

**CITY OF WEST BUECHEL, KENTUCKY**

**ORDINANCE 281, SERIES 2019**

**AN ORDINANCE REPEALING THE CITY ORDINANCE CONCERNING THE CODE ENFORCEMENT BOARD, CREATING A CODE AND PARKING ENFORCEMENT BOARD, AND AMENDING CERTAIN OTHER SECTIONS OF THE CITY'S CODE OF ORDINANCES**

**WHEREAS**, in accordance with KRS 65.8801 TO 65.8839 the City adopted Ordinance 179, Series 2000 on December 5, 2000 thereby creating a City of West Buechel Code Enforcement Board.

**WHEREAS**, since the adoption of Ordinance 179, Series 2000 the Kentucky Legislature has passed new laws on the subject of code enforcement;

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

**WHEREAS**, the City desires to exercise its option to initially enforce parking ordinances as civil violations through a non-judicial process, rather than as criminal offenses in the Jefferson District Court, all pursuant to the procedures set forth in KRS 82.600 to 82.640;

**WHEREAS**, the City desires to appoint an official empowered to issue parking citations and to utilize a hearing body to conduct hearings on contested parking motor vehicle parking citations; and,

**WHEREAS**, it is the desire of the City Council of the City of West Buechel, Kentucky to utilize the authority granted in KRS 65.8801 to 65.8839, and KRS 82.600 to 82.640 to establish a City of West Buechel Code and Parking Enforcement Board to enforce the City's ordinances as provided for generally in §92 of the City Code and the City's Parking Code as provided for generally in §72 of the City Code.

**NOW THEREFORE** be it ordained by the City Council of the City of West Buechel as follows:

1. Ordinance 179, Series 2000, enacted on December 5, 2000, and relating to the creation of a City of West Buechel Code Enforcement Board, is repealed in its entirety.

2. In replacement for Ordinance 179, Series 2000, now repealed, there is hereby created within the City pursuant to KRS 65.8801 to KRS 65.8839 and KRS 82.600 to 82.640, a code and parking enforcement board.

3. The code and parking enforcement board shall serve as the same hearing body termed a "code enforcement board" in §92 "Nuisances" of the City Code and for which a code and parking enforcement officer shall be an appointed city official with the same powers as those set forth for a "code enforcement officer" in §92 "Nuisances" of the City Code.

4. Sections 72.20 to 72.22 ("Impounding") and section 72.99 ("Penalty") of Title VII, Chapter 72 of the City's Code of Ordinances as adopted by Ordinance 38, Series 1977, enacted on December 6, 1977 and Am. Ord. 251, Series 2014, enacted on March 11, 2014 are repealed in their entirety.

5. In replacement for Sections 72.20 to 72.22 and 72.99, now repealed, a new set of provisions is adopted to include impounding and charging for same as well as a parking ordinance fines schedule.

6. A new set of sections in the City Code of Ordinances is to be inserted after existing §72.49 and before new §72.99 as detailed herein.

**SECTION 1. In codification, insert the following as new §72.50 and entitled "Definitions."**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "***Code and Parking Enforcement Board***" or "***board***" means an administrative body created and acting as a code enforcement board under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839 and also as a parking enforcement board under the authority of KRS 82.600 to 82.640.

2. "***Code and Parking Enforcement Officer***" means an appointed city official, a city police officer, safety officer, citation officer, county police officer, sheriff, deputy sheriff, university police officer, airport police officer, or other public law enforcement officer with the authority to issue a Notice of Violation or a Citation in the City of West Buechel.

3. **"Final Order"** means any order:
  - a. Issued by the code and parking enforcement board in accordance with Section 10(e) or (f) of this ordinance;
  - b. Issued by an assigned hearing officer in accordance with Section 10(e) of this ordinance and that is not appealed to the board as provided in Section 10(f) of this ordinance;
  - c. Created because a violator neither paid nor contested the citation within seven (7) days as provided in Section 8(e)2. of this ordinance;  
or
  - d. Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in Section 10(c) of this ordinance.
4. **"Imminent Danger"** means a condition that is likely to cause serious or life-threatening injury or death at any time.
5. **"Ordinance"** means an official action of a local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinances adopted by the city legislative body which embodies all or part of an ordinance.
6. **"Ordinary public view"** means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property;
7. **"Owner"** means a person, association, corporation, partnership or other legal entity having a legal or equitable title in real property.
8. **"Parking ordinance"** means an ordinance regulating parking, standing, or stopping upon the public streets or ways within the City of West Buechel.
9. **"Premises"** means a lot, plot or parcel of land, including any structures upon it.
10. **"Vehicle Owner"** means a person, association, corporation, partnership or other legal entity having a legal or equitable title in a motor vehicle.

