local public safety or emergency services agencies in the city for all costs incurred in responding to a release or threat of release, including costs associated with the execution or implementation of the City Emergency Operations Plan, response agency standard operating procedures, and the terms of written mutual aid agreements approved by the City Council.

(C) At the direction of the City Council, the City Attorney is hereby authorized and directed to initiate such proceedings against the owner/operator, or handler, or other responsible party, or other private entity, in the name of the city, in any court having jurisdiction over such matters as are necessary to recover the costs incurred as described in this chapter.

(Ord. 10-10-1102, passed 10-12-2010)

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