

# Kentucky Municipal Statutory Law

Informational Bulletin No. 145

Revised September 2024



# Kentucky Legislative Research Commission

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# **Kentucky Municipal Statutory Law**

## **Informational Bulletin No. 145**

(Revised September 2024)

## **Legislative Research Commission**

Frankfort, Kentucky

[legislature.ky.gov](http://legislature.ky.gov)



## Foreword

The Legislative Research Commission is a partner to other governmental agencies, including municipal governments that provide vital services at the most local level. We have published this revision of *Kentucky Municipal Statutory Law* to include the statutory enactments made by the 2024 General Assembly; this bulletin also cites selected court decisions and opinions of the attorney general that assist in the interpretation of the statutes. We hope this bulletin helps city officials understand new laws governing operation of cities throughout the commonwealth.

This bulletin is not a replacement for the actual language of the Kentucky Revised Statutes but is intended only to be a convenient reference regarding the organization, structure, and function of city governments.

We welcome feedback on our many publications, and I invite you to contact my office if you have any questions or suggestions.

Jay D. Hartz  
Director

Legislative Research Commission  
Frankfort, Kentucky  
September 2024



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# Chapter 1

## Introduction

### Use Of This Publication

This report describes the statutory duties of elected city officials and the organization and powers of city government. The statutes pertaining to cities are numerous and complex, and many details have of necessity been omitted. For this reason, this publication should be used as a guide to and not a substitute for the Kentucky Revised Statutes.

Reading and understanding the Kentucky Revised Statutes is often a challenge for lay people and attorneys as well, but the task will be easier if some basic points are kept in mind. The reader should be aware, for example, of the statutory definitions of the words *may* and *shall*. In the context of the statutes, *may* permits while *shall* mandates. These terms and a number of others are defined in KRS Chapter 446, which also contains other information essential to understanding the statutes. A prospective reader of the Kentucky Revised Statutes is also cautioned to make sure that the law consulted is the current version by checking the pocket supplement in statute books, the advance services and interim supplements provided by the publisher, or the latest edition of the *Acts Of The General Assembly*.

Also, the Kentucky General Assembly has established a website—[legislature.ky.gov/Pages/index.aspx](http://legislature.ky.gov/Pages/index.aspx)—that contains information regarding recent legislative action and other useful information about the legislative branch.

Beyond the sheer number of statutes, their complexity also poses a problem. Many times there is no clear-cut meaning to a statute granting a power or assigning a duty. The law is subject to differences of opinion and continuing legal interpretation. This bulletin cannot be taken as a substitute for legal counsel, the advice of the attorney general, or the findings of the courts.

Each year, many city officials and citizens seek the written opinions of the attorney general on questions of law pertaining to the powers and duties of cities. In many instances, the attorney general's interpretations of statutes have been cited throughout this book. Such opinions are not law and are not legally binding, but they are important as researched and informed views on the meaning of statutes.

Court rulings have also been cited throughout the following pages, and the rulings of the court are law until altered or overturned by another court. The inclusion of court cases in this publication has been selective and does not represent an exhaustive compilation of the cases relating to each statute. When a particular statute is in question, the reader should check for recent court rulings relevant to that statute.

## City Government

The American federal system is composed of three levels of government: national, state, and local. As of 2017, the US Census Bureau counted 90,126 governmental units in the United States.<sup>1</sup> Kentucky local government consists of counties, cities, and special districts. Although the distinctions have become blurred in recent decades, counties and cities have traditionally served very different purposes. Counties are territorial entities, in that the entire state is divided into 120 counties. Counties were organized to carry out on a local level such state functions as justice, tax assessment, and road maintenance.

Cities, on the other hand, are voluntarily created entities. A city comes into existence when the residents of an area petition the Circuit Court to incorporate a defined area as a city. A city is incorporated “in order to provide urban services ... demanded by the denser population, and in order to carry out the more sophisticated regulatory and police measures that an urban population would demand.”<sup>2</sup> Cities accordingly possess far broader legislative powers than counties. “Historically counties ... have existed primarily to perform state functions ... and to provide governmental services to rural areas; whereas municipalities have existed to provide the governmental needs of the more urban areas. Municipalities have been delegated vast authority to exercise the police power ... and consequently the range of municipal functions greatly exceeds that of county functions.”<sup>3</sup>

Cities perform the functions and provide the services that have become essential to the quality of life in America and on which citizens depend for health, safety, and welfare. Services commonly provided by cities include police protection, fire protection, ambulance service, hospitals, garbage collection, streets, sewers, flood protection, electricity, gas, water, parks and recreation, cable television, and libraries.

To finance these services, cities levy taxes and fees on property, individuals, and businesses in the city. To administer the government, officials are popularly elected by the residents of the city. In Kentucky, all cities have a mayor and a legislative body composed of a varied number of members. The functions of the elected officers depend on the form of government under which the city operates. In Kentucky, cities may operate under one of three governmental plans: mayor-council/aldermen, city manager, or commission. A city and a county may choose to merge their respective governments. Merged governments allowed by Kentucky law include urban-county governments, charter-county governments, consolidated local governments, and unified local governments. See Chapter 9 of this publication for these forms of merged governments.