**SECTION 2. In codification, insert the following as new §72.51 and entitled "Citation for parking violation -- Notice."**

1. If any motor vehicle is found parked, standing or stopped in violation of a parking ordinance passed by the City, the vehicle may be cited for the appropriate parking violation. The code and parking enforcement officer or other citing officer shall note the vehicle's registration number and any other information concerning the vehicle which will identify it and, if the driver is not present, shall conspicuously affix to the vehicle a citation for the parking violation.

2. The form of the notice of the parking citation shall contain in substance the following information:

- a. A statement that the notice represents a determination that a parking violation has been committed by the owner of the vehicle and that the determination shall be final unless contested as provided in KRS 82.600 to 82.640;
- b. A statement that a parking violation may result in impoundment of the vehicle for which the owner may be liable for a fine and towing, handling and storage charges or fees;
- c. A statement of the specific parking violation for which the citation was issued;
- d. A statement of the monetary penalty established for the parking violation; and
- e. A statement of the options provided in KRS 82.600 to 82.640 for responding to the notice and the procedures necessary to exercise these options.

3. The citation represents a determination that a parking violation has been committed, and such determination shall be final unless contested as provided in this ordinance.

**SECTION 3. In codification, insert the following as new §72.53 and entitled "Response to notice."**

1 Any person who receives a parking citation shall respond to such citation as provided in this section within fourteen (14) days of the date of the notice by either paying the fine set forth in the citation or requesting a hearing before the code and parking enforcement board pursuant to this ordinance.

2 If the owner of a vehicle cited for a parking violation has not responded to the citation within fourteen (14) days as provided in subsection 1 of this section, the City shall send a second notice by regular, first-class mail of the United States Postal Service to the last known address of the registered owner of the vehicle as listed on the certificate of title. Such notice shall state that if the owner of the vehicle does not respond to the second notice by either paying the fine or by requesting in writing a hearing pursuant to this ordinance, within fourteen (14) days of the receipt of the second notice, the owner shall be deemed to have waived his right to a hearing and the determination that a violation was committed shall be considered final. In addition, any person who fails to request a hearing or pay the fine within the additional fourteen (14) days provided in the second notice shall be deemed to have refused to pay the fine levied by the citation.

3 The registered owner of a vehicle at the time the violation occurred shall be liable for all fines, fees and penalties which he has refused to pay.

**SECTION 4. In codification, insert the following as new §72.54 and entitled "Impoundment -- Charges for towing, handling and storage -- Hearing on validity of impoundment - Appeal."** (Note to codifier only - This section replaces former §72.20 to §72.22 now repealed.)

1. The City may impound a motor vehicle parked, stopped or standing upon a street or public way within its jurisdiction in violation of an ordinance or statute prohibiting parking, stopping or standing in the location, manner or at the time the vehicle is cited or for any other lawful reason.

2. The City, by this ordinance, hereby imposes reasonable towing, handling and storage charges upon such impounded vehicle, any and all in addition to the fines levied for the parking or traffic offense. Reasonable charges under this section are equivalent to those that are customarily charged to the public by licensed operators who perform such towing, storage and handling services in and near to the City. If the City utilizes a licensed operator to have such service performed, then their bill to the City may be passed to the owner of the impounded vehicle as reasonably charged hereunder.

3. The City may condition the release of an impounded vehicle upon the payment of the towing, handling and storage charges imposed thereon, unless the owner or other person entitled to possession challenges the validity of the impoundment pursuant to subsection 4 of this section. A vehicle may be released to the owner or other person entitled to possession only upon proof of ownership or right to possession. The City may require reasonable security, bond or other assurances of indemnification from a

person who is not the registered owner of the vehicle prior to releasing the vehicle to such person.

