

TITLE III: ADMINISTRATION

Chapter

- 30. COMMISSION PLAN AND ORGANIZATION**
- 31. OFFICERS, EMPLOYEES, AND DEPARTMENTS**
- 32. CITY COMMISSION**
- 33. PERSONNEL POLICIES**
- 34. FINANCIAL ADMINISTRATION**
- 35. IMPROVEMENTS**
- 36. PUBLIC RECORDS**

CHAPTER 30: COMMISSION PLAN AND ORGANIZATION

Section

- 30.01 Incorporation area
- 30.02 Official city map
- 30.03 Form of government
- 30.04 Governing officers

§ 30.01 INCORPORATION AREA.

The boundaries of the city are described in the petition and judgment for incorporation as follows:

(A) A tract of land in the county about six and one-half miles eastwardly from the Courthouse in Louisville, Kentucky; and

(B) Beginning at the end point of division fence between the lands of Mrs. Kent and Arterburn, which post is in the eastern line of Breckinridge Avenue, running fence with the eastern line of said avenue, north 33 degrees 50 minutes west 75.08 poles to a stone corner to the 49.95 acres, which with this tract compose the tract of 99.9 acres which has been equally divided; thence north 56 degrees ten minutes east, 106 and one-half poles to a stone in the original line of the Brown tract or the western line of Brown's Lane and corner to said 49.95 acres; thence with the western line of Brown's Lane which is the original western line of the Brown tract, south 33 degrees 50 minutes east, 75.08 poles to the intersection of said original line or line of Brown's Lane and Mrs. Kent's line; thence with Mrs. Kent's line as indicated by a fence, south 56 degrees ten minutes west, 106.44 poles to the beginning, containing 49.95 acres of land; and being further described as Norbourne Estates Subdivision, plat of which is recorded in the County Clerk's office, in plat and subdivision book 6, pages 56 and 57; and being the same property conveyed to the Moorehouse Corporation by deed dated September 30, 1926 and of record in said Clerk's office in deed book 1244, page 328.

(1997 Code, § 110.01)

Editorial Note:

Jefferson Circuit Court Action No. 319881, Chancery Branch, Second Division. Judgment entered 4-12-1950. Judgment book 114, page 442-443

§ 30.02 OFFICIAL CITY MAP.

The boundaries of the city shall be shown on an official map kept on file with the City Clerk.
(1997 Code, § 110.02)

§ 30.03 FORM OF GOVERNMENT.

The city shall be governed under the Commission form of government as provided by KRS Ch. 83A.

(1997 Code, § 120.3)

§ 30.04 GOVERNING OFFICERS.

The city shall be governed by an elective officer who shall be called Mayor and by elected legislative body members who shall be called City Commissioners and which together shall be known as the City Commission and by such other officers and employees as may be provided for by statute or city ordinance.

(1997 Code, § 120.3)

CHAPTER 31: OFFICERS, EMPLOYEES, AND DEPARTMENTS

Section

General Provisions

31.01 Indemnification of city officers and employees

Executive Officials and Departments

31.15 Mayor
31.16 City Clerk
31.17 City Treasurer
31.18 Bonds of Clerk and Treasurer
31.19 Oath of City Clerk and City Treasurer
31.20 City Tax Collector
31.21 Legal Counsel
31.22 Police Department

GENERAL PROVISIONS

§ 31.01 INDEMNIFICATION OF CITY OFFICERS AND EMPLOYEES.

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

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

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

OFFICER. Any elected official of the city, City Clerk, City Treasurer, City Tax Collector, City Engineer, and the Attorney for the city.

(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 with the city.

(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 its 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 such 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
- (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 said 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 action in tort, or any compromise or settlement of such 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 such payment and the costs to defend, if:

- (1) The officer or employee acted or failed to act because of fraud, malice, or corruption;
- (2) The action was outside the actual or apparent scope of the employee's employment;

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

(4) The employee compromised or settled the claim without the consent of the City Commission.

(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 City Commission.

(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. Defense by the city of any action shall not be deemed an admission by the city that the acts of the officer or employee were within the actual or apparent scope and in the course of such person's office or duties.

(1997 Code, § 270.1) (Ord. 83, Series 1986, passed 4-8-1986)

EXECUTIVE OFFICIALS AND DEPARTMENTS

§ 31.15 MAYOR.

(A) The Mayor shall preside at all meetings of the Commission and may vote in all proceedings. The Mayor shall sign all warrants or checks drawn on the City Treasury and all bonds, notes, contracts, and written obligations or documents of the city authorized by the Commission.

(B) Appointment of all non-elected city officers shall require nomination by a Commission member and approval (majority vote) by the City Commission. Such non-elected officer may be suspended by the Mayor at will unless otherwise provided by statute. Any suspension shall be in effect until the next Commission meeting at which time the Commission shall remove or reinstate the suspended officer.

(1997 Code, § 130.1)

§ 31.16 CITY CLERK.

(A) There is hereby created a non-elective city office to be known as the office of City Clerk.

(B) The City Clerk shall be appointed by the City Commission at the January meeting of even-numbered years for a term of two years beginning on the February 1 and until a successor is appointed and qualified. It is preferable, though not required, that the Clerk be a city resident.

(C) The City Clerk shall be at least 21 years of age and of good moral character. Residency within the city shall not be required.

(D) The duties and responsibilities of the City Clerk shall include, but not be limited to the following:

- (1) Maintenance and safekeeping of the permanent records of the city;
 - (2) Performance of the duties required of the official custodian or custodian pursuant to KRS 61.870 to KRS 61.882;
 - (3) Possession of the seal of the city if used; and
 - (4) Performance of all duties and responsibilities required of a City Clerk by statute, ordinance, or municipal order of the city.
- (E) The salary of the City Clerk is hereby fixed at \$125 per month, payable monthly, or such other amount as may be from time to time fixed by order of the Commission.
(1997 Code, § 130.2)

§ 31.17 CITY TREASURER.

(A) The City Treasurer shall receive and safely keep all city funds coming into his or her hands, and for all such funds he or she shall give duplicate receipts, one of which shall be filed with the City Clerk. He or she shall pay out city funds only on warrants signed by the Clerk and counter-signed by the Mayor.

(B) The Treasurer shall make monthly reports to the City Commission showing the state of the finances of the city, and the amounts received and spent during the month, which reports shall be filed. He or she shall make an annual report at the close of the fiscal year with the total amount of all receipts and expenditures of the city and the transactions during the preceding year.

(C) The City Treasurer shall be appointed by the Commission at the January meeting of even-numbered years for a term of two years beginning on the February 1 and until a successor is appointed and qualified. It is preferable, though not required, that the Treasurer be a city resident.

(D) The salary of the City Treasurer is hereby fixed at \$120 per month, payable monthly, or such other amount as may be from time to time fixed by order of the Commission.
(1997 Code, § 130.3)

§ 31.18 BONDS OF CLERK AND TREASURER.

The City Clerk and Treasurer shall each execute a bond before entering upon the duties of their respective offices, conditioned for the faithful performance of his or her duties, including the duties of all offices of which he or she is an ex-officio incumbent. The amount and sufficiency of such bond shall be approved by the City Commission. The bond of the Treasurer shall be filed with the City Clerk and the bond of the Clerk shall be filed with the Mayor.
(1997 Code, § 130.4)

§ 31.19 OATH OF CITY CLERK AND CITY TREASURER.

Before entering upon the duties of his or her office, the City Clerk and the City Treasurer shall each take the oath prescribed by § 228 of the Constitution of the commonwealth for city officials.
(1997 Code, § 130.42)

§ 31.20 CITY TAX COLLECTOR.

(A) There is hereby created the office of City Tax Collector who shall be appointed by the Commission at the January meeting of even-numbered years for a term of two years beginning on February 1 and until his or her successor is appointed and qualified.

(B) Before entering upon the duties of his or her office, the City Tax Collector shall take the oath prescribed by law for city officials and shall execute a bond in the amount of \$2,500 with corporate surety.

(C) The salary of the City Tax Collector is hereby fixed at \$125 per month, payable monthly, or such other amount as may be from time to time fixed by order of the Commission.

(D) It shall be the duty of the City Tax Collector to proceed as authorized by law to collect all taxes and special assessments that may be due or become due the city and to keep such records pertaining to such collections as may be required by statutes, ordinance, or direction of the City Commission.

(E) The City Tax Collector shall make such reports regarding delinquent taxes as are required by statute or by the City Commission. The City Tax Collector shall make a monthly report to the Commission showing all monies that have been received and the source thereof. Monthly reports shall show totals for all monies received in the current fiscal year (categorized as taxes, penalties, or interest), totals for all tax monies due in the current fiscal year, and totals for all past due monies summarized by year(s). The Tax Collector may furnish the required report to the City Treasurer for inclusion in the Treasurer's report in lieu of a separate report. All monies when received shall be deposited with the City Treasurer, or as directed by the City Treasurer.
(1997 Code, § 130.5)

§ 31.21 LEGAL COUNSEL.

(A) In lieu of establishing an office of City Attorney, the city may retain a licensed attorney as Legal Counsel, such Attorney to be selected by the City Commission at the January meeting of each even-numbered year to serve for a period of two years, subject to removal at the pleasure of the City Commission.

(B) The duties of Legal Counsel shall be as follows:

(1) Legal Counsel shall prosecute or defend any and all suits or actions at law or equity to

which the city may be a party, or in which it may be interested, or which may be brought against, or by, any officer of the city, on behalf of the city, or in the capacity of such person as an officer of the city;

(2) To see to the full enforcement of all judgments or decrees rendered or entered in favor of the city and of all similar interlocutory orders;

(3) He or she shall be legal advisor to the city officials and the City Commission and shall render service on all legal questions affecting the city, whenever requested to do so by any city official. Upon request by the Mayor or City Commission, he or she shall reduce any such opinion to writing;

(4) He or she shall see to the completion of all special assessment proceedings and condemnation proceedings;

(5) He or she shall draft or supervise the phraseology of any contract, lease, or other document or instruments, to which the city may be a party; and upon request of the Commission, to draft ordinances covering any subjects within the power of the city; and

(6) He or she shall perform such other duties as are prescribed by ordinance.