There is no inherent right for cities to exist, and thus they are totally creatures of state law. A city’s powers, organization, and very right to exist derive exclusively from laws enacted by the state legislature. Since the adoption of the 1891 constitution, Kentucky’s body of municipal statutory law was significantly revised in the 1980 Session of the General Assembly. The most fundamental change was the granting of broad home rule powers to all Kentucky cities. Home rule made possible several other changes. First, it did away with the necessity for statutes to grant specific authority to perform particular acts or functions. Second, it permitted statutes relating to cities to be drafted more broadly, allowing cities greater discretion. Third, because

statutes could be drafted generally, city laws could be more uniform. Fourteen years later, the 1994 General Assembly and the public further established the concept of home rule in Kentucky law with the adoption of Section 156b of the Constitution of Kentucky, specifically authorizing the General Assembly to permit cities to exercise home rule. This development reinforced a concept that the local government legal community, hesitant to venture into uncharted waters, had not yet fully embraced. Together, these changes have permitted cities greater flexibility and authority in handling their local affairs.<sup>4</sup> While the General Assembly granted cities greater flexibility and authority in the changes effected prior to 2014, the 2014 General Assembly sought to unify the city classifications extant under constitutional and statutory authorities.

### **2014 HB 331: Omnibus City Reclassification**

House Bill 331, passed during the 2014 Regular Session, made omnibus revisions to the Kentucky Revised Statutes relating to municipal law, all with the primary intent of reducing the total number of city classifications. The historic six classes of cities and the various powers, duties, and responsibilities of these classes of cities were revised to two classes of cities: cities of the first class and home rule cities. The powers, duties, and responsibilities of cities, when not available to all cities universally, are determined according to three criteria:

- City classification—city of the first class or home rule city
- Population
- A list of certain cities established as of January 1, 2014, or August 1, 2014

HB 331 became effective on January 1, 2015.



## Chapter 2

### Constitutional Provisions

#### History

The current Constitution of Kentucky dates from 1891 and is the commonwealth's fourth constitution. The first constitution, framed in 1793, was based closely on the federal constitution. It was short and made no mention of local governments. It provided for an automatic constitutional convention within 7 years. That convention, held in 1799, produced the second Kentucky constitution, which was a slightly longer reworking of the 1793 constitution and which also opted not to mention units of local government.

To a large extent, the aim of the 1850 constitution was to more firmly fix the institution of slavery within the law of the commonwealth, but it was also the first Kentucky constitution to contain provisions relating to local government. Article II, sec. 5, permitted the General Assembly to grant cities separate representation upon attaining a certain population level. Article VI, sec. 6, stated that officers for towns and cities were to be elected for such terms and in such manner and with such qualifications as may be prescribed by law.<sup>5</sup>

The current Kentucky constitution was drafted by the 1890 Constitutional Convention. The major innovation of the 1891 constitution was the abolition of "special legislation" in Sections 59 and 60. This provision had a profound effect on municipal legislation. Previously, cities had operated under specific charters granted by the General Assembly. Additionally, individual cities would request specific acts relating only to themselves. "Because such legislation could be used to benefit the friends or harm the enemies of a legislator, there developed out of such system ... a great deal of favoritism, corruption and confusion."<sup>6</sup>

The abolition of special legislation posed a serious problem for cities. There needed to be some way to address the very different problems of the various cities in the commonwealth. As an alternative to special legislation, the 1891 constitution adopted a classification system that assigned each city to one of six classes (the arrangement that 2014 HB 331 altered as of January 1, 2015). The classes in 1891 were defined by population, and legislation was required to be uniform with respect to any one class. All charters specifically granted prior to the new constitution were revoked.

Unfortunately for cities, the delegates to the convention were overwhelmingly of rural backgrounds and in general had a great distrust of cities. The Committee on Municipalities, for example, which would be expected to be heavily weighted with urban delegates, had only 5 urban representatives out of a total of 11. In the debates during the 1890 Convention, one delegate said of cities that "Every right-thinking and intelligent patriot will at once see that there is more extravagance and fraud in the government of cities than in every other department of political life."<sup>7</sup> An indication of the disrepute in which delegates held cities is that this statement came not long after "Honest Dick" Tate, the state treasurer, had absconded to points unknown with nearly all the cash in the state treasury. City government was considered worse than that!