4. The owner of a motor vehicle which has been impounded pursuant to this section or other person entitled to possession, may challenge the validity of such impoundment and request in writing a hearing before the code and parking enforcement board. The hearing shall be conducted at the next regularly scheduled meeting of the board, unless the owner or other person entitled to possession waives the limitation or the City shows good cause for such delay. The City shall retain possession of the vehicle pending the hearing, unless the owner or other person claiming right of possession posts a bond in an amount equal to the fines and fees accrued as of the date of the hearing request, or seventy-five dollars (\$75) whichever is less. If the owner or person claiming possession of the vehicle is unable to pay the amount of the bond, the hearing shall be held within seventy-two (72) hours of the date the request for hearing is received, unless such person requests or agrees to a continuance.

5. (a) The Notice of Impoundment shall contain the details sufficient to allow the person to know where and when to appear in order to regain possession of the vehicle. In addition, the Notice shall provide sufficient detail regarding the next regular meeting of the board to allow the person to contest their violation. However, if such information is not provided on the Notice of Violation, then No less than five (5) days prior to the date set for the hearing, the City shall notify the person requesting the hearing of the date, time and place of the hearing. In the case of a hearing required to be held within seventy-two (72) hours of the date of the request as provided in subsection (4) of this section, the person requesting the hearing shall be informed at the time of his request, or as soon thereafter as is practicable, of the date and time of the hearing.

(b) Any person who refuses or, except for good cause, fails to appear at the time and place set for the hearing shall be deemed to have conceded on his and the owner's behalf the validity of the impoundment.

(c) At the hearing, after consideration of the evidence, the board shall determine whether the impoundment was valid and reasonable. Where it has not been established that the impoundment was justified, an order releasing the vehicle shall be entered. All fines and fees paid or amounts posted as bond because of the impoundment of the vehicle shall be returned. Where it has been established that the impoundment was justified, the board shall uphold the impoundment and condition the release of the vehicle upon payment of all fines and fees accruing thereto. If bond has been posted as security for release of the vehicle, said bond shall be forfeited to the City. Any fines or fees in excess of the amount of the bond posted shall be ordered to be

paid by the owner of the vehicle to the City. The board shall furnish the owner or person appearing on the owner's behalf with a copy of its order.

(d) The board may consider a parking citation and any other written report made under oath by the issuing officer in lieu of the officer's personal appearance at the hearing.

(e) An appeal from the board's determination may be made to the District Court of the county in which the City is located within thirty (30) days of the board's determination. 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. The action shall be tried de novo and the burden shall be on the City to establish that impoundment was justified. If the court finds that the impoundment was justified, the owner shall be ordered to pay all fees and fines accruing as of the date of judgment. If the court finds that the impoundment was not justified, the City shall be ordered to release the vehicle, if applicable, and to return all fines and fees paid as a result of the impoundment and the plaintiff shall be authorized to recover his costs.

(f) The judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure

**SECTION 5. In codification, insert the following as new §72.55 and entitled "Vehicle deemed abandoned -- Escheat to City -- Disposal of vehicle."**

1. If within ten (10) business days of impoundment a motor vehicle impounded by a City has not been claimed, or a hearing has not been requested pursuant to KRS 82.625, notice shall be mailed by certified mail to the registered owner, if known, and lienholders of record, if any, affording the parties the right within ten (10) days from the date of notice to claim the vehicle or request a hearing pursuant to KRS 82.625. The notice shall state that, if no hearing is requested, the vehicle shall be deemed abandoned unless the charges thereon are paid within forty-five (45) days of receipt of notice.

2. After forty-five (45) days from the date of notice required by subsection (1) of this section an impounded motor vehicle shall be deemed abandoned and the vehicle shall escheat to the City.

3. If the vehicle is judged to be suitable for use, the City may obtain a certificate of registration and ownership from the county clerk pursuant to KRS 186.020 and either use the vehicle for governmental purposes or sell the vehicle at public auction to the highest bidder. If the vehicle is not suitable for use, it may be sold for its scrap or junk value.

**SECTION 6. In codification, insert the following as new §72.56 and entitled "Lien for fines and other charges."**

1. The City shall possess a lien on a motor vehicle impounded pursuant to this ordinance for all fines, penalties, and towing, handling and storage charges and fees imposed thereon. Such lien shall be superior to and have priority over all other liens thereon.

2. Nothing in this ordinance shall otherwise affect the rights or obligations between the owner of the motor vehicle and those persons who claim a security interest therein.