(C) Legal Counsel shall receive for his or her services a retainer as fixed by the City Commission, and a fee for all advisory services, the drafting of ordinances, contracts, and other documents, and all services rendered in connection with bond issues, or litigation to which the city or its officers or employees in their official capacity may be parties. For all such services not covered by the retainer, he or she shall receive such compensation as may be authorized by the City Commission.

(D) The City Commission retains the right to obtain legal counsel from other licensed attorneys for matters which are deemed by the Commission to require special expertise or effort beyond that readily available from retained counsel.

(1997 Code, § 250.1)

§ 31.22 POLICE DEPARTMENT.

(A) There is hereby established a Police Department for the city, which shall be responsible for enforcement and maintenance of law and order within the corporate boundaries of the city in accordance with policies and guidelines established by the City Commission.

(B) The Chief of Police shall be the chief administrative officer of the Police Department and shall select such departmental personnel as are authorized by the City Commission and shall assign their duties and hours and shall direct and supervise their work. The Chief of Police shall be appointed by the City Commission and serve at its pleasure. All departmental personnel shall be appointed in accordance with the personnel rules or administrative code of the city.

(C) Additional police officers as may be appointed to the Police Department shall be appointed for a term of office not to exceed 12 months. Qualifications for members of the Police Department shall be such as are set forth in the Kentucky Revised Statutes.

(D) The term of office of all members, if more than one, of the Police Department shall commence on the date of the municipal order effectuating their appointment and shall expire on the anniversary date of that appointment 12 months later; provided, however, that all such appointments shall be subject to removal from office at the pleasure of the City Commission.

(E) In lieu of establishing a police force, the city may procure security or police services deemed necessary through any lawful means, such as interlocal government contacting or contracted services of qualified police, or may rely on the protection provided by the commonwealth or county. Qualifications for police shall be those as are set forth in Kentucky Revised Statutes.
(1997 Code, § 320.1)

CHAPTER 32: CITY COMMISSION

Section

General Provisions

- 32.01 Powers and duties
- 32.02 Creation and supervision of departments
- 32.03 Official responses to complaints and/or expressions of concern submitted anonymously

Rules of Procedure

- 32.15 Mayor as presiding officer
- 32.16 Meetings
- 32.17 Open meetings and records

Ordinances

- 32.30 Notice of violation of ordinances or noncompliance
- 32.31 Policy on enforcement of ordinances
- 32.32 Alterations in ordinances permitted in publication
- 32.33 Adoption of code of ordinances
- 32.34 Permanent records

GENERAL PROVISIONS

§ 32.01 POWERS AND DUTIES.

(A) All legislative, executive, and administrative authority of the city shall be vested in and exercised by the City Commission. The Commission shall enforce the Commission plan, ordinances, and orders of the city and all applicable statutes. The Commission shall maintain liaison with related units of local government respecting interlocal contracting and joint activities. The Commission shall supervise all departments of city government and the conduct of all city officers and employees under its jurisdiction and may require each department to make such reports to it as it finds necessary. The Commission shall report to the public on the condition and needs of city government as provided by ordinance, but not less than annually.

(B) In carrying out its duty to supervise the departments of city government and the conduct of all city officers and employees under its jurisdiction, the Commission may require any city officer or employee to prepare and submit to it sworn statements regarding the performance of his or her official duties.

(C) The Commission shall by ordinance establish all appointive offices and the duties and responsibilities of those offices, and codes, rules, and regulations for the public health, safety, and welfare. The Commission shall by ordinance provide for sufficient revenue to operate city government and shall appropriate such funds in a budget which shall provide for the orderly management of city resources. The Commission shall promulgate procedures to ensure orderly administration of the functions of city government in compliance with statutes, ordinances, or orders.
(1997 Code, § 120.3)

§ 32.02 CREATION AND SUPERVISION OF DEPARTMENTS.

(A) (1) All administrative and service functions of the city shall be classified under departments created by ordinance which shall prescribe the functions of the department and the duties and responsibilities of the department head and his or her employees. The Commission shall at its first regular meeting each year designate the Commission member to have superintendence over each department established under this division (A), except the Commission may delegate responsibility for overall operations of any or all departments to a city administrative officer established pursuant to KRS 83A.090.

(2) The administration and service functions of the city shall be classified under four departments.

(3) The departments shall be known as follows:

(a) Ordinance;

(b) Roads and Grounds;

(c) Sanitation; and

(d) Security and Finance.

(1997 Code, § 120.3)

(B) The following is a description of each of the four departments.

(1) *Ordinance*. The function of the Ordinance Department is to administer duly adopted ordinances of the city as provided for in such ordinances, and to administer the issuance, tracking, and closure of construction permits as provided for herein.

(2) *Roads and Grounds.* The function of the Roads and Grounds Department is to oversee the public ways and grounds of the city, contracting with responsible parties for the maintenance and specifically authorized improvement of these areas.

(3) *Sanitation.* The function of the Sanitation Department is to oversee the collection of garbage and refuse within the city, contracting with responsible parties for the collection and lawful disposition of such garbage and refuse.

(4) *Security and Finance.* The function of the Security and Finance Department is to oversee the public safety needs of the city, and to oversee the preparation and implementation of the city budget, including the collection of taxes, the investment of city funds, and any other financial activity of the city. The Commission will determine the particular method of obtaining any security or police service deemed necessary, such as interlocal government contracting, contracted services of qualified police, or employment of police officers.

(1997 Code, § 120.4)

§ 32.03 OFFICIAL RESPONSES TO COMPLAINTS AND/OR EXPRESSIONS OF CONCERN SUBMITTED ANONYMOUSLY.

There is adopted and instituted by the Commission a certain policy, which more specifically is the effect that the Commission shall not be required to take official action or otherwise to respond to any such complaint or expression of concern if the same shall have been submitted anonymously; provided however, that the Commission may elect to act thereupon or to respond thereto, at its sole discretion, if it deems such to be appropriate under the circumstances.

(Res. 10 Series 2007, passed - -)

RULES OF PROCEDURE

§ 32.15 MAYOR AS PRESIDING OFFICER.

The Mayor shall preside at all meetings of the Commission and may vote in all proceedings. All bonds, notes, contracts, and written obligations of the city authorized by ordinance or resolution shall be executed by the Mayor on behalf of the city. The Commission shall designate one City Commissioner to serve as Mayor Pro-Tem. The Mayor Pro-Tem shall act for the Mayor whenever the Mayor is unable to attend to the duties of his or her office and the Mayor Pro-Tem shall then possess all rights, powers, and duties of the Mayor. If the disability of the Mayor to attend to his or her duties continues for 60 consecutive days, the office of Mayor may be declared vacated by a majority vote of the Commission membership and the provisions of KRS 83A.040 shall apply.

(1997 Code, § 120.3)

§ 32.16 MEETINGS.

(A) (1) The legislative body shall hold regular monthly meetings at 7:00 p.m. on the second Tuesday of each month at the St. Matthews/Eline Library located at 3940 Grandview Avenue, St. Matthews, Kentucky.

(2) If the regular meeting date falls on a legal holiday as defined by Kentucky Revised Statutes, the regular meeting shall be on the following Tuesday which is not a legal holiday.

(3) Special meetings may be called as provided by law.
(1997 Code, § 120.1)

(B) Regular meetings of the City Commission shall be held at least once a month at such times and places as are fixed by ordinance. Special meetings may be called by the Mayor or a majority of the City Commissioners. In the call, the Mayor or City Commissioners shall designate the purpose, time, and place of the special meeting with sufficient notice for the attendance of Commission members and for compliance with KRS Ch. 61. At a special meeting, no business may be considered other than that set forth in a designation of purpose. The minutes of every meeting shall be signed by the officer presiding at the meeting.

(1997 Code, § 120.3) (Ord. 66, passed 1-3-1978)

§ 32.17 OPEN MEETINGS AND RECORDS.

All meetings of a quorum of the city legislative body shall be open to the public and all public records of the city shall be open for inspection by any person in accordance with KRS 61.805 to KRS 61.884.

(1997 Code, § 120.2)

ORDINANCES**§ 32.30 NOTICE OF VIOLATION OF ORDINANCES OR NONCOMPLIANCE.**

(A) The intent of giving notice of violation of or noncompliance with an ordinance is to ensure the responsible parties are aware of their violation and are given reasonable time to take corrective action. Such notice as given by the city only applies to city codes. Violations of other applicable codes, regulations, or statutes must be referred by a complainant to the agency responsible for their enforcement.

(B) If the Commissioner of Ordinance becomes aware of a confirmable violation of or noncompliance with an ordinance, the Commissioner will give written notice of the violation to the

responsible party or will refer the situation to the full Commission for a determination of what, if any, action is to be taken.

(C) (1) If a city resident believes that some action is required to achieve compliance with an ordinance, the resident should contact the Commissioner of Ordinance and advise him or her of the situation.

(2) If the Commissioner determines that a violation exists and the violation is confirmable, the Commissioner will give written notice to the violator or will refer the situation to the Commission for a determination of what, if any, action is to be taken.

(3) If the Commissioner determines that a violation does not exist or it is not confirmable, the Commissioner will so advise the resident. To pursue the matter further, the resident should contact the City Clerk and ask to be put on the agenda of the next regular Commission meeting, or the complainant may submit a written description of the situation to the Commission for review.

(D) A confirmable violation or noncompliance as used in these ordinances shall be taken to mean a violation that can be observed first-hand by the Commissioner, or one that is documented by a written and signed complaint from a resident who is a witness to the violation. Complaints from individuals who do not identify themselves or who want to remain anonymous will not generally be pursued.

(E) The foregoing notwithstanding, the failure of the Commissioner of Ordinances to give notice to the responsible party shall not affect the prosecution of any person for the violation of any ordinance. (1997 Code, § 120.51)

§ 32.31 POLICY ON ENFORCEMENT OF ORDINANCES.

(A) ***ENFORCEMENT*** as used herein refers to legal action taken to achieve a remedy in those instances where violation of or noncompliance with an ordinance is not corrected following notice of the same, or to impose a penalty where such response is appropriate for the violation or noncompliance. Legal action is required as such forced remedies or penalties must rely on the power of the courts for execution.