Because of the perceived or actual corruption of cities, the framers sought to write into the constitution a number of inviolable restraints on the powers that cities could possess. As early as 1937, when Kentucky was still very much a rural state, one writer bemoaned the constitution as a “straitjacket over cities.”<sup>8</sup>

### **Cities And The Constitution**

As previously noted, under Kentucky’s first three constitutions, the General Assembly exercised total control over the creation of cities, counties, and other units of local government and could adjust the boundaries of existing ones without limitation. Further, those constitutions contained no framework for organizing, financing, or managing local government as a whole. Instead, the General Assembly could enact “special” legislation to meet an individual local government’s needs or desires without restriction and without considering whether the legislation might similarly aid—or harm—other local governments. This provision resulted in favoritism and corruption, and historians have often cited it as the major reason for calling the 1890 Constitutional Convention to consider changes in the constitution, including sweeping reforms in the treatment of local government.

Cities derive their powers from the state and can do only those things permitted by the constitution and the laws the General Assembly has passed. As mentioned above, the 1891 constitution, in addition to prohibiting the use of special or local legislation, established six population-based classes of cities so that laws relating to a particular class would apply equally to all cities within that class. It provided for the election or appointment of city and county officers, established their qualifications, and prohibited them from having conflicts of interest. The General Assembly retained its authority to create new cities, counties, and other units of local government, but its ability to adjust county boundaries diminished somewhat.<sup>9</sup> Also included in the 1891 revision were limits on local governments’ maximum property tax rates and the amount of debt they may incur, other requirements regarding debt capacity and debt payment, and the authority to grant tax exemptions to businesses to encourage them to locate in the area.<sup>10</sup>

In the 1970s and 1980s, the General Assembly enacted laws granting cities and counties home rule. That is, cities and counties may govern local affairs as they see fit, so long as their actions further a governmental purpose and do not conflict with the constitution or state law. While courts have upheld this broad grant of power to local governments by the General Assembly, the constitution did not specifically authorize home rule until a 1994 constitutional amendment permitted the General Assembly to extend this authority to local governments.

Most of the 28 sections of the constitution relating to local government have remained largely unchanged since their adoption in 1891. As local governments have responded to increasingly complex local and regional problems, particularly economic issues, some have advocated modernizing the constitution by updating some of its strict limits and requirements regarding local governments and by permitting the General Assembly to establish limits that it can adjust in response to changing conditions.

Several attempts to change the constitution's treatment of local governments have arisen through the years. Some proposals offered sweeping, comprehensive reforms, but only small, specific reforms succeeded until the 1994 constitutional amendment proposed a major revision in the way that local governments can be structured, organized, financed, and operated. A summary of the constitutional changes follows.

### **City Government And Municipal Classification**

Section 156 of the 1891 constitution divided cities into six classes, based solely on their population, and specified that all cities of the same class had the same powers and were subject to the same restrictions established by law. The classification system permitted some distinction in the laws governing different classes of cities but prevented special or local legislation that would affect only certain cities within a particular class. Section 156 also required the General Assembly to specify by law how city governments would be organized and governed.

The 1994 local government constitutional amendment repealed Section 156 and replaced it with two new subsections.

- Subsection 156a allows the General Assembly to specify by law how cities may be created, consolidated, merged, and dissolved, and how their boundaries may be changed. The General Assembly may pass laws regarding the types of governments cities may have and their functions and officers. The General Assembly may create new classifications of cities not only by considering population but also by considering cities' tax bases, forms of government, geography, and other reasonable characteristics. All laws passed by the General Assembly regarding cities of a certain class must still apply uniformly to all cities within the same class.
- Subsection 156b establishes a constitutional foundation for the city home rule statutes enacted by the General Assembly in 1980. It authorizes the General Assembly to permit cities to exercise any power and perform any function within their boundaries that is in furtherance of a public purpose of a city so long as it does not conflict with a constitutional provision or statute.

As mentioned earlier in this chapter, in 2014, the General Assembly created a new two-level classification system, based on the city's governance model rather than population. It became effective on January 1, 2015. See Chapter 3 for a detailed explanation of the new system.

### **Limits On Debt Capacity**

Section 157 established the maximum tax rates that counties, taxing districts, and cities of different populations could impose. It also prohibited a local government from incurring debt in a given year that would exceed its income and revenue for that year, unless two-thirds of its voters agreed to let the local government enter into debt for a longer period. In a similar fashion, Section 158 (which, like Section 157, was amended in 1994) established the maximum amount of indebtedness that local governments could incur.

The amendment of Section 157 in 1994 deleted the voter approval referendum requirement, which had stipulated that, before a local government could incur more debt in a given year than could be paid off with the income and revenue that the local government would receive during that year, two-thirds of the voters would have to agree to allow the local government to pay off the debt over a longer period than that year. This relaxed rule on incurring debt permits a local government to finance public projects for more than a year without having elections to approve them. Interest rates on loans made for a period of years are generally lower than those charged for “annual appropriation” debt (that is, debt on a year-to-year basis); the lower rates should result in lower debt service costs for a local government that chooses to finance public projects over time. Also, because the “two-thirds voter approval” requirement made it almost impossible to issue general obligation debt, local governments had been pushed into using “creative” financing mechanisms, such as industrial revenue bonds, to finance long-term projects. Local governments often created public holding corporations or used annually renewable lease purchase agreements to avoid debt issuance requirements. The constitutional changes of 1994 eliminated the need for local governments to use these sorts of entities, thus potentially saving even more local dollars.