**SECTION 7. In codification, insert the following as new §72.99 and entitled "Ordinance parking fine schedule." (Note to codifier only - This section replaces former §72.99 now repealed.)**

Violations of ordinances that are enforced by the city code and parking enforcement board or an assigned hearing officer shall be subject to the following schedule of civil fines:

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

<u>Violation</u>	<u>1<sup>st</sup> Offense</u>	<u>2<sup>nd</sup> Offense</u>	<u>3<sup>rd</sup> or Greater</u>
Parking	\$50.00	\$200.00	\$400.00
Handicap Parking	\$250.00	\$500.00	\$1,000.00
Fire Lane	\$100.00	\$250.00	\$500.00
Parking wrong direction	\$50.00	\$100.00	\$200.00
Fire hydrant	\$100.00	\$250.00	\$500.00
Blocking Emergency Exit	\$100.00	\$250.00	\$500.00
Motorcycle on sidewalk	\$50.00	\$200.00	\$400.00

2. If the citation is contested and a hearing before the code and parking enforcement board or assigned hearing officer is required, or the person contesting the Citation fails to appear at the hearing, the following maximum penalties may be imposed at the discretion of the code and parking enforcement board or hearing officer:

<u>Violation</u>	<u>1<sup>st</sup> Offense</u>	<u>2<sup>nd</sup> Offense</u>	<u>3<sup>rd</sup> or Greater</u>
Parking	\$100.00	\$250.00	\$500.00
Handicap Parking	\$300.00	\$750.00	\$1,500.00



Fire Lane	\$150.00	\$300.00	\$600.00
Parking wrong direction	\$100.00	\$150.00	\$300.00
Fire hydrant	\$150.00	\$300.00	\$600.00
Blocking Emergency Exit	\$150.00	\$300.00	\$600.00
Motorcycle on sidewalk	\$100.00	\$250.00	\$500.00

3. Any person receiving a citation for any parking violation in the City for which no penalty is expressly set forth as above or otherwise shall be fined in an amount of not less than twenty-five dollars (\$25.00) and not more than one-hundred dollars (\$100.00).

**SECTION 8. Board composition.**

1. **In General.** KRS 65.8801 to 65.8839 provides that a code enforcement board shall be composed of three members, all of whom shall be residents of the city for a period of at least one (1) year prior to their appointment and all of whom shall reside there throughout the term in office. In addition, KRS 82.605 to 82.640 provides that a parking enforcement board shall be composed of one (1) or more persons appointed in the manner provided by ordinance.

2. **Therefore, the City of West Buechel Code and Parking Enforcement Board** (hereinafter "board") **shall be composed of** at least three members, all of whom shall be residents of the city for a period of at least one (1) year prior to their appointment and all of whom shall reside there throughout the term in office. In all cases, the board will be composed of an odd number of board members.

**SECTION 9. Enforcement powers in general.**

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

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

3. A docket of cases shall be prepared for use at each board meeting. The docket will have any code violation (non-parking) cases consolidated in one group and any parking enforcement cases consolidated in a second group. In this fashion, the board will sit as a code enforcement board per KRS 65.8801 to 65.8839 when handling the non-parking cases and as a parking

enforcement board per KRS 82.605 to 82.640 when handling the parking violation cases of the second group.

**SECTION 10. Appointment of members; term of office; removal from office; oath; compensation.**

1. Members of the board shall be appointed by the executive authority of the city, subject to the approval of the legislative body.

2. The initial appointment to the board shall be as follows:

a. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of one (1) year;

b. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of two (2) years; and

c. One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be appointed for a term of three (3) years.

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

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

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

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

7. Before entering upon the duties of their office, all members of the board shall take the oath of office prescribed by Section 228 of the Kentucky Constitution.

8. Members of the board shall serve with or without compensation subject to the approval of the legislative body upon the recommendation of the Mayor.

9. No member of the board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the city.

**SECTION 11. Organization of board; meetings; quorum.**

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

2. Regular meetings of the board shall be held on the second Wednesday of every month, at 6 PM, in City Hall. Meetings other than those regularly scheduled shall be special meetings or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act.

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

4. The presence of at least a majority of the board's entire membership shall constitute a quorum. The affirmative vote of a majority of a quorum of the board shall be necessary for the taking of any official action.

5. Minutes shall be kept for all proceedings of the board and the vote of each member on any issue decided by the board shall be recorded in the minutes.