(B) As provided for by Kentucky Revised Statute, any aggrieved party may undertake enforcement of the provisions of a municipal ordinance through legal action filed in the County District Court. In this instance, the costs of, and time required for such action must be borne by the filing party.

(C) (1) When the Commission determines that specific enforcement action is in the interest of the general public welfare and is likely to be upheld, the Commission may undertake enforcement through legal action in the County District Court.

(2) Such determination shall include obtaining the advice of legal counsel. Recognizing the voluntary nature of the Commission, the Commission may designate a qualified individual to assist counsel in presenting the city's case in the ensuing proceedings.

(3) In the event that such individual is required and no volunteer can be found, further action may be precluded. It shall not be an obligation of the Commissioners to participate in litigation on the city's behalf. In all instances, the Commission retains the authority to determine the extent to which the action is pursued.

(4) Costs associated with actions taken per this section are borne by the city to the extent specifically authorized by the Commission.

(D) The foregoing notwithstanding, the failure of the Commissioner of Ordinances to give notice to the responsible party shall not affect the prosecution of any person for the violation of any ordinance. (1997 Code, § 120.52)

§ 32.32 ALTERATIONS IN ORDINANCES PERMITTED IN PUBLICATION.

(A) The City Clerk, in preparing editions of the ordinances or supplements thereto for publication or distribution, shall not alter the sense, meaning, or effect of any act of the city legislative body, but may renumber sections and parts of sections of the acts of the city legislative body, change the wording of headnotes, divide or rearrange sections and parts of sections, change words when directed by law, change reference numbers to agree with renumbered chapters or sections or make corrections in reference numbers when sections referred to are repealed or amended and the correction can be made without change in the law, substitute the proper section or chapter numbers for the terms "this ordinance", "the preceding section", and the like, strike out figures where they are merely a repetition of written words, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(B) In any edition of the code of ordinances or supplement thereto hereafter published, the City Clerk may substitute the name of any agency, officer, or instrumentality of the commonwealth or of a political subdivision whose name is changed by law or to which powers, duties, and responsibilities have been transferred by law, for the name which the agency, officer, or instrumentality previously used or of the agency which was previously vested with the same powers and charged with the same duties and responsibilities.
(KRS 7.136) (1997 Code, § 120.6)

§ 32.33 ADOPTION OF CODE OF ORDINANCES.

(A) The code or composite index of ordinances is hereby adopted for the city as a new and original comprehensive ordinance, superseding and repealing all other general ordinances of the city adopted before the effective date of this code or composite index of ordinances.

(B) This ordinance repeals only ordinances which are continuing and apply to the general population. No special ordinance, including any franchise ordinance, appropriation, or tax levy shall be repealed or otherwise affected hereby. The repeal provided herein shall not affect any offense or act committed or any penalty or forfeiture incurred on any contract or right established or accruing before

the effective date of this code or composite index of ordinances. The repeal provided herein shall not be construed to revive any ordinance or part thereof that has been repealed by an ordinance repealed by this ordinance.

(C) Any and all additions, deletions, and amendments to this code or composite index of ordinances, when enacted into law, shall be so incorporated therein that any reference to the code or composite index of the city shall be deemed to include such amendments. Any ordinance in this code or composite index of ordinances shall be numbered in accordance with the Kentucky Ordinance Code topical numbering system and may be referred to by said number.

(D) A copy of such code or composite index shall be kept on file in the office of the City Clerk, maintained in accordance with the guidelines of the Commonwealth Department for Local Government or its successor and available as part of the public records of the city.
(1997 Code, § 120.7)

§ 32.34 PERMANENT RECORDS.

(A) The City Clerk is responsible for maintaining and safekeeping the permanent records of the city including ordinances and municipal orders, and shall sign the official records of each meeting.

(B) All ordinances adopted by the city shall be numbered in accordance with the Kentucky Ordinance Code Topical Numbering System.

(1) The city budget, appropriations of money, and tax levies shall be maintained and indexed by fiscal year.

(2) All ordinances shall be kept in an ordinance book in the order adopted.

(3) The text of each general ordinance shall be kept in a loose leaf binder with tabbed dividers arranged and numbered according to the Kentucky Ordinance Code Topical Numbering System with an alphabetical index.

(4) Each month, every ordinance or amendment adopted during the month shall be assigned a KOC number, listed by topic and date of passage and publication, and placed in the appropriate place in the binder.

(5) Once a year, all additions or amendments shall be incorporated in the text of the code and in the table of contents.

(6) At least once every five years, the text of the code shall be examined for consistency with state law, and with other provisions and revised to eliminate redundant, obsolete, inconsistent, and invalid provisions.

(C) Every action of the legislative body shall be made a part of the permanent records of the city and on passage of an ordinance, the vote of each member of the city legislative body shall be entered on the official record of the meeting.

(D) The legislative body may adopt municipal orders. Any orders shall be in writing and may be adopted only at an official meeting. Any order may be amended by subsequent municipal order or ordinance. All orders adopted shall be maintained in an official Order Book and shall be numbered and maintained as follows.

<i>Contracts</i>
11.0 Purchases 12.0 Public Improvements, and Construction 13.0 Personal Services 14.0 Emergencies 15.0 Procurement Regulations

<i>Personnel</i>
21.0 Job Description and Classification 22.0 Testing and Employment 23.0 Position Compensation 24.0 Employee Rules and Procedures 25.0 Disciplinary Action 26.0 Affirmative Action Plan

<i>Organization and Administration</i>
31.0 Management Positions 32.0 Departments, Agencies, and Functions 33.0 Interlocal Cooperation 34.0 Conduct of Meetings 35.0 Administrative Code

<i>Appointments</i>
40.0 Appointments 41.0 Independent Boards and Commissions 42.0 Joint Agencies

<i>Resolutions</i>
50.0 Policy statements 51.0 Condemnations 52.0 Other

<i>Other</i>

(E) In lieu of an ordinance, a municipal order may be used for matters relating to the internal operation and functions of the city and to appoint or remove or approve appointment or removal of members of boards, commissions, or other agencies over which the city has control.
(1997 Code, § 120.8)

CHAPTER 33: PERSONNEL POLICIES

Section

Ethics Code

- 33.001 Title
- 33.002 Findings
- 33.003 Purpose and authority
- 33.004 Definitions

Standards of Conduct

- 33.015 Conflicts of interest in general
- 33.016 Conflicts of interest in contracts
- 33.017 Receipt of gifts
- 33.018 Use of city property, equipment, and personnel
- 33.019 Representation of interests before city government
- 33.020 Misuse of confidential information
- 33.021 Post-employment restriction
- 33.022 Honoraria

Financial Disclosure

- 33.035 Who must file
- 33.036 When to file statements; amended statement
- 33.037 Form of the statement of financial interests
- 33.038 Control of the maintenance of the statement of financial interests
- 33.039 Contents of the statement of financial interests
- 33.040 Noncompliance with filing requirements

Nepotism and Affirmative Action

- 33.055 Nepotism prohibited
- 33.056 Affirmative action program

Enforcement

- 33.070 Board of Ethics created
- 33.071 Alternative members

- 33.072 Facilities and staff
- 33.073 Powers and duties of the Board of Ethics
- 33.074 Filing and investigations of complaints
- 33.075 Notice of hearings
- 33.076 Hearing procedure
- 33.077 Appeals
- 33.078 Limitation of actions
- 33.079 Advisory opinions
- 33.080 Reprisals against persons disclosing violations prohibited

- 33.999 Penalty

ETHICS CODE

§ 33.001 TITLE.

This chapter shall be known and may be cited as the “City of Norbourne Estates Code of Ethics”.
(1997 Code, § 160.01)

§ 33.002 FINDINGS.

The City Commission finds and declares that:

(A) Public office and employment with the city are a public trust;

(B) The vitality and stability of the government of this city depends upon the public’s confidence in the integrity of its elected and appointed officers and employees. Whenever the public perceives a conflict between the private interests and public duties of a city officer or employee, that confidence is imperiled; and

(C) The government of this city has a duty to provide its citizens with standards by which they may determine whether public duties are being faithfully performed, and to make its officers and employees aware of the standard which the citizenry rightfully expects them to comply with while conducting their public duties.

(1997 Code, § 160.02)

§ 33.003 PURPOSE AND AUTHORITY.

(A) It is the purpose of this chapter to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees of the city shall be clearly established, uniform in their application, and enforceable, and to provide the officers and employees of the city with advice and information concerning potential conflicts of interest which might arise in the conduct of their public duties.

(B) It is the further purpose of this chapter to meet the requirements of KRS 65.003 as enacted by the 1994 Kentucky General Assembly.

(C) This chapter is enacted under the power vested in the city by KRS 82.082 and pursuant to the requirements of KRS 65.003.
(1997 Code, § 160.03)

§ 33.004 DEFINITIONS.

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

BOARD OF ETHICS. The City Board of Ethics which is created and vested by this chapter with the responsibility of enforcing the requirements of the city's code of ethics.

BUSINESS. Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.

CANDIDATE. Any individual who seeks nomination or election to a city office. An individual is a **CANDIDATE** when the individual files a notification and declaration for nomination for office with the County Clerk or Secretary of State, is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the County Clerk or Secretary of State.

CITY. The City of Nourbourne Estates, Kentucky.

CITY AGENCY. Any board, commission, authority, non-stock corporation, or other entity created, either individually or jointly, by this city.

EMPLOYEE. Any person, whether full time or part time, and whether paid or unpaid, who is employed by or provides service to the city. The term **EMPLOYEE** shall not include any contractor or subcontractor or any of their employees.

FAMILY MEMBER. A spouse, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

IMMEDIATE FAMILY MEMBER. A spouse, an unemancipated child residing in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.

OFFICER. Any person, whether full time or part time, and whether paid or unpaid, who is one of the following:

- (1) The Mayor;
- (2) A City Commission member;
- (3) The City Clerk;
- (4) The City Treasurer;
- (5) Any person who occupies a non-elected office created under KRS 83A.080; or

(6) A member of the governing body of any city agency who has been appointed to the governing body of the agency by the city.
(1997 Code, § 160.04)

STANDARDS OF CONDUCT

§ 33.015 CONFLICTS OF INTEREST IN GENERAL.