Section 158 retains the debt limits for local governments based on assessed taxable property values but requires that those debt limits be based on population alone, rather than on class of city. The debt limit for cities with populations of 15,000 or more is limited to 10 percent of their assessed taxable property value; the limit is 5 percent for cities of 3,000 to 14,999, 3 percent for cities of fewer than 3,000, and 2 percent for counties and other taxing districts. In addition, the General Assembly is authorized to establish by statute additional limits on local government indebtedness, subject to the limits and conditions established by the constitution.

### **Balanced Budget Requirement**

Local governments previously could not incur debt in one year in an amount that would exceed the income and revenue that would be received in that year, unless the voters approved a higher debt capacity (bonded debt, for example). This language in essence forced local governments to adopt a balanced budget unless the voters had allowed otherwise. However, the 1994 amendment deleted that language and, instead, inserted a new constitutional section—Section 157b—that requires every city, county, and taxing district to adopt a budget prior to each fiscal year that shows the expected revenues and expenditures for the fiscal year and prohibits a local government from spending any funds in excess of the expected revenues for that fiscal year. A local government may amend its budget during a fiscal year, but the revised expenditures may not exceed the revised revenues. *Revenues* means all income received by the local government from any source, including unencumbered budget reserves carried over from the previous fiscal year. *Expenditures* means all funds paid out for expenses of the local government during the fiscal year, including any amounts needed to pay the principal and interest due during the fiscal year on any debt incurred.

## Constitutional Provisions Governing Structure And Finance

The 1994 local government constitutional amendment repealed Section 156 of the constitution, which had set out the classification of cities. Even with the repeal of Section 156, the classification system in effect at the time remained effective until January 1, 2015, when the provisions of 2014 HB 331 took effect, replacing the former system. The former system was based on population and could not be changed without legislative action. The current system bases classification on the city’s governance model. Changes to the class are no longer accomplished through General Assembly action.

### Classes Of Cities

Every city is classified into one of two classes according to its governance model. A city with the mayor-aldermen form of government (historically, Louisville before it merged with Jefferson County to become a consolidated local government) was a city of the first class (and, as an aside, the merged government still uses the powers, authorities, and obligations found in the statutes relative to cities of the first class). All other cities are cities of the home rule class. These are cities with mayor/council, city manager, and commission forms of government. The changeover from the six-level classification system was automatic, and cities no longer need to submit resolutions to the General Assembly seeking consideration for class changes.

**Table 2.1**  
**City Classes And Governance Models**

| <b>Governance Model</b> | <b>Class</b> |
|-------------------------|--------------|
| Mayor-aldermen          | First        |
| Mayor-council           | Home rule    |
| City manager            | Home rule    |
| Commission              | Home rule    |

Source: Compiled by LRC staff.

### Municipal Officers

The constitution does not explicitly mandate the existence of particular officers in cities, although Section 160 implies that a mayor or chief executive and a legislative body made up of more than one member are required.

**Election And Term.** The terms of mayors are 4 years or until their successors qualify, and the terms of members of legislative bodies are 2 years. Section 160 does not permit legislative body members to hold over in office because, unlike mayors, they are to serve a definite term of 2 years and have no right to stay in office “until their successors qualify.” Section 160 provides that no mayor or chief executive of a city of the first class may succeed himself or herself after serving three successive terms in office. No fiscal officer of a city of the first class may serve more than one term. *Fiscal officer* means an officer whose chief duty is the collection or holding of public money, but the term does not include auditors or assessors.

If any city of the first class is divided into wards, the members of the legislative body are elected from the city at large, but an equal proportion must reside in each ward.

Section 152 specifies that vacancies in offices are to be filled by appointment. The appointee serves until the next regular city, county, district, or state election, unless the election takes place less than 3 months after the vacancy occurs, in which case the appointee serves until the second succeeding annual election. The Section 167 requirement that all city officers, except members of the legislative body, be elected only in even-numbered years does not apply to special elections to fill vacancies.

Section 167 provides that all elected city officials are to be elected at the general election in November in even-numbered years.

Section 236 authorizes the General Assembly to set the date on which officers take office, unless it is otherwise fixed in the constitution. For municipal officers, Section 167 sets that date.

**Qualifications.** Section 160 provides that the General Assembly may set qualifications for all officers and the manner in which they may be removed and how vacancies are to be filled. A number of provisions—some applicable to all state officers, others only to local government officers—set out various qualifications and disqualifications for public office.

Section 165 states that municipal officers may not be state officers or members of the General Assembly. One person may not simultaneously fill two municipal offices.<sup>a</sup>

Section 228 sets out the following oath, which all officers must take before they assume the duties of office:

I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of \_\_\_\_\_ according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

Because the oath requires an officer to state that he or she is a citizen of the commonwealth, a statutory requirement that an officer must take an oath of office is tantamount to requiring residency in Kentucky.