**SECTION 12. Conflict of interest.**

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

**SECTION 13. Powers of the code and parking enforcement board.**

1. To adopt rules and regulations to govern its operations and the conduct of its hearings consistent with this ordinance.
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 board may be served by any code enforcement officer.
4. To take testimony under oath. The chairman 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 city ordinance or code provision which the board is authorized to enforce.
6. To impose civil fines, as authorized, on any person found to have violated an ordinance over which the board has jurisdiction.
7. To assign a hearing officer to conduct hearings in accordance with this ordinance.

**SECTION 14. Hearing officers.**

1. Eligibility.
  - a. The board may assign any of its members, including the chair, to be a hearing officer.
  - b. The board may assign an individual who is not a member of the board to be a hearing officer as long as the individual does not hold any elected or appointed office or position of employment with the city.
2. Experience and training.
  - a. A person assigned to be a hearing officer by the board shall have experience or shall have received training in the code enforcement process and basic procedural due process. At a minimum, the experience or training shall include acquired knowledge regarding a party's fundamental due process right to:
    - b. Be accompanied and advised by counsel at the hearing;

- c. Present evidence and witnesses on his or her behalf at the hearing;
- d. Examine the evidence opposing the party; and
- e. Confront and cross-examine the witnesses opposing the party.

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

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

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

6. Hearing powers and procedures.

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

b. Any hearing conducted by a hearing officer shall conform to the procedural requirements of this ordinance.

7. Final order.

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

b. Within twenty-four (24) hours of entry, these findings, conclusions, and final order shall be forwarded to the alleged violator, and to the board. The findings, conclusions, and recommended order may be delivered to the alleged violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the delivery.

8. Appeal from final order.

a. An alleged violator may appeal a final order issued by a hearing officer to the board.

b. The appeal shall be filed in writing to the board within seven (7) days of receipt of the final order. Failure to file an appeal within seven (7) days shall render the order final for all purposes.

c. An alleged violator shall exhaust the administrative remedy of appeal to the board before pursuing an appeal to District Court in accordance with this ordinance.

**SECTION 15. Enforcement proceedings.**

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

1. Enforcement proceedings shall only be initiated by the issuance of a citation by a code and parking enforcement officer or by others having the authority to issue citations.

2. Except when immediate action is necessary pursuant to Section 17 of this ordinance, and with the exception of parking violations, if a code and parking enforcement officer believes, based on his personal observation or investigation, that a person has violated a city ordinance, he shall issue a Notice of Violation allowing the alleged violator a specified period of time to remedy the violation without incurring a fine and, in effect, providing a warning to the violator to remedy or face the prospect of a citation. If the alleged violator fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation. Enforcement for parking violations is done only by Citation. No Notice of Violation is first given.

3. The code and parking enforcement officer shall issue the initial Notice of Violation as well as any subsequent Citation by one of the following methods:

a. Personal service to the alleged violator;

b. Leaving a copy with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or

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

d. If, in the exercise of reasonable diligence, the issuance of a Notice of Violation or of a subsequent Citation using the methods set out above is not possible, then either is properly served by posting a copy of it in a conspicuous place on the premises and mailing a copy of it by regular, first-class mail to the owner of record of the property, if no one is on the premises at the time the Notice of Violation or a Citation is issued.

4. When readily available to the code enforcement officer at the scene and without need to search a database, Notices of Violation and Citations should include the name of the person believed to be associated with the premises deemed to be in violation. However, at a minimum, Notices of Violation and Citations issued by the code and parking enforcement officer shall contain the following information:

- a. The date and time of issuance;
- b. The physical address of the premises where the violation occurred;
- c. The date and time the offense was committed;
- d. The facts constituting the offense;
- e. The section of the code or the number of the ordinance violated;
- f. The name of the code enforcement officer;
- g. The civil fine that may be imposed for the violation, including, if applicable:

(1) For code violations for which a fine is not expressly provided, the minimum civil fine that will be imposed if the person does not contest the citation; and

(2) For code violations for which a fine is not expressly provided, the maximum civil fine that may be imposed if the person elects to contest the citation.

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

i. 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 board or hearing officer to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to District Court.

5. After issuing a Notice of Violation or a Citation to an alleged violator, the code and parking enforcement officer shall notify the board by delivering a copy of the Notice of Violation or Citation addressed to the board's attention at City Hall.