Every officer and employee of the city and every city agency shall comply with the following standards of conduct.

(A) No officer or employee, or any immediate family member of any officer or employee, shall have an interest in a business or engage in any business, transaction, or activity, which is in substantial conflict with the proper discharge of the officer's or employee's public duties.

(B) No officer or employee shall intentionally use or attempt to use his or her official position with the city to secure unwarranted privileges or advantages for himself, herself, or others.

(C) No officer or employee shall intentionally take or refrain from taking any discretionary action, or agree to take or refrain from taking any discretionary action, or induce or attempt to induce any other officer or employee to take or refrain from taking any discretionary action, on any matter before the city in order to obtain a financial benefit for any of the following:

- (1) The officer or employee;

- (2) A family member;
- (3) An outside employer;
- (4) Any business in which the officer, employee, or any family member has a financial interest;

or

(5) Any business with which the officer or employee or any family member is negotiating or seeking prospective employment or other business or professional relationship.

(D) No officer or employee shall be deemed in violation of any provision in this section if, by reason of the officer's or employee's participation, vote, decision, action, or inaction, no financial benefit accrues to the officer or employee, a family member, an outside employer, or a business as defined in divisions (C)(4) and (C)(5) above, as a member of any business, occupation, profession, or other group, to any greater extent than any gain could reasonably be expected to accrue to any other member of the business, occupation, profession, or other group.

(E) Every officer or employee who has a prohibited financial interest which the officer or employee believes or has reason to believe may be affected by his or her participation, vote, decision, or other action taken within the scope of his or her public duties shall disclose the precise nature and value of the interest, in writing, to the governing body of the city or city agency served by the officer or employee, and the disclosure shall be entered on the official record of the proceedings of the governing body. The officer or employee shall refrain from taking any action with respect to the matter that is the subject of the disclosure.

(1997 Code, § 160.05)

§ 33.016 CONFLICTS OF INTEREST IN CONTRACTS.

(A) No officer or employee of the city or any city agency shall directly or through others undertake, execute, hold, or enjoy, in whole or in part, any contract made, entered into, awarded, or granted by the city or a city agency, except as follows.

(1) The prohibition in this division (A) shall not apply to contracts entered into before an elected officer filed as a candidate for the city office, before an appointed officer was appointed to a city or city agency office, or before an employee was hired by the city or a city agency. However, if any contract entered into by a city, city agency officer, or employee before he or she became a candidate, was appointed to office, or was hired as an employee, is renewable after he or she becomes a candidate, assumes the appointed office, or is hired as an employee, the prohibition in this division (A) shall apply to the renewal of the contract.

(2) The prohibition in this division (A) shall not apply if the contract is awarded after public notice and competitive bidding, unless the officer or employee is authorized to participate in establishing the contract specifications, awarding the contract, or managing contract performance after the contract is awarded. If the officer or employee has any of the authorities set forth in the preceding sentence, then

the officer or employee shall have no interest in the contract, unless the requirements set forth in division (A)(3) below are satisfied.

(3) The prohibition in this division (A) shall not apply in any case where the following requirements are satisfied.

(a) The specific nature of the contract transaction and the nature of the officer's or employee's interest in the contract are publicly disclosed at a meeting of the governing body of the city or city agency.

(b) The disclosure is made a part of the official record of the governing body of the city or city agency before the contract is executed.

(c) A finding is made by the governing body of the city or city agency that the contract with the officer or employee is in the best interests of the public and the city or city agency because of price, limited supply, or other specific reasons.

(d) The finding is made part of the official record of the governing body of the city or city agency before the contract is executed.

(B) Any violation of this section shall constitute a Class A misdemeanor, and upon conviction, the court may void any contract entered into in violation of this section. Additionally, a violation of this section shall be grounds for removal from office or employment with the city in accordance with any applicable provisions of state law and ordinances, rules, or regulations of the city.
(1997 Code, § 160.06)

§ 33.017 RECEIPT OF GIFTS.

No officer or employee of the city agency shall directly or indirectly through any other person or business, solicit or accept any gift having a fair market value of more than \$50,000, whether in the form of money, service, loan, travel, entertainment, hospitality, thing of promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee in the performance of his or her public duties.

(1997 Code, § 160.07)

§ 33.018 USE OF CITY PROPERTY, EQUIPMENT, AND PERSONNEL.

No officer or employee of the city shall use or permit the use of any city time, funds, personnel, equipment, or other personal or real property for the private use of any person, unless de minimus and unless:

(A) The use is specifically authorized by a stated city policy; or

(B) The use is available to the general public, and then only to the extent and upon the terms that such use is available to the general public.
(1997 Code, § 160.08)

§ 33.019 REPRESENTATION OF INTERESTS BEFORE CITY GOVERNMENT.

(A) No officer or employee of the city or any city agency shall represent any person or business, other than the city, in connection with any cause, proceeding, application, or other matter pending before the city or any city agency.

(B) Nothing in this section shall prohibit an employee from representing another employee or employees where the representation is within the context of official labor union or similar representational responsibilities.

(C) Nothing in this section shall prohibit any officer or employee from representing himself or herself in matters concerning his or her own interests.

(D) No elected officer shall be prohibited by this section from making any inquiry for information on behalf of a constituent, if no compensation, reward, or other thing of value is promised to, given to, or accepted by the officer, whether directly or indirectly, in return for the inquiry.
(1997 Code, § 160.09)

§ 33.020 MISUSE OF CONFIDENTIAL INFORMATION.

No officer or employee of the city or any city agency shall intentionally use or disclose information acquired in the course of his or her official duties, if the primary purpose of the use or disclosure is to further his or her personal financial interest or that of another person or business. Information shall be deemed confidential, if it is not subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.872 to 61.884, at the time of its use or disclosure.
(1997 Code, § 160.10)

§ 33.021 POST-EMPLOYMENT RESTRICTION.

No officer or employee of the city or any city agency shall appear or practice before the city or any city agency with respect to any matter on which the officer or employee personally worked while in the service of the city or city agency for a period of one year after the termination of the officer's or employee's service with the city or city agency.
(1997 Code, § 160.11)

§ 33.022 HONORARIA.

(A) No officer or employee of the city agency shall accept any compensation, honorarium, or gift with a fair market value greater than \$100 in consideration of an appearance, speech, or article unless the appearance, speech, or article is both related to the officer's or employee's activities outside of municipal service and is unrelated to the officer's or employee's service with the city.

(B) Nothing in this section shall prohibit an officer or employee of the city or any city agency from receiving and retaining from the city or on behalf of the city actual and reasonable out-of-pocket expenses incurred by the officer or employee in connection with an appearance, speech, or article, provided that the officer or employee can show by clear and convincing evidence that the expenses were incurred or received on behalf of the city or city agency and primarily for the benefit of the city or city agency and not primarily for the benefit of the officer, employee, or any other person.
(1997 Code, § 160.12)

FINANCIAL DISCLOSURE**§ 33.035 WHO MUST FILE.**

The following classes of officers and employees of the city and city agencies shall file an annual statement of financial interests with the Board of Ethics:

(A) Elected city officials;

(B) Candidates for elected city office;

(C) Members of the Board of Ethics created by this chapter; or

(D) Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or services, or award contracts, leases, or agreements involving the expenditure of more than \$50,000.

(1997 Code, § 160.13)

§ 33.036 WHEN TO FILE STATEMENTS; AMENDED STATEMENTS.

(A) The initial statement of financial interests required by this section shall be filed with the Board of Ethics, or the administrative official designated as the custodian of its records by the Board of Ethics, no later than 30 days after the effective date of this chapter. All subsequent statements of financial interests shall be filed no later than January 31 of each year, provided that:

(1) An officer or employee newly-appointed to fill an office or position of employment with the city or a city agency shall file his or her initial statement no later than 30 days after the date of the appointment; or

(2) A candidate for city office shall file his or her initial statement no later than 30 days after the date on which the person becomes a candidate for elected city office.

(B) The Board of Ethics may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

(C) In the event there is a material change in any information contained in a financial statement that has been filed with the Board, the officer or employee shall, no later than 30 days after becoming aware of the material change, file an amended statement with the Board.

(1997 Code, § 160.14)

§ 33.037 FORM OF THE STATEMENT OF FINANCIAL INTERESTS.

The statement of financial interests shall be filed on a form prescribed by the Board of Ethics, or the administrative official designated by the Board of Ethics. The Board, or the designated administrative official, shall deliver a copy of the form to each officer and employee required to file the statement, by first class mail or hand delivery, no later than January 1 of each year. The failure of the Board, or the designated administrative official, to deliver a copy of the form to any officer or employee shall not relieve the officer or employee of the obligation to file the statement.

(1997 Code, § 160.15)

§ 33.038 CONTROL OF THE MAINTENANCE OF THE STATEMENT OF FINANCIAL INTERESTS.

(A) The Board of Ethics shall be the official custodian of the statements of financial interests and shall have control over the maintenance of the statements of financial interests. The statements of financial interests shall be maintained by the Board of Ethics, or the administrative official designated by the Board of Ethics as the custodian, as public documents, available for public inspection immediately upon filing. Until changed by the Board of Ethics, the City Clerk is hereby named the designated administrative official and the custodian for all purposes under this chapter.

(B) A statement of financial interests shall be retained by the Board or the designated administrative official for such periods as are prescribed by the Commonwealth's Archives and Records Commission, or in default of such regulation, for a period of three years.

(1997 Code, § 160.16)

§ 33.039 CONTENTS OF THE STATEMENT OF FINANCIAL INTERESTS.