Section 234 requires all municipal officers to reside within the city and to keep offices therein where required by law.

Section 237 prohibits a person holding or exercising an office of trust or profit under the United States or any foreign power, or a member of Congress, from holding a state office.

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<sup>a</sup> KRS 61.080 complements Section 165 and provides additional considerations for officers interested in holding more than one office.

Section 239 disqualifies a person from holding an office if the person has participated in a duel or acted as a second in a duel.

Sections 173 and 197 disqualify any officer who profits using public funds or any officer who accepts free passes or reduced rates not common to the public on any common carrier.

Section 68 provides that all civil officers are subject to removal by impeachment before the General Assembly.

Section 150 disqualifies any person from public office if, to serve in that office, the person has promised money or anything of value. Any person convicted of a felony or high misdemeanor is also disqualified from public office.

Section 45 makes any person who has served as a city collector of taxes ineligible to serve in the General Assembly unless the person has received a quietus from the city at least 6 months before the election.

**Compensation.** Section 246 limits the compensation of city officers. Mayors of cities of the first class are limited to a total annual compensation of \$12,000, while all other municipal officers are limited to \$7,200 per annum. The meager compensatory amounts of this section have been adjusted by the courts in two lines of cases.

**As calculated by the Department for Local Government, the \$12,000 limit equals \$154,433 in 2024 dollars, and the \$7,200 limit equals \$92,660.**

In *Matthews v. Allen*, popularly known as “the rubber dollar case,” the Court of Appeals interpreted the monetary limit not as an absolute limit, but as a limit that “stretches” as the purchasing power of the dollar decreases (or shrinks as it increases, unlikely as that might seem).<sup>11</sup> Therefore, the actual compensatory limit of an officer is the amount of money currently required to equal the purchasing power of \$7,200 or \$12,000 in 1949 (when the amendment to Section 246 was adopted). The US Department of Labor’s Consumer Price Index is the guide, and the Department for Local Government annually computes the current level. This is the formula, as approved by the Office of the Attorney General (OAG), for calculating the current maximum value of the constitutional limits (where X is the maximum compensation limit):

$$\frac{\text{current consumer price index}}{100} = \frac{X}{\text{constitution limit}}$$

Even with the rubber dollars, the limit of Section 246 might pose a hindrance to the hiring of professional specialists. To remedy that problem, the Court of Appeals in *Board of Education of Graves County v. Deweese* defined *officers*, as used in Section 246, to mean only those officers specifically mentioned in the constitution.<sup>12</sup> In the case of cities, therefore, only mayors, or chief executives, and members of the legislative bodies are subject to the compensation limit.

Section 161 prohibits the compensation of any city, county, or municipal constitutional officer from being changed after election, after appointment, or during a term. It also prohibits the extension of a term. Although Section 161 prohibits changes in compensation during the term of an officer, it has been construed not to prohibit cost-of-living adjustments, since, under

the reasoning of *Matthews v. Allen*, a cost-of-living raise is not actually an increase in compensation.<sup>13</sup> Section 235 duplicates Section 161, in that it prohibits a salary from being changed during the term for which an officer is elected. In addition, it authorizes the General Assembly to establish what deductions may be imposed for neglect of duty.

## Taxation

Section 157 establishes the maximum tax rates for units of local government. Table 2.2 presents the maximum rates for other than school purposes.

**Table 2.2**  
**Maximum Municipal Tax Rates**

| Type Of Government         | Population    | Maximum Rate Per \$100 Taxable Property |
|----------------------------|---------------|---|
| City                       | 15,000+       | \$1.50                                  |
| City                       | 10,000–14,999 | \$1.00                                  |
| City                       | Up to 9,999   | \$0.75                                  |
| County and taxing district | Any           | \$0.50                                  |

Source: Kentucky. Constitution of Kentucky, sec. 157.

Section 169 provides that, unless otherwise specified by law, the fiscal year begins July 1.

Section 170 exempts the following property from taxation:

- Public property used for public purposes
- Nonprofit burial grounds
- Real property owned and occupied by institutions of religion
- Tangible and intangible personal property owned by institutions of religion
- Institutions of purely public charity
- Nonprofit educational institutions
- Public libraries
- Household goods used by a person at home
- Crops grown in the year of assessment that are still in the hands of the producer
- A maximum of \$6,500 of real property owned and used as a permanent residence by a person older than 65 years of age, or a person classified by the federal government as totally disabled. This figure is adjusted each year by the Department for Revenue pursuant to KRS 132.810 to account for changes in the Consumer Price Index. For 2023-2024, the maximum is \$46,350.

Section 170 also provides that the General Assembly may grant cities the power to exempt manufacturing establishments from municipal taxation for up to 5 years as an inducement for the establishment to locate in the city.

Section 171 permits the General Assembly to divide property into classes and to determine which classes are to be subject to local taxation.