8. The person to whom the Notice of Violation or a Citation is issued shall respond to it within fourteen (14) days of the date of issuance by correcting the violation in the case of a Notice of Violation by paying the civil fine in the case of a Citation or by requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation within fourteen (14) days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final. In this event, the Notice of Violation or the Citation as issued shall be deemed a Final Order determining that the violation was committed and imposing the civil fine as set forth in the Notice of Violation or in the Citation, and the person shall be deemed to have waived the right to appeal such Final Order to District Court.

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

#### **SECTION 16. Hearing; notice; and final order.**

1. When a hearing has been requested, the board or its administrative staff shall docket the matter for no sooner than the next regular meeting of the board.

2. The Notice of Violation or the Citation shall contain the details regarding the next regular meeting of the board sufficient to allow the person to know where and when to appear in order to contest their violation. However, if such information is not provided in writing thereupon, then not less than seven (7) days before the date of the hearing, the board shall notify the requester of the date, time, and place of the hearing. The notice may be



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

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

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

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

5. The board or assigned hearing officer shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, an order dismissing the citation shall be entered. If it is determined that a violation was committed, an order may be issued upholding the citation. The board or hearing officer may impose a fine up to the maximum authorized by ordinance or require the offender to remedy a continuing violation to avoid a fine, or both.

6. If the board is reviewing a final order entered by a hearing officer on appeal as authorized by Section 8(e) of this ordinance, the board shall review the record created before the hearing officer and determine whether there is substantial evidence on the record to support the finding of the hearing officer. If the board determines there is not substantial evidence on the record, it shall enter an order dismissing the citation. If the board determines that there is substantial evidence on the record, it shall issue a final order upholding the order entered by the hearing officer. The provisions of this Section shall apply to any appeal hearing conducted pursuant to this subsection.

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

b. If the person named in the citation is not present when the final order is issued, the order shall be delivered by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

**SECTION 17. Presentation of cases.**

Each case before the board or assigned hearing officer shall be presented by someone not a member of the board. Examples include the code enforcement officer for the city, the Chief of Police, an attorney selected by the city, or a member of the city's administrative staff. The city attorney may either be counsel to the board or hearing officer, or may present cases before the board or hearing officer, but shall in no case serve in both capacities.

**SECTION 18. Appeals; final judgment.**

1. An appeal from a final order of a board following a hearing conducted pursuant to this ordinance may be made to the Jefferson County 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 final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

2. If no appeal from a final order following a hearing is filed within the time period set forth above, the order shall be deemed final for all purposes.

**SECTION 19. Ordinance fine schedule.**

With the exception of parking ordinances for which §72.99 applies, violations of ordinances that are enforced by the city code and parking enforcement board or an assigned hearing officer shall be subject to the following schedule of civil fines:

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

<u>Violation</u>	<u>1<sup>st</sup> Offense</u>	<u>2<sup>nd</sup> Offense</u>	<u>3<sup>rd</sup> or higher</u>
Animals	\$50.00	\$100.00	\$200.00
Garbage and Refuse	\$25.00	\$50.00	\$100.00
Occupational License	\$50.00	\$75.00	\$100.00
Tall Grass, Weeds and Rubbish	\$25.00	\$50.00	\$100.00
Littering	\$500.00	\$750.00	\$1,000.00

2. If the person contests a Notice of Violation or a Citation and a hearing before the board or assigned hearing officer is required, or if the person contesting fails to appear at the hearing, the following maximum penalties may be imposed at the discretion of the board or hearing officer:

<u>Violation</u>	<u>1<sup>st</sup> Offense</u>	<u>2<sup>nd</sup> Offense</u>	<u>3<sup>rd</sup> or higher</u>
Animals	\$100.00	\$200.00	\$300.00
Garbage and Refuse	\$75.00	\$150.00	\$250.00
Occupational License	\$500.00	\$750.00	\$1000.00
Tall Grass, Weeds and Rubbish	\$50.00	\$100.00	\$200.00
Littering	\$750.00	\$1,000.00	\$2,000.00

3. Any person receiving a citation for any violation of the City Code for which no penalty is expressly set forth as above or otherwise shall be fined in an amount of not less than twenty-five dollars (\$25.00) and not more than one-hundred dollars (\$100.00).