(A) The statement of financial interests shall include the following information for the preceding calendar year:

(1) The name, current business address, business telephone number, and home address of the filer;

(2) The title of the filer's office, office sought, or position of employment;

(3) The occupation of the filer and the filer's spouse;

(4) Information that identifies each source of income of the filer and the filer's immediate family members exceeding \$5,000,000 during the preceding calendar year, and the nature of the income (e.g., salary, commission, dividends, retirement fund distributions, and the like);

(5) The name and address of any business located within the state in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of \$500,000 at fair market value or 100% ownership interest or more;

(6) The name and address of any business located outside of the state, if the business has engaged in any business transactions with the city during the past three years, or which is anticipated to engage in any business transactions with the city, in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of \$500,000 at fair market value or 100% ownership interest or more;

(7) A designation as commercial, residential, or rural, and the location of all real property within the county, other than the filer's primary residence, in which the filer or any member of the filer's immediate family had during the preceding calendar year an interest of \$500,000 or more;

(8) Each source, by name and address, of gifts or honoraria having an aggregate fair market value of \$50,000 or more from any single source, excluding gifts received from family members, received by the filer or any member of the filer's immediate family during the preceding calendar year; and

(9) The name and address of any creditor owed more than \$5,000,000 except debts arising from the purchase of a primary residence or the purchase of consumer goods which are bought or used primarily for personal, family, or household purposes.

(B) Nothing in this section shall be construed to require any officer or employee to disclose any specific dollar amounts nor the names of individual clients or customers of businesses listed as sources of income.

(1997 Code, § 160.17)

§ 33.040 NONCOMPLIANCE WITH FILING REQUIREMENTS.

(A) The Board of Ethics, or the designated administrative official, shall notify by certified mail each person required to file a statement of financial interests who fails to file the statement by the due date, files an incomplete statement, or files a statement in a form other than that prescribed by the Board.

(B) The notice shall specify the type of failure or delinquency, shall establish a date by which the failure or delinquency shall be remedied, and shall advise the person of the penalties for a violation. (1997 Code, § 160.18) Penalty, see § 33.999

NEPOTISM AND AFFIRMATIVE ACTION

§ 33.055 NEPOTISM PROHIBITED.

(A) No officer or employee of the city or a city agency shall advocate, recommend, or cause the following for a family member:

- (1) Employment;
- (2) Appointment;
- (3) Transfer; or
- (4) Advancement to an office or position of employment with the city or a city agency.

(B) No officer or employee of the city or a city agency shall supervise or manage the work of a family member employed by the city.

(C) No officer or employee shall participate in any action relating to the employment or discipline of a family member, except that this prohibition shall not prevent an elected or appointed official from voting on or participating in the development of a budget which includes compensation for a family member, provided that the family member is included only as a member of a class of persons or a group, and the family member benefits to no greater extent than any other similarly situated member of the class or group.

(D) The prohibitions in this section shall not apply to any relationship or situation that would violate the prohibition, but which existed prior to September 1, 1994. (1997 Code, § 160.19)

§ 33.056 AFFIRMATIVE ACTION PROGRAM.

(A) *Statement of policy.* The affirmative action policy of the city is to promote equal employment opportunity; to prohibit discrimination in employment on account of race, color, religion, national origin, sex, age, or handicapped status; and to bring about a fair representation and utilization of females and minorities in all levels of city employment.

(B) *Dissemination of policy.* The city will advise all employees and applicants for employment of this policy. The city will make known to the public that employment opportunities are available on the basis of individual ability and will encourage all persons who are employed by the city to strive for advancement on that basis.

(C) *Personnel actions.* The city will actively recruit qualified or qualifiable persons among females and minorities on a non-discriminatory basis for all available job openings at every level; and the city will ensure every employee equal treatment in respect to terms and conditions of employment, job assignments, compensation, access to training, and promotions.

(D) *Responsibility for implementation.* The Mayor shall be responsible for implementation of this affirmative action plan, including hearing complaints of discrimination by any employee or prospective employees of the city, with a final appeal to the City Commission.
(1997 Code, § 230.1)

ENFORCEMENT**§ 33.070 BOARD OF ETHICS CREATED.**

(A) There is hereby created a Board of Ethics which shall have the authorities, duties, and responsibilities as set forth in this chapter to enforce the provisions of this chapter.

(B) The Board of Ethics shall consist of not less than one nor more than five members who shall be appointed by the executive authority of the city, subject to the approval of the City Commission. The initial members of the Board of Ethics shall be appointed within 60 days of the effective date of this chapter. No member of the Board of Ethics shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city or any city agency. The members shall serve for a term of three years; except that when the Board consists of more than one member, appointments shall be made for one, two, or three years as designated in the appointment so as to create staggered terms. All terms shall expire on December 31 of the designated year. Each member of the Board of Ethics shall have been a resident of the city for at least one year prior to the date of the appointment and shall reside in the city throughout the term in office. The members of the Board of Ethics shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. The members may be reappointed for any number of consecutive terms.

(C) A member of the Board of Ethics may be removed by the executive authority, subject to the approval of the City Commission for misconduct, inability, or willful neglect of duties. Before any member of the Board of Ethics is removed from office under this section, the member shall be afforded the opportunity for a hearing before the executive authority and the City Commission.

(D) Vacancies on the Board of Ethics shall be filled within 60 days by the executive authority, subject to the approval of the City Commission. If a vacancy is not so filled within 60 days, the remaining members of the Board of Ethics shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.

(E) Members of the Board of Ethics shall serve without compensation, unless otherwise approved by the City Commission, but shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.

(F) The Board of Ethics shall, upon the initial appointment of its members, and annually thereafter, elect a Chairperson from among the membership. The Chairperson shall be the presiding officer and a full voting member of the Board.

(G) Meetings of the Board of Ethics shall be held, as necessary, upon the call of the Chairperson or at the written request of a majority of the members.

(H) The presence of a majority of the members shall constitute a quorum and the affirmative vote of a number of members equal to a quorum shall be necessary for any official action to be taken. Any member of the Board of Ethics who has a conflict of interest with respect to any matter to be considered by the Board shall disclose the nature of the conflict, shall disqualify himself or herself from voting on the matter, and shall not be counted for purposes of establishing a quorum.

(I) Minutes shall be kept for all proceedings of the Board of Ethics and the vote of each member on any issue decided by the Board shall be recorded in the minutes.
(1997 Code, § 160.20)

§ 33.071 ALTERNATIVE MEMBERS.

(A) The executive authority of the city, with the approval of the City Commission may appoint two alternate members of the Board of Ethics who may be called upon to serve when any regular member of the Board is unable to discharge his or her duties.

(B) An alternate member shall be appointed for a term of one year. Alternate members shall meet all qualifications and be subject to all of the requirements of this chapter that apply to regular members.
(1997 Code, § 160.21)

§ 33.072 FACILITIES AND STAFF.

Within the limits of the funds appropriated by the City Commission in the annual budget, the city shall provide the Board of Ethics, either directly or by contract or agreement, with the facilities, materials, supplies, and staff needed for the conduct of its business.

(1997 Code, § 160.22)

§ 33.073 POWERS AND DUTIES OF THE BOARD OF ETHICS.

(A) To initiate on its own motion, receive and investigate complaints, hold hearings, and make findings of fact and determinations with regard to alleged violations of the provisions of this chapter;

(B) To issue orders in connection with its investigations and hearings requiring persons to submit in writing and under oath reports and answers to questions that are relevant to the proceedings and to order testimony to be taken by deposition before any individual designated by the Board who has the power to administer oaths;

(C) To administer oaths and to issue orders requiring the attendance and testimony of witnesses and the production of documentary evidence relating to an investigation or hearing being conducted by the Board, to the extent allowed by law;

(D) To refer any information concerning violations of this chapter to the executive authority of the city, the City Commission, the governing body of any city agency, the County Attorney, or other appropriate person or body, as necessary;

(E) To render advisory opinions to city, city agency officers, and employees regarding whether a given set of facts and circumstances would constitute a violation of any provision of this chapter;

(F) To enforce the provisions of this chapter with regard to all officers and employees of the city and city agencies who are subject to its terms by issuing appropriate orders and imposing penalties authorized by this chapter;

(G) To control and maintain all statements of financial interests that are required to be filed by this chapter and to ensure that the statements are available for public inspection in accordance with the requirements of this chapter and the Kentucky Open Records Act;

(H) To develop and submit any reports regarding the conduct of its business that may be required by the executive authority or City Commission; and

(I) To adopt rules and regulations and to take other actions, as necessary, to implement the provisions of this chapter, provided that the rules, regulations, and actions are not in conflict with the provisions of this chapter or any state or federal law.

(1997 Code, § 160.23)

§ 33.074 FILING AND INVESTIGATIONS OF COMPLAINTS.

(A) All complaints alleging any violation of the provisions of this chapter shall be submitted to the Board of Ethics, or the administrative official designated by the Board of Ethics. All complaints shall be in writing, signed by the complainant under oath, and shall meet any other requirements established by the Board of Ethics. The Board of Ethics shall acknowledge receipt of a complaint to the complainant within ten working days from the date of receipt. The Board shall forward within ten working days to each officer or employee of the city or city agency who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this chapter.

(B) Subject to the provisions of division (D) below, within 30 days of the receipt of a proper complaint, the Board of Ethics shall conduct a preliminary inquiry concerning the allegations contained in the complaint. The Board shall afford a person who is the subject of the complaint an opportunity to respond to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations.

(C) All proceedings and records relating to a preliminary inquiry being conducted by the Board of Ethics shall be confidential until a final determination is made by the Board except:

(1) The Board may turn over to the Commonwealth's Attorney or County Attorney evidence which may be used in criminal proceedings; or

(2) If the complainant or alleged violator publicly discloses the existence of a preliminary inquiry, the Board may publicly confirm the existence of the inquiry, and, at its discretion, make public any documents which were issued to either party.

(D) The Board shall make a determination based on its preliminary inquiry whether the complaint is within its jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this chapter. If the Board concludes that the complaint is outside of its jurisdiction, frivolous, or without factual basis, the Board shall immediately terminate the inquiry, reduce the conclusion to writing, and transmit a copy of its decision to the complainant and to all officers or employees against whom the complaint was filed.

(E) If the Board of Ethics concludes, based upon its preliminary inquiry, that the complaint is within its jurisdiction and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the Board shall notify the officer or employee who is the subject of the complaint and may:

(1) Due to mitigating circumstances such as, lack of significant economic advantage or gain by the officer or employee, lack of economic loss to the city or its taxpayers, or lack of significant impact on public confidence in city government, it may issue a reprimand to the officer or employee concerning the alleged violation and may provide a copy of the reprimand to the executive authority and governing body of the city or city agency; or

(2) Initiate a hearing to determine whether there has been a violation.