Section 172 mandates that all property not exempted is to be assessed for taxation “at its fair cash value, estimated at the price it would bring at a fair voluntary sale.”

Section 172a permits the General Assembly to provide for differences in the ad valorem taxation within different areas of the same taxing district where those differences “relate directly to differences between nonrevenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.”

Section 172b permits the General Assembly to authorize local governments to grant property reassessment moratoriums for a period not to exceed 5 years for the purpose of “encouraging the repair, rehabilitation, or restoration” of existing improvements on real property.

Section 174 requires that all property be taxed in proportion to its value.

Section 180 requires that every ordinance that levies a tax specify “distinctly the purpose for which said tax is levied.” No tax levied for one purpose shall be used for any other.

Section 181 prohibits the General Assembly from levying taxes for the purpose of any city, but it authorizes the General Assembly to confer on cities the right to levy certain taxes. Cities may be authorized to impose the following taxes or license fees:

- License fees on stock used for breeding purposes
- License fees on franchises, trades, occupations, and professions
- Taxes for municipal purposes on personal property, tangible or intangible, based on income, licenses, or franchises, in lieu of ad valorem taxes thereon, although a city of the first class is prohibited from omitting the imposition of an ad valorem tax on such property of any utility

The section does not explicitly provide for the imposition of an ad valorem tax on real property, but the power is implied from this section and others that refer or relate to that power.

### **Indebtedness**

Section 52 prohibits the General Assembly from releasing or extinguishing the indebtedness or liability of any city.

Section 157 provides that no unit of local government is to acquire debt in any year in an amount exceeding the income and the revenue produced in that year without placing the question on the ballot and receiving the assent of two-thirds of those voting. Any indebtedness incurred in violation of this section shall be void. This limitation does not apply to revenue bonds.

Section 158 establishes maximums for the aggregate indebtedness of cities, as shown in Table 2.3.

**Table 2.3**  
**Maximum Aggregate Indebtedness**

| <b>Population</b> | <b>Maximum Indebtedness</b> |
|-------------------|-----------------------------|
| 15,000+           | 10% of taxable property     |
| 3,000–14,999      | 5% of taxable property      |
| Fewer than 3,000  | 3% of taxable property      |

Note: The limits do not apply to revenue bond indebtedness.

Source: Kentucky. Constitution of Kentucky, sec. 158.

Section 159 requires that municipal indebtedness be amortized in not more than 40 years. Before that debt may be incurred, the city shall levy a tax sufficient to pay the interest due and create a sinking fund for the payment of the principal.

Section 171 provides that bonds issued by cities are exempt from taxation.

Section 176 prohibits the state from assuming the indebtedness of any city.

Section 178 requires that all laws authorizing the borrowing of money by a city specify the purpose for which the money is to be used and that the money may not then be used for any other purpose.

Section 179 prohibits the General Assembly from authorizing a city to become a stockholder in a corporation or obtaining money from or appropriating money to a corporation, or lending its credit to a corporation, except for the purposes of constructing roads.

### **General Provisions Relating To Cities**

Section 60 provides that, except for cities, the General Assembly cannot enact laws to take effect on the approval of any authority other than the General Assembly.

Section 61 requires the General Assembly to provide for taking the sense of the residents of a city concerning the permitting or prohibiting of trafficking in alcoholic beverages.

Section 162 makes void any agreement made by the city unless made pursuant to the express authority of the law.

Section 163 prohibits utilities from constructing any apparatus on public ways or property without the consent of the city legislative body or board unless that right had been granted prior to the date of the constitution.

Section 164 prohibits a city from granting any franchise or privilege for a term exceeding 20 years. Before granting any franchise the city is required to advertise, take bids, and award the franchise to the “highest and best” bidder. The section does not apply to a trunk railway.

Section 168 prohibits a city ordinance from fixing a penalty less than that imposed by statute for the same offense. A conviction under state law is a bar to conviction under local law for the same offense, and vice versa.

Section 242 requires, whenever any city exercises the privilege of taking private property for public purpose, that it make “just compensation for property taken, injured or destroyed.”

## Chapter 3

### Municipal Procedural Requirements (Nonfinancial)

As discussed in Chapter 1, the municipal code is designed to give cities a wide degree of discretion in their operation. This discretion is not total, for the Kentucky Revised Statutes contain a variety of mandates with which cities must comply. Generally these mandates are imposed because there is some prevailing state interest in ensuring that cities perform a certain activity in the same manner as all other cities, or all other cities of a particular class. The most significant areas where the state has retained control are city organization, personnel, and financial administration (see Chapters 5, 6, and 7).

Additionally the Kentucky Revised Statutes impose a variety of nonfinancial procedural requirements. Those requirements are the subject of this chapter. Chapter 8 discusses permissive enabling statutes, which, though optional, impose requirements if a city wishes to perform the particular function.

### Boundary Changes

A city is an artificial legal entity that has jurisdiction over a defined geographical area. A city first achieves that jurisdiction through incorporation. It may expand or decrease its jurisdiction through annexation and deannexation. It may cease jurisdiction through dissolution. Appendix A includes a map showing the location and distribution of city population throughout Kentucky.