**SECTION 20. Lien; Notice, Fines, Charges, and Fees.**

1. The city shall possess a lien on property owned by the person found by a non-appealable final order, or by a final judgment of the court, to have committed a violation of a city ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance, including abatement costs. An affidavit of the code and parking enforcement officer shall constitute prima facie evidence of the amount of the lien and regularity of the proceedings pursuant to KRS 65.8801 to 65.8839.

2. 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. The lien shall continue for ten (10) years following the date of the non-appealable final order or final court judgment.

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

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

#### **SECTION 21. Lien Removal.**

1. A lien may be removed if a person whose property is subject to the lien takes either if the following steps within forty-five (45) days from the date of issuance of notification:

- a. Correct the violation, if it has not already been abated; or
- b. Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.

2. Notwithstanding the above, the City may take immediate action to remedy a violation under the provisions found in Section 23 of this ordinance.

3. The lien provided by Section 20 of this ordinance shall not take precedence over previously recorded liens if:

- a. The city failed to comply with the requirements of Section 20 of this ordinance for notification of the final order; or
- b. A prior lienholder complied with subsection 1 of this Section.

4. A lien that does not take precedence over previously recorded liens shall, if the final order remains partially unsatisfied, take precedence over all other subsequent liens except liens for state, county, school board and city taxes.

5. The city may record a lien before the forty-five (45) day period established in subsection 1 of this Section expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period, the city shall release the lien in the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.

6. Failure of the city to comply with Sections 20 and 21 of this ordinance, or failure of a lien to take precedence over previously filed liens as provided

in subsection 3 of this Section, shall not limit or restrict any other remedies the city has against the property of the violator.

**SECTION 22. Amending certain other sections of the City's code of ordinances**

1. Existing Code Section 50.04 (D) is amended as follows:

~~All refuse containers shall be stored in~~ The storage location for refuse containers shall be a location behind the premises outside of ordinary public view or alternatively, alongside the premises but no closer to the public street or sidewalk than the front-most corner of the premises on the side of the premises where stored. Before 7:00 A.M. on the fixed date of collection of refuse from the premises, the refuse containers shall be placed immediately adjacent to the paved portion of the public street way designated as the route for refuse collection. ~~before 7:00 a.m. on the fixed date of collection of refuse from the premises. These waste~~ The refuse containers shall be promptly removed from the public way and placed in their storage location by the occupant of the property after the contents have been removed and in all cases, not later than 5:00 A.M. on the day following that same fixed date of collection of refuse from the premises. (Amending original provision of Ord. 27-77, passed 2-1-77)

2. Portions of existing Code Section 92.04 (A) are amended as follows:

**"Code and Parking Enforcement Board"** means an administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839 and KRS 82.600 to 82.640.

**"Code and Parking Enforcement Officer"** means an appointed city official, a city police officer, safety officer, citation officer, county police officer, sheriff, deputy sheriff, university police officer, airport police officer, or other public law enforcement officer with the authority to issue a Notice of Violation or a Citation in the City of West Buechel;

3. Existing Code Section 72.13 is amended as follows:

**72.13 Parking Tractor-Trailers and House Trailers.**

**Amending 72.13 (A) to read:** No person shall park a semitrailer truck or any parts of a semitrailer truck or a house-type trailer on any street, or road, or sidewalk within the corporate limits of the city.

**Amending 72.13 (A) to read:** No person shall park a semitrailer truck or any parts of a semitrailer truck or a house-type trailer on any street, or road, or sidewalk within the corporate limits of the city.

(Amending original provision of Ord. 79-68, passed 6-27-68; Am. Ord. 168-1999, passed 4-6-99)

**SECTION 23. Immediate action.**

Nothing in this ordinance shall prohibit the city from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

**SECTION 24. Savings and Severability:** The provisions of this ordinance are severable and any finding that a part is invalid does not necessarily invalidate the entire ordinance.

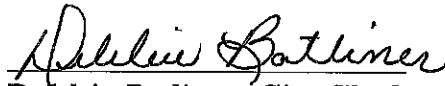
**SECTION 25. All Former Provisions in Conflict are repealed** and the Effective Date of this Ordinance shall be from its adoption as provided by law.

Introduced and given First Reading on August 14, 2019.

Given second reading and passed on September 12, 2019.

Publication Date: September 16, 2019

Attested:

  
Debbie Batliner, City Clerk

Approved:

  
Brenda Moore, Mayor