(F) Any person who knowingly files with the Board a false complaint alleging a violation of any provision of this chapter by an officer or employee of the city or any city agency shall be guilty of a Class A misdemeanor.
(1997 Code, § 160.24)

§ 33.075 NOTICE OF HEARINGS.

If the Board of Ethics determines that a hearing regarding allegations contained in the complaint is necessary, the Board shall issue an order setting the matter for a hearing within 30 days of the date the order is issued, unless the alleged violator petitions for, and the Board consents to a later date. The order setting the matter for hearing, along with a copy of any pertinent regulations of the Board relating to the hearing shall be sent to the alleged violator within 24 hours of the time the order setting a hearing is issued.
(1997 Code, § 160.25)

§ 33.076 HEARING PROCEDURE.

(A) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall not apply to hearings conducted by the Board of Ethics; however, the hearings shall be conducted in accordance with this section and in accordance with any additional rules and regulations adopted by the Board so as to afford all parties the full range of due process rights required by the nature of the proceedings.

(B) Prior to the commencement of the hearing, the alleged violator, or his or her representative, shall have a reasonable opportunity to examine all documents and records obtained or prepared by the Board in connection with the matter to be heard. The Board shall inform the alleged violator, or his or her representative, of any exculpatory evidence of its possession.

(C) All testimony in a Board hearing shall be taken under oath and administered by the presiding officer. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel. All witnesses shall have the right to be represented by counsel.

(D) Any person whose name is mentioned during the hearing and who may be adversely affected thereby may appear personally before the Board, with or without counsel, to give a statement regarding the adverse mention, or may file a written statement regarding the adverse mention for incorporation into the record of the proceeding.

(E) All hearings of the Board of Ethics shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.

(F) After the conclusion of the hearing, the Board of Ethics shall, as soon as practicable, begin deliberations in executive session for the purpose of reviewing the evidence before it and making a

determination whether a violation of this chapter has been proven. Within 30 days after completion of the hearing, the Board shall issue a written report of its findings and conclusions.

(G) If the Board concludes in its report that no violation of this chapter has occurred, it shall immediately send written notice of this determination to the officer or employee who was the subject of the complaint and to the party who files the complaint.

(H) If the Board concludes in its report that in consideration of the evidence produced at the hearing there is clear and convincing proof of a violation of this chapter, the Board may:

(1) Issue an order requiring the violator to cease and desist the violation;

(2) In writing, publicly reprimand the violator for the violations and provide a copy of the reprimand to the executive authority and governing body of the city or city agency with which the violator serves;

(3) In writing, recommend to the executive authority and the governing body that the violator be sanctioned as recommended by the Board, which may include a recommendation for discipline, dismissal, or removal from office;

(4) Issue an order requiring the violator to pay a civil penalty of not more than \$1,000; or

(5) Refer evidence of criminal violations of this chapter or state laws to the County Attorney or Commonwealth's Attorney of the jurisdiction for prosecution.
(1997 Code, § 160.26)

§ 33.077 APPEALS.

Any person who is found guilty of a violation of any provision of this chapter by the Board of Ethics may appeal the finding to the Circuit Court of the county within 30 days after the date of the final action by the Board of Ethics by filing a petition with the Court against the Board. The Board shall transmit to the Clerk of the Court all evidence considered by the Board at the public hearing.
(1997 Code, § 160.27)

§ 33.078 LIMITATION OF ACTIONS.

Except when the period of limitation is otherwise established by state law, an action for a violation of this chapter must be brought within one year after the violation is discovered.
(1997 Code, § 160.28)

§ 33.079 ADVISORY OPINIONS.

(A) The Board of Ethics may render advisory opinions concerning matters under its jurisdiction, based upon real or hypothetical facts and circumstances, upon its own initiative, or when requested by any officer or employee of the city or a city agency who is covered by this chapter.

(B) An advisory opinion shall be requested in writing and shall state relevant facts and ask specific questions. The request for an advisory opinion shall remain confidential unless confidentiality is waived, in writing, by the requestor.

(C) The Board may adopt regulations, consistent with the Kentucky Open Records Law, to establish criteria under which it will issue confidential advisory opinions. All other advisory opinions shall be public documents, except that before an advisory opinion is made public, it shall be modified so that the identity of any person associated with the opinion shall not be revealed.

(D) The confidentiality of an advisory opinion may be waived either:

(1) In writing by the person who requested the opinion; or

(2) By majority vote of the members of the Board, if a person makes or purports to make public the substance or any portion of an advisory opinion requested by or on behalf of the person. The Board may vote to make public the advisory opinion request and related materials.

(E) A written advisory opinion issued by the Board shall be binding on the Board in any subsequent proceeding concerning the facts and circumstances of the particular case if no intervening facts or circumstances arise which would change the opinion of the Board if they had existed at the time the opinion was rendered. However, if any fact determined by the Board to be material was omitted or misstated in the request for an opinion, the Board shall not be bound by the opinion.

(F) A written advisory opinion issued by the Board shall be admissible in the defense of any criminal prosecution or civil proceeding for violation of this chapter for actions taken in reliance on that opinion.

(1997 Code, § 160.29)

§ 33.080 REPRISALS AGAINST PERSONS DISCLOSING VIOLATIONS PROHIBITED.

(A) No officer or employee of the city or any city agency 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, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Board of Ethics or any other agency or official of the city or the commonwealth, any facts or information relative to an actual or suspected violation of this chapter.

(B) This section shall not be construed as prohibiting disciplinary or punitive action if an officer or employee of the city or any city agency discloses information which he or she knows:

(1) To be false or which he or she discloses with reckless disregard for its truth or falsity;

(2) To be exempt from required disclosure under the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884; or

(3) Is confidential under any other provision of law.
(1997 Code, § 160.30)

§ 33.999 PENALTY.

(A) (1) Any person who fails or refuses to file the statement or who fails or refuses to remedy a deficiency in the filing identified in the notice under § 33.040 within the time period established in the notice shall be guilty of a civil offense and shall be subject to a civil fine imposed by the Board in an amount not to exceed \$25 per day, up to a maximum total civil fine of \$500. Any civil fine imposed by the Board under § 33.040 may be recovered by the city in a civil action in the nature of debt if the offender fails or refuses to pay the penalty within a prescribed period of time.

(2) Any person who intentionally files a statement of financial interest which he or she knows to contain false information or intentionally omits required information shall be guilty of a Class A misdemeanor.
(1997 Code, § 160.18)

(B) (1) Except when another penalty is specifically set forth in §§ 33.070 through 33.081, any officer or employee of the city or any city agency who is found by the Board of Ethics to have violated any provisions of §§ 33.070 through 33.081 shall be deemed guilty of a civil offense and may be subject to a civil fine imposed by the Board of Ethics not to exceed \$1,000, which may be recovered by the city in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time.

(2) In addition to all other penalties which may be imposed under §§ 33.070 through 33.081, any officer or employee of the city or any agency who is found by the Board of Ethics to have violated any provision of §§ 33.070 through 33.081 shall forfeit to the city or the city agency an amount equal to the economic benefit or gain which the officer or employee is determined by the Board to have realized as a result of the violation. The amount of any forfeiture may be recovered by the city in a civil action in the nature of debt, if the offender fails to pay the amount of the forfeiture within a prescribed period of time.

(3) In addition to all other penalties which may be imposed under §§ 33.070 through 33.081, a finding by the Board of Ethics that an officer or employee of the city or any city agency is guilty of a violation of §§ 33.070 through 33.081 shall be sufficient cause for removal, suspension, demotion, or other disciplinary action by the executive authority of the city or city agency, or by any other officer or agency having the power of removal or discipline. Any action to remove or discipline any officer or employee for a violation of §§ 33.070 through 33.081 shall be taken in accordance with all applicable ordinances and regulations of the city and all applicable laws of the commonwealth.

(1997 Code, § 160.31)

CHAPTER 34: FINANCIAL ADMINISTRATION

Section

- 34.01 Ad valorem tax
- 34.02 Adoption of county property valuation administrator assessment
- 34.03 Due dates and discount periods
- 34.04 Budget procedures
- 34.05 Fiscal year
- 34.06 Purchasing, sales, and contracts

§ 34.01 AD VALOREM TAX.

(A) An ad valorem tax is hereby imposed upon all lands or improvements, held or owned by any person, corporation, or association in any name, or as agent subject to taxation under the laws of the commonwealth.

(B) All ad valorem property taxes shall be paid to the City Tax Collector.

(C) The City Commission shall set the tax levy for the ad valorem tax not later than September 1 of each year.

(1997 Code, § 220.1)

§ 34.02 ADOPTION OF COUNTY PROPERTY VALUATION ADMINISTRATOR ASSESSMENT.

Pursuant to KRS 92.520(4) and KRS 132.285, the city hereby adopts and elects to use the annual county assessment for property situated within the city as a basis of ad valorem tax levies ordered or approved by the City Commission.

(1997 Code, § 220.2)

§ 34.03 DUE DATES AND DISCOUNT PERIODS.

Unless otherwise provided in the ordinance levying the tax, all such tax bills shall be subject to the discounts and penalties listed below and the collection remedies provided by law.

(A) The face amount of the tax bill shall be payable through October of the year when due.

(B) On tax bills paid on or after November 1 of the year when due, there shall be added thereto a penalty of 10% of the tax due with interest from November 1 of that year at 1.5% per month or part thereof, compounded monthly, or \$10 if the penalty and interest is less than that amount, plus any lien filing and release fees.

(1997 Code, § 220.3)

§ 34.04 BUDGET PROCEDURES.

The following standards shall apply to the form and detail in which the annual budget proposal of the city should be prepared.

(A) *Generally.* The annual budget proposal shall detail the raising of revenue from all sources, including grants and transfers, and the spending of money for specified programs, functions, activities, or otherwise of the city, including all principal and interest due on debt, for the budget year. The total of anticipated revenues shall equal or exceed the total proposed expenditures.

(B) *Form.* The form of the annual budget proposal shall be consistent in form, to the extent practical, with the accounting system of the city.