### Incorporation

**Standards.** For an area to become incorporated, the following conditions must exist:

- Minimum population of 300 persons
- Incorporation represents “a reasonable way of providing the public services sought by the voters and property owners of the territory, and there is no other reasonable way of providing the services”
- Contiguous area
- The newly formed city will be able to provide necessary city services to residents within a reasonable time
- The interests of adjacent areas and local governments will not be unduly prejudiced (KRS 81.060).

The issue of incorporation is determined by civil action in the Circuit Court. The court is directed to consider the following criteria in determining whether the incorporation has met the standards set out above:

- Whether the character of the territory is urban or rural
- The ability of any existing city, county, or district to provide needed services
- Whether the territory and any existing city are interdependent or part of one community

- The need for city services in the territory
- The development scheme of applicable land-use plans
- The area and topography of the territory
- The effect of the proposed incorporation on the population growth and assessed valuation of the real property in the territory (KRS 81.060).

**Procedure.** Proceedings to incorporate a territory come before the Circuit Court of the county in which the area is located. To commence the action, a petition is filed with the clerk of the Circuit Court. The petition contains

- the signatures and addresses of either
  - a number of registered voters equal to two-thirds of the voters in the area or
  - a number of owners of real property equal to the owners of at least two-thirds of the assessed value of the property in the area,
- a description of the boundaries of the area and the number of residents therein,
- an accurate map of the area,
- “a detailed statement of the reasons for incorporation, including the services sought from the proposed city,”
- a description of the existing facilities and services provided within the territory, and
- a statement of the plan of government under which the city will operate if incorporated (KRS 81.050).

The petition shall be set for hearing not later than 20 days from the date of filing. Notice of the hearing is given pursuant to KRS Chapter 424.

At the hearing before the Circuit Court, any resident of the area proposed to be incorporated may make a defense to the petition. Regardless of whether a defense is filed, the court may find in favor of the incorporation only if it finds, as a matter of law, that the standards in KRS 81.050, as previously discussed, have been met (KRS 81.060).

If the court decides in favor of the incorporation, it issues an order setting out

- the name of the city;
- a metes and bounds description of the boundaries of the city;
- the population therein;
- the class of city, which is dictated by the plan of government chosen by the petitioners; and
- the names of those who will serve as mayor and members of the legislative body until the next regular election.

A copy of the order establishing the city is sent to the Office of the Secretary of State (KRS 81.060).

### **Classification**

Kentucky statutory law identifies two classes of cities (KRS 81.005). These classes—cities of the first class and home rule cities—are determined by the governance model under which the city operates. (Under the previous system of classification, six classes were determined by population levels.) Cities with the mayor-aldermen form of government are assigned as cities of the first

class; cities operating under the mayor/council, city manager, and commission forms are assigned to the home rule class. The only city that has ever been a city of the first class is Louisville. In 2000, Louisville voted to merge with Jefferson County, becoming a consolidated local government. Louisville/Jefferson County Metro Government still uses many of the statutes assigned to cities of the first class, so it is important that this class remains even though Louisville is technically no longer a city government, but a consolidated local government. That leaves all other cities in Kentucky as home rule cities.

Cities that change class must report the change to the secretary of state (KRS 81.005). Home rule cities are unlikely to adopt the mayor-aldermen form of government, so changes in class are apt to be rare.

## **Dissolution**

The corporate identity of a city may be terminated in two situations:

- A city that has failed to maintain a government for at least 1 year may be terminated by order of the Circuit Court upon the petition of one or more residents of the city. A city is deemed to have failed to maintain a government only if it has failed to both
  - elect or appoint officers and
  - levy and collect necessary taxes (KRS 81.094).
- A city that is otherwise maintaining an ongoing government may be dissolved upon a majority vote of the residents of the city. If a petition requesting dissolution is presented to the mayor and signed by at least 20 percent of those registered voters who voted in the last presidential election, the issue is placed on the ballot at the next general election. The petition must be filed and certified as sufficient by the county clerk by the second Tuesday in August preceding the general election. If a majority of those voting favor dissolution, the city is dissolved within 30 days of the certification of the election results. A city may not be dissolved by popular vote if it has any outstanding long-term debt or debt in excess of the assets of the city (KRS 81.094).

Any resident of the city may offer a defense to a petition to dissolve. The court grants a petition only if it finds that

- notice of the petition was published pursuant to KRS Chapter 424 and
- provision for the equitable distribution of all city assets and liabilities has been made and approved by the court (KRS 81.096). All remaining assets of a city become the property of the fiscal court of that county.

