

PERRY COUNTY, KENTUCKY  
ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE ESTABLISHING A CODE ENFORCEMENT BOARD

Whereas, the Perry County Fiscal Court, pursuant to KRS 65.8808, *et seq.* has the authority to enact ordinance establishing a Code Enforcement Board which shall have the authority to issue remedial measures and issue civil fines as a method of enforcing local government ordinances when a violation of the ordinance has been classified as a civil offense; and

Whereas, the Perry County Fiscal Court believes that the creation of a Code Enforcement Board is necessary in order to most effectively ensure compliance with its Ordinances; and

Whereas, the Perry County Fiscal court hereby finds that this Ordinance is necessary for the preservation of the public welfare, health and safety:

Now, therefore, be it Ordained by the Perry County Fiscal Court as follows:

SECTION 1: CREATION AND MEMBERSHIP

There is hereby created pursuant to KRS 65.8801 to KRS 65.8839 within Perry County, a Code Enforcement Board shall consist of Five (5) members, all of whom shall be residents of Perry County for a period of one (1) year prior to the appointment and shall reside there throughout their term in office.

SECTION 2: POWERS

A. The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing county ordinances when a violation of the ordinance has been classified as a civil offense.

B. The Code Enforcement Board shall not have the authority to enforce any ordinance the violation of which constitutes an offense under any provision of the Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

C. The Perry County Code Enforcement Board shall have the following powers and duties:

1. To adopt rules and regulations to govern the operations and conduct of its hearings and meetings.
  2. To conduct hearings to determine if there has been a violation of an ordinance over which it has jurisdiction.
  3. To subpoena alleged violators, witnesses and evidence to its hearings.
- Subpoenas issued by the Code Enforcement Board shall be executed by the chairperson.

Subpoenas issued by the Code Enforcement Board may be served by any code enforcement officer or peace officer.

4. To take testimony under oath. The chairperson shall have the authority to administer oaths for the purpose of taking testimony.

5. To make findings of fact and issue orders necessary to remedy any violation of a county ordinance which the Board is authorized to enforce.

6. To impose civil fines, as authorized, on any person or entity found to have violated an ordinance over which the Board has jurisdiction.

7. To order the abatement of any public nuisance.

### SECTION 3: MEMBERSHIP

A. Members of the Code Enforcement Board shall be appointed by the County Judge Executive, subject to approval of the Perry County Fiscal Court.

B. The initial appointment of the Code Enforcement Board shall be as follows:

1. One member appointed to a one-year term.
2. Two members appointed to a two-year term.
3. Two members appointed to a three-year term.

C. All subsequent appointments shall be for a term of three years. Members may be reappointed.

D. Any vacancy on the Board shall be filled by the County Judge Executive, subject to approval of the Perry County Fiscal Court within sixty (60) days of the vacancy. If the vacancy is not filled within sixty (60) days, the other members of the Code Enforcement Board may fill the vacancy. The remaining members of the Code Enforcement Board may continue to operate as a board during the vacancy described in this paragraph.

E. A Code Enforcement Board member may be removed from office by the County Judge Executive for misconduct, inefficiency, or willful neglect of duty. The County Judge Executive must submit a written statement to the member and the Perry County Fiscal court setting forth the reasons for removal.

F. All members of the Code Enforcement Board must, before entering into office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

G. No member of the Code Enforcement Board may hold any elected or nonelected public office, paid or unpaid, or any position of employment with Perry County or any political subdivision located within its boundaries.

### SECTION 4: ORGANIZATION OF THE BOARD

A. The Board shall annually elect a Chairperson from its members. The Chairperson shall be the presiding officer and a full voting member of the Board.

B. Regular meetings of the Code Enforcement Board shall be held once a month, as needed, to be determined by the Board. Special meetings may be held as needed. Special meetings shall be held in compliance with the notice requirements set forth in the provisions of Kentucky Open Meetings Act.

C. All meetings and hearings of the Code Enforcement Board shall be held in accordance with the requirements of KRS 65.8815 (5) and the Kentucky Open Meetings Act.

D. The presence of three (3) or more members constitutes a quorum.

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

E. A record of all proceedings shall be kept and the vote of each member on any issue decided by the Board shall be recorded.

#### SECTION 5: CONFLICT OF INTEREST

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

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#### SECTION 6: ENFORCEMENT PROCEEDINGS

The following requirements shall govern all enforcement proceedings before the Code Enforcement Board:

A. Enforcement proceedings shall only be initiated by the issuance of a citation by a Code Enforcement Officer or peace officer.

B. Except as provided below, if a Code Enforcement Officer or peace officer believes, based on his or her personal observation or investigation, that a person has violated a county ordinance over which the Code Enforcement Board has jurisdiction, he or she shall issue a Notice of Violation to the offender allowing the offender a specified period of time to remedy the violation without a fine. The time allowed by the Code Enforcement Officer or peace officer shall depend upon the nature of the violation and the time necessary to complete the remedy. If the offender fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer or peace officer is authorized to issue a citation.

C. If the Code Enforcement Officer or peace officer believes that a violation presents a serious threat to the public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible, the Code

Enforcement Officer or peace officer may issue a citation without offering the alleged offender an opportunity to remedy the situation.

D. The citation issued by the Code Enforcement Officer or peace officer shall contain the following information:

1. The date and time of issuance;
2. The name and address of the person to whom the citation is issued;
3. The date and time the offense was committed;
4. The facts constituting the offense;
5. The ordinance and section number violated;
6. The name of the Code Enforcement Officer or peace officer
7. The civil fine imposed for the violation if the person does not contest the citation;
8. The maximum civil fine that may be imposed if the person elects to contest the citation;
9. The procedure for the person to follow in order to pay the civil fine or to contest the citation;
10. A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the Code Enforcement Board to contest the citation and the determination that the violation was committed shall be final.