(C) *Contents of budget.* The annual budget proposal shall provide a complete program and financial plan for all funds for the budget year. It shall contain:

(1) A budget message as specified in KRS 91A.030(7); and

(2) A budget summary, as specified in division (D) below, supported by:

(a) An estimate of fund and balance carried forward as specified in division (E) below;

(b) An estimate of all anticipated revenues in the city as compared to previous years, as specified in division (F) below;

(c) Proposed expenditures compared to previous years, as specified in division (G) below;

and

(d) An estimate of the anticipated transfers, as specified in division (H) below.

(D) *Budget summary.* At the head of the annual budget proposal, there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, and proposed expenditures by program, function, activity, or objectives of the city, in such a manner as to present a simple and clear summary of the detailed estimates of the budget components.

(E) *Fund balance carried forward.* Each fund balance available for appropriation shall be limited to the amount by which assets are estimated to exceed liabilities at the beginning of the budget year.

(F) *Anticipated revenues; comparison with other years.* In parallel columns, there shall be placed:

(1) The amount of each such item actually received during the next preceding fiscal year;

(2) The amount of each item actually received to the time of preparation of the annual budget proposal, plus anticipated receipts for the remainder of the current fiscal year estimated as accurately as possible; and

(3) The amount of each item anticipated to be received during the budget year, estimated as accurately as possible.

(G) *Proposed expenditure; comparison with other years.* In parallel columns, opposite the several items of proposed expenditures, there shall be placed:

(1) The amount of each such item actually expended during the next preceding fiscal year;

(2) The total of the amount actually expended to the time of the preparation of the annual budget proposal plus the expenditures for the remainder of the current fiscal year as accurately as possible; and

(3) The amount of each item to be appropriated for the budget year.

(H) *Anticipated transfer from other funds.* Any anticipated excess revenues, if legally available for general purposes and to the extent such excess is to be used to support other funds, shall be stated as a transfer item in the annual budget proposal.

(1997 Code, § 220.4)

§ 34.05 FISCAL YEAR.

The fiscal year of the city shall begin on July 1, of each year and end the following June 30.
(1997 Code, § 220.5)

§ 34.06 PURCHASING, SALES, AND CONTRACTS.

(A) Every contract of the city shall be authorized or approved by the City Commission and signed by the Mayor.

(B) No contract or purchase shall be made which is at variance with the annual budget as adopted and amended.

(C) No emergency shall be declared for the purpose of making purchases over \$20,000 without advertising for bids except upon written recommendation of the Mayor and an affirmative vote of a majority of the members of the City Commission.

(1997 Code, § 240.1)

CHAPTER 35: IMPROVEMENTS

Section

- 35.01 Definitions
- 35.02 Financing of improvements
- 35.03 Apportionment of cost
- 35.04 Comprehensive report required
- 35.05 Public hearing required
- 35.06 Adoption of ordinance; notice to affected owners
- 35.07 Affected owner may contest
- 35.08 When city may proceed; assessment constitutes lien
- 35.09 Effect of additional property or change in financing

§ 35.01 DEFINITIONS.

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

ASSESSED VALUE BASIS. The apportionment of cost of an improvement according to the ratio the assessed value of individual parcels of property bears to the total assessed value of all the properties.

BENEFITS RECEIVED BASIS. The apportionment of cost of an improvement according to equitable determination by the Commission of the special benefit received by property from the improvement, including assessed value basis, front foot basis, and square foot basis, or any combination thereof, and may include consideration of assessed value of land only, graduation for different classes of property based on nature and extent of special benefits received, and other factors affecting benefits received.

COST. All costs related to an improvement, including planning, design, property or easement acquisition and construction costs, fiscal and legal fees, financing costs, and publication expenses.

FAIR BASIS. Assessed value basis, front foot basis, square foot basis, or benefits received basis.

FRONT FOOT BASIS. The apportionment of cost of an improvement according to the ratio the front footage on the improvement of individual parcels of property bears to the front footage of all the properties.

IMPROVEMENT. Construction of any facility for public use or services or any addition thereto, which is of special benefit to specific properties in the area served by the facility.

PROPERTY. Any real property benefitted by an improvement.

SPECIAL ASSESSMENT or **ASSESSMENT.** A special charge fixed on property to finance an improvement in whole or in part.

SQUARE FOOT BASIS. The apportionment of cost of an improvement according to the ratio the square footage of individual parcels of property bears to the square footage of all the property.
(KRS 91A.210)

§ 35.02 FINANCING OF IMPROVEMENTS.

(A) The city may not finance any improvement in whole or in part through special assessments except as provided in this chapter and in any applicable statutes.
(KRS 91A.200)

(B) Cost of an improvement shall be apportioned equitably on a fair basis.

(C) The city may provide for lump sum or installment payment of assessments or for bond or other long-term financing, and for any improvement may afford property owners the option as to method of payment or financing.
(KRS 91A.220)

Statutory reference:

Improvements; alternate methods, see KRS Ch. 107

§ 35.03 APPORTIONMENT OF COST.

The cost of any improvement shall be apportioned on a benefits received basis with respect to any property owned by the state, a local unit of government, or any educational, religious, or charitable organization. The Commission may assess the property in the same manner as for privately owned property or it may pay the costs so apportioned out of general revenues.
(KRS 91A.230)

§ 35.04 COMPREHENSIVE REPORT REQUIRED.

Before undertaking any improvements pursuant to this chapter, the city shall prepare a comprehensive report setting out:

(A) The nature of the improvement;

(B) The scope and the extent of the improvement, including the boundaries or other description of the area to be assessed;

(C) The preliminary estimated cost of the improvement;

(D) The fair basis of assessment proposed;

(E) If financing of assessments is provided, the proposed method, including the proposed years to maturity of any bonds to be issued in connection with the improvement; and

(F) Other information as may further explain material aspects of the improvement, assessments, or financing.

(KRS 91A.240)

§ 35.05 PUBLIC HEARING REQUIRED.

(A) After preparation of the report required by § 35.04, the city shall hold at least one public hearing on the proposed improvement at which all interested persons shall be heard.

(B) Notice of the hearing shall be published pursuant to KRS Ch. 424, and mailed to each affected property owner by certified mail, return receipt requested, and shall include:

(1) The nature of the improvement;

(2) Description of area of the improvement;

(3) Statement that the city proposes to finance the improvement in whole or in part by special assessment of property and the method to be used;

(4) Time and place the report may be examined; and

(5) Time and place of the hearing.

(KRS 91A.250)

§ 35.06 ADOPTION OF ORDINANCE; NOTICE TO AFFECTED OWNERS.

Within 90 days of conclusion of the hearing, the city shall determine whether to proceed with the improvement by special assessments, and if it determines to proceed, shall adopt an ordinance so stating and containing all necessary terms, including the items referred to in § 35.04 and a description of all properties. Promptly upon passage the city shall publish the ordinance pursuant to KRS Ch. 424 and shall mail by certified mail to each affected property owner a notice of determination to proceed with the

project, the fair basis of assessment to be utilized, the estimated cost to the property owner, and the ratio the cost to each property owner bears to the total cost of the entire project.

(KRS 91A.260)

§ 35.07 AFFECTED OWNER MAY CONTEST.

(A) Within 30 days of the mailing of the notice provided for in § 35.06, any affected property owner may file an action in the Circuit Court of the county, contesting the undertaking of the project by special assessment, the inclusion of his or her property in the improvement, or the amount of his or her assessment. If the action contests the undertaking of the improvement by the special assessment method of the inclusion of the property of that property owner, no further action on the improvement insofar as it relates to any property owner who is a plaintiff shall be taken until the final judgment has been entered.

(B) The city may proceed with the improvement with respect to any properties whose owners have not filed or joined in an action as provided in this section or who have contested only the amounts of their assessments, and the provisions of the resolution shall be final and binding with respect to the property owners except as to contested amounts of assessments. After the lapse of time as herein provided, all actions by owners of properties are forever barred.

(KRS 91A.270)

§ 35.08 WHEN CITY MAY PROCEED; ASSESSMENT CONSTITUTES LIEN.

(A) After the passage of time for the action provided for in § 35.07, or after favorable final judgment in the action, whichever comes later, the city may proceed with the improvement or part thereof stayed by the action, including notice requiring payment of special assessment or installment thereon and bonds or other method proposed to finance the improvement. The first installment may be apportioned so that other payments will coincide with payment of ad valorem taxes.

(B) (1) The amount of any outstanding assessment or installments thereof on any property, and accrued interest and other charges, constitutes a lien on the property to secure payment to the bondholders or any other source of financing of the improvement.

(2) The lien takes precedence over all other liens, whether created prior to or subsequent to the publication of the ordinance, except a lien for state and county taxes, general municipal taxes, and prior improvement taxes, and is not defeated or postponed by any private or judicial sale, by any mortgage, or by any error or mistake in the description of the property or in the names of the owners.

(3) No error in the proceedings of the Commission shall exempt any benefitted property from the lien for the improvement assessment, from payment thereof, or from the penalties or interest thereon, as herein provided.

(KRS 91A.280)

§ 35.09 EFFECT OF ADDITIONAL PROPERTY OR CHANGE IN FINANCING.

The city may undertake any further proceedings to carry out the improvement or any extension or refinancing thereof, except that §§ 35.04 through 35.08 apply if additional property is included in the improvement or if change is made in the method or period of financing; but additional property may be included in the improvement with the consent of the owner thereof without compliance with other sections if it does not increase the cost apportioned to any other property, or any other change may be made without this compliance, if all property owners of the improvement consent.

(KRS 91A.290)

CHAPTER 36: PUBLIC RECORDS

Section

General Provisions

36.01 Definitions

Procedures for Requesting Public Records

36.15 Initial request with immediate inspection

36.16 Referral to proper custodian

36.17 Public records not immediately available

36.18 Refusal of unreasonable requests

36.19 Time limitation; denial of inspection

36.20 Concealing or destroying records prohibited

36.21 Access to records relating to particular individual

36.22 Format of copies

36.23 Fees for copies

36.24 Misstatement of purpose prohibited

36.25 Online access to public records in electronic form

36.26 Public records protected from disclosure

36.27 Notification of the Attorney General

GENERAL PROVISIONS

§ 36.01 DEFINITIONS.