During the 2022 Regular Session, the legislature created a process that allowed for a one-time administrative dissolution of cities that are no longer actively operating (KRS 81.062). By September 1, 2022, each incorporated city in the commonwealth was to submit documentation listing its name, address, phone number, year of incorporation, and form of government. If a city failed to submit the documentation and no other documentation indicated the city is currently operating, the Department of Local Government was to mail a notification to the city regarding its noncompliance and post the notification in a local newspaper. The department would then arrange for an administrative hearing to be conducted after January 1, 2023, regarding the question of whether to administratively dissolve any city that failed to provide notice of its

continued operation. Any citizen, resident, or creditor of the city would be allowed to defend against the administrative dissolution, and appeal any adverse decision of the administrative body. For additional information regarding the one-time administrative dissolution process and its consequences for noncompliant cities, see KRS 81.062.

Monterey, Poplar Hills, South Park View, and Vicco, identified by the Department for Local Government as being noncompliant with KRS 81.062, have been dissolved according to the Secretary of State's Land Office.<sup>14</sup> Blandville, also on the list, is still listed as inactive as of the publication date of this informational bulletin.

## **Annexation**

A city expands its jurisdiction into outlying areas through the method of annexation. Three methods of annexation are authorized: two applicable to cities of the first class, the other applicable to home rule cities.

**Cities Of The First Class.** A city of the first class that does not have in effect a compact with a county pursuant to KRS 79.310 to 79.335 may annex any unincorporated territory contiguous to its boundaries. Incorporated territory may not be annexed (KRS 81A.010). Before beginning the annexation process by the enactment of the first ordinance stating its intention to annex, the city must prepare a report setting out the following:

- A map of the city itself and the territory to be annexed, showing
  - the present and proposed boundaries of the city;
  - the present streets, water mains, sewer lines, and utility lines;
  - the present areas receiving or able to receive major city services and the proposed extension of those services to other areas;
  - the prevailing land use patterns in the area to be annexed; and
  - a map showing the zoning that will be effective for the annexed area (if the annexing city has zoning)
- A statement that the area to be annexed meets the requirements of KRS 81A.010 to 81A.020
- A statement of the city's plans for extending each major city service to the area to be annexed. The statement
  - provides for the immediate extension of police and fire protection, garbage collection, and street maintenance on substantially the same basis as provided to the existing area of the city;
  - provides for the extension of streets, major trunk water mains, sewer lines, and utility lines;
  - sets out the proposed timetable for the extension of city services;
  - provides an estimation of tax rates in the area to be annexed for each year until all major services are provided; and
  - describes the planned methods for financing the extension of services (KRS 81A.050).

After the preparation of the annexation report, the city holds at least two public hearings before enacting the first ordinance. At each hearing, the city explains the annexation report and listens to testimony. The board of aldermen considers the testimony. If the report is amended, another hearing is held on those amendments (KRS 81A.060).

If, after the preparation of the report, the board of aldermen desires to annex the territory, it enacts an ordinance stating its intention to annex an area. The ordinance is to be published pursuant to KRS Chapter 424, and a notice sent pursuant to KRS 81A.425 to each property owner in the area proposed for annexation. From the date of publication, the residents of the area to be annexed have 30 days to file a petition in Circuit Court objecting to the annexation. If no petition is filed, the city may enact a second ordinance, at the end of the 30-day period, annexing the area. If a petition is filed, the issue shall be tried in the Circuit Court before a jury. The question of which party has the burden of proof depends on the percentage of residents remonstrating. If less than 75 percent have remonstrated, the city need only prove that the annexation “will be for the interest of the city, and will cause no manifest injury” to the persons in the area; however, if 75 percent or more of the residents remonstrate, the city must prove that the failure to annex will “materially retard the prosperity of the city” (KRS 81A.020).

If the court renders judgment in favor of the city, the board may enact the second ordinance annexing the area; if the court finds against the city, the board is precluded from annexing the area.

After the city has annexed an area by either method, the ad valorem tax rate on property therein shall be an amount commensurate with the services or facilities made available to the residents of the annexed area, in relation to those provided in other parts of the city. If a service available from the city has been provided previously from another source, the city cannot tax for the service unless the service is actually provided by the city as a lawful replacement for an existing service (KRS 81A.070).

**Relocation Of Cities.** Cities in counties containing a city of the first class that have been adversely affected by a public project of that city may relocate to any unincorporated area of the county. The relocated city is restricted to the same acreage as the original location, and all financial assets are transferred with the relocation. The city clerk is responsible for forwarding specified information to the secretary of state within 1 year of the relocation, or the city will be ineligible to receive state funds (KRS 81.380). The only city known to have relocated under this section is the city of Heritage Creek, which was called Minor Lane Heights at the time.

**Home Rule Cities.** Home rule cities may annex any unincorporated territory that

- is adjacent or contiguous to the boundaries of the annexing city when annexation proceedings begin and
- is urban in character or suitable for development for urban purposes without unreasonable delay (KRS 81A.410).

A home rule city must take the following steps in order to annex unincorporated territory:

- **Step 1:** Enactment by legislative body of annexing city of an ordinance stating its intention to annex territory. The first ordinance must contain
  - an accurate definition of the boundaries of the