E. The person to whom the citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the fine or requesting, in writing, a hearing before the Code Enforcement Board to contest the citation. All fines are payable in the Office of the Perry County Judge Executive. Any request for a hearing before the Code Enforcement Board shall be delivered to the Office of the Perry County Judge Executive. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final.

F. If the alleged offender does not contest the citation within the time prescribed, the Code Enforcement Board shall issue a final order determining that the violation was committed and impose the civil fine set forth in the citation, and may impose any other remedy or action authorized by this Ordinance, or the Ordinance that designates enforcement by the Code Enforcement Board. A copy of the final order shall be served upon on the person determined to have committed the violation. The original of the final order shall be filed and maintained in the Office of the Perry County Judge Executive.

#### SECTION 7: CONDUCT OF HEARINGS

A. When a hearing has been requested, the Code Enforcement Board shall schedule a hearing.

B. Not less than seven (7) days before the date of the hearing, the Code Enforcement Board shall notify the requester of the date, time and place of the hearing. The notice may

be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

C. Any person requesting a hearing before the Code Enforcement Board who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. The Code Enforcement Board shall enter a final order determining the violation was committed and shall impose the civil fine set forth in the citation. A copy of the final order shall be served upon on the person determined to have committed the violation.

D. All testimony shall be taken under oath and recorded. Testimony shall be taken from the Code Enforcement Officer and/or peace officer, the alleged violator, and any witnesses to the violation offered by the Code Enforcement Officer or alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

E. The Code Enforcement Board shall, based on the evidence presented, determine whether a violation was committed. If the Board determines that no violation was committed, an order dismissing the citation shall be entered. If the Board determines that a violation was committed, an order shall be issued upholding the citation and either imposing a fine up to the maximum fine by this ordinance, or other ordinance, or requiring the offender to remedy a continuing violation, or both. The Code Enforcement Board may waive or suspend the imposition of any fine, or any portion thereof, upon making a determination that such waiver or suspension would promote compliance with this Ordinance.

F. Every final order of the Code Enforcement Board shall be reduced to writing, which shall include the date the order was issued. The original order shall be filed and maintained in the Office of the Perry County Judge Executive. A copy shall be furnished to the person named in the citation. If the person named in the citation is not present when the final order is issued, the order shall be delivered in accordance with the procedures set forth in paragraph B of this Section above.

#### SECTION 8: PRESENTATION OF CASES

Each case before the Code Enforcement Board shall be presented by an attorney selected by the County. The County Attorney shall represent and advise the Code Enforcement Board, but shall not present evidence before the Board.

#### SECTION 9: APPEALS; FINAL JUDGMENT

An appeal from any final order of the Code Enforcement Board may be made to the Perry District Court within thirty (30) days of the date the order is issued. The appeal shall be

initiated by the filing of a complaint and a copy of the Board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure. If no appeal of the final order of the Board is filed within the time specified above, the Board's order shall be deemed final for all purposes.

#### SECTION 10: ORDINANCE FINE SCHEDULE

Violations of ordinances that are enforced by the Perry County Code Enforcement Board shall be subject to the following schedule of civil fines:

A. If a citation for a violation of an ordinance is not contested by the person named therein, the penalties set forth in this Section shall apply; however, the Board may waive all or any portion of any penalty for an uncontested violation, if in its discretion, the Board determines that such waiver will promote compliance with the ordinance in issue.

<u>Violation</u>	<u>Fine</u>
Maintaining an Open Dump	\$250.00
Engage in the Business of Collecting Transporting or Disposing of Solid Waste without proper franchise agreement	\$250.00
Any other violation of the Solid Waste Management Ordinance	\$ 50.00
Any Public Nuisance violation	\$250.00

B. If the citation is contested and a hearing before the Board is required, the maximum penalty which may be imposed by the Board for any violation of the Solid Waste Management Ordinance or the Public Nuisance Ordinance is Five Hundred Dollars (\$500.00), provided that each day's violation thereof may be treated as a separate offense for the purpose hereof.

C. The Perry County Code Enforcement Board is authorized to impose penalties as set forth in the Solid Waste Management Ordinance, Public Nuisance Ordinance, and any other ordinance that designates enforcement by the Code Enforcement Board.

#### SECTION 11: LIENS, CHARGES AND FEES

A. The county shall possess a lien on real and personal property owned by the person found by a final, non-appealable order of the Code Enforcement Board, or by a final judgment of the court to have committed a violation of a county ordinance for all fines assessed for the violation and for all charges and fees incurred by the county in connection with the enforcement of the ordinance.

B. The lien shall be recorded in the office of the County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid.

C. The lien shall take precedence over all other subsequent liens, except state and county ad valorem property taxes, and may be enforced by judicial proceedings.

D. In addition to the remedy prescribed in paragraph A above, the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the County in connection with the enforcement of the ordinance. The County may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

SECTION 12: SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this ordinance.

SECTION 13: REPEAL OF PRIOR ORDINANCES

This Ordinance repeals and replaces any and all Ordinances related to the Establishment of a Code Enforcement Board heretofore enacted by the Perry County Fiscal Court. Any previous Ordinance Establishing a Code Enforcement Board enacted by the Perry County Fiscal Court shall be repealed on the effective date of this Ordinance.

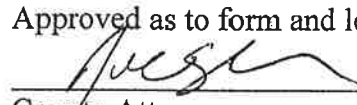
This ordinance shall become effective upon, \_\_\_\_\_, 20\_\_\_\_\_.

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_

  
\_\_\_\_\_  
County Judge/Executive

ATTEST:

  
\_\_\_\_\_  
County Fiscal Court Clerk

Approved as to form and legality:  
  
\_\_\_\_\_  
County Attorney