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

CITY. The city government of this city.

COMMERCIAL PURPOSE. The direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. **COMMERCIAL PURPOSE** shall not include:

- (1) Publication or related use of a public record by a newspaper or periodical;

(2) Use of a public record by a radio or television station in its news or other informational programs; or

(3) Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to the action, or the attorneys representing the parties.
(KRS 61.870(4))

CUSTODIAN.

(1) The official custodian or any authorized person having personal custody and control of public records.
(KRS 61.870(6))

(2) The ***CUSTODIAN*** having personal custody of most of the public records of this city is the City Clerk.

MECHANICAL PROCESSING. Any operation or other procedure which is transacted on a machine, and which may include but is not limited to a copier, computer, recorder or tape processor, or other automated device.
(KRS 61.870(8))

MEDIA. The physical material in or on which records may be stored or represented, and which may include but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards.
(KRS 61.870(7))

OFFICIAL CUSTODIAN.

(1) The chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.
(KRS 61.870(5))

(2) The ***OFFICIAL CUSTODIAN*** of this city shall be the Mayor.

PERSON. A human being who makes a request for inspection of public records.

PRESCRIBED FEE or ***FEE.*** The fair payment required by the city for making copies of public records and for mailing public records, which shall not exceed the actual cost thereof and shall not include the cost of required staff time.

PUBLIC AGENCY.

(1) Every state or local government officer;

- (2) Every state or local government department, division, bureau, board, commission, and authority;
 - (3) Every state or local legislative board, commission, committee, and officer;
 - (4) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (5) Every state or local court or judicial agency;
 - (6) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
 - (7) Any body created by state or local authority in any branch of government;
 - (8) Any body which derives at least 25% of its funds expended by it in the commonwealth from state or local authority funds;
 - (9) Any entity where the majority of its governing body is appointed by a public agency as defined in this definition; by a member or employee of the public agency; or by any combination thereof;
 - (10) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in this definition; and
 - (11) Any interagency body of two or more public agencies where each public agency is defined in this definition.
- (KRS 61.870(1))

PUBLIC RECORDS. All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of, or retained by the public agency. **PUBLIC RECORDS** shall not include any records owned or maintained by or for the public agency discussed in division (8) of the definition of **PUBLIC AGENCY** above that are not related to functions, activities, programs, or operations funded by state or local authority.

(KRS 61.870(2))

REQUEST. An oral or written application by any person to inspect public records of the agency.

SOFTWARE. The program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system. **SOFTWARE** consists of the operating system, application programs, procedures,

routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency.

(KRS 61.870(3))

PROCEDURES FOR REQUESTING PUBLIC RECORDS

§ 36.15 INITIAL REQUEST WITH IMMEDIATE INSPECTION.

(A) Any person desiring to inspect or copy the public records of this city shall make a request for inspection at the office of the City Clerk during regular office hours, except during legal holidays. The official custodian, or the custodian acting under the authority of the official custodian, may require a request to inspect public records to be in writing, signed by the applicant, and with the applicant's name printed legibly on the application. A written request to inspect public records may be presented by hand delivery, mail, or via facsimile, if one is available.

(B) If the custodian determines that a person's request is in compliance with this chapter and the Open Records Law, and the requested public records are immediately available, the custodian shall deliver the records for inspection. A person may inspect public records at the designated office of the city during the regular office hours, or in appropriate cases, by receiving copies of the records through the mail.

(C) (1) If the public records are to be inspected at the offices of the city, suitable facilities shall be made available in the office of the City Clerk or in another office of the city as determined by the official custodian or custodian for the inspection.

(2) No person shall remove original copies of public records from the offices of the city without the written permission of the official custodian of the record.

(3) When public records are inspected at the city offices, the person inspecting the records shall have the right to make abstracts and memoranda of the public records and to obtain copies of all written public records. When copies are requested, the custodian may require advance payment of the prescribed fee.

(D) Upon proper request, the city shall mail copies of the public records to a person whose residence or principal place of business is located outside of the county after the person precisely describes the public records which are readily available and after the person pays in advance the prescribed fee.

Statutory reference:

Right to inspection, limitations, see KRS 61.872(1) through (3)

§ 36.16 REFERRAL TO PROPER CUSTODIAN.

If the City Clerk does not have custody or control of the public record or records requested, the City Clerk shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(KRS 61.872(4))

§ 36.17 PUBLIC RECORDS NOT IMMEDIATELY AVAILABLE.

If the public record is in active use, in storage, or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection or mailing of the public records, not to exceed three days (excepting Saturdays, Sundays, and legal holidays) from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection or duplication.

(KRS 61.872(5))

§ 36.18 REFUSAL OF UNREASONABLE REQUESTS.

If the application places an unreasonable burden in producing public records, or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section must be sustained by clear and convincing evidence.

(KRS 61.872(6))

§ 36.19 TIME LIMITATION; DENIAL OF INSPECTION.

The official custodian, upon any request for records made under this chapter, shall determine within three days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any request whether to comply with the request and shall notify in writing the person making the request within the three-day period of his, her, or its decision. Any agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his or her authority and shall constitute final agency action.

(KRS 61.880)

§ 36.20 CONCEALING OR DESTROYING RECORDS PROHIBITED.

No official of the city shall willfully conceal or destroy any record with the intent to violate the provisions of this chapter or these rules and regulations.

§ 36.21 ACCESS TO RECORDS RELATING TO PARTICULAR INDIVIDUAL.

Any person shall have access to any public record relating to him or her or in which he or she is mentioned by name, upon presentation of appropriate identification, subject to the provisions of § 36.26 of these rules and regulations.

(KRS 61.884)

§ 36.22 FORMAT OF COPIES.

(A) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of § 36.26. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that the duplication will not damage or alter the original records.

(KRS 61.874(1))

(B) (1) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(2) The minimum standard format in paper form shall be defined as not less than eight and one-half inches by 11 inches in at least one color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and the format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(KRS 61.874(2))

§ 36.23 FEES FOR COPIES.

(A) *Noncommercial purposes.* The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a

group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(KRS 61.874(3))

(B) *Commercial purposes.*

(1) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(2) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(3) The fee provided for in division (B)(1) above may be based on one or both of the following:

(a) Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records; and/or

(b) Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(KRS 61.874(4))

Cross-reference:

Fees for online access to public records, see § 36.25

§ 36.24 MISSTATEMENT OF PURPOSE PROHIBITED.

It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(A) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to § 36.23(B)(2);

(B) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(C) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio, or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(KRS 61.874(5)) Penalty, see § 10.99

§ 36.25 ONLINE ACCESS TO PUBLIC RECORDS IN ELECTRONIC FORM.

(A) Online access to public records in electronic form may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements.

(B) Fees shall not exceed:

(1) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(2) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in § 36.23(B).
(KRS 61.874(6))

§ 36.26 PUBLIC RECORDS PROTECTED FROM DISCLOSURE.

(A) The following public records are excluded from the application of this chapter and these rules and regulations and shall be subject to inspection only upon order of a court of competent jurisdiction, except as provided in KRS 61.878(1) that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(1) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(2) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by other statute;

(3) (a) Records confidentially disclosed to the agency, or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

(b) Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

1. In conjunction with an application for or the administration of a loan or a grant;

2. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Ch. 154;

3. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

4. For the grant or review of a license to do business.

(c) The exemptions provided for in divisions (A)(3)(a) and (A)(3)(b) above shall not apply to records the disclosure or publication of which is directed by statute.

(4) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within, or expanding within the commonwealth. This exemption shall not include those records pertaining to applications to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in division (A)(3) above;

(5) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(6) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made by or for a public agency relative to the acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(7) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(8) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations, if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of this chapter, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. The exemptions provided by this division (A)(8) shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this chapter;

(9) Preliminary drafts, notes, or correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(10) Preliminary recommendations and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(11) All public records or information, the disclosure of which is prohibited by federal law or regulation;

(12) Public records or information, the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;

(13) (a) Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

1. Criticality lists resulting from consequence assessments;
2. Vulnerability assessments;
3. Antiterrorism protective measures and plans;
4. Security and response needs assessments;

5. Infrastructure records that expose a vulnerability referred to in this division (A)(13)(a)5. through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

6. The following records when their disclosure will expose a vulnerability referred to in this division (A)(13)(a)6.: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

7. Records when their disclosure will expose a vulnerability referred to in this division (A)(13)(a)7., and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

(b) As used in this division (A)(13)(b), ***TERRORIST ACT*** means a criminal act intended to:

1. Intimidate or coerce a public agency or all or part of the civilian population;
2. Disrupt a system identified in division (A)(13)(a)5. above; or
3. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

(c) On the same day that a public agency denies a request to inspect a public record for a reason identified in this division (A)(13)(c), that public agency shall forward a copy of the written

denial of the request, referred to in KRS 61.880(1), to the Executive Director of the Office for Security Coordination and the Attorney General.

(d) Nothing in this division (A)(13)(d) shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

(e) The exemption established in this division (A)(13)(e) shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this division (A)(13)(e) under the Open Records Law.

(14) (a) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency.

(b) This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

(KRS 61.878(1))

(B) (1) No exemption under this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(KRS 61.878(2))

(2) In addition, if any public record contains material which is not excepted under this section, the city shall separate the excepted and make the nonexcepted material available for examination, subject to the possible applicability of § 36.18.

(KRS 61.878(4))

(C) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

(KRS 61.878(5))

(D) (1) No exemption under this section shall be construed to deny, abridge, or impede the right of a municipal employee, an applicant for employment, or an eligible on a register to inspect and copy any record, including preliminary and other supporting documentation, that relates to him or her.

(2) These records shall include but not be limited to work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation.

(3) A city employee, applicant, or eligible shall not have the right to inspect or copy any examination or any documents relating to ongoing criminal or administrative investigations by any agency.

(KRS 61.878(3))

§ 36.27 NOTIFICATION OF THE ATTORNEY GENERAL.

The official custodian shall notify the Attorney General of any actions filed against the city in Circuit Court regarding the enforcement of the Open Records Law, KRS 61.870 to 61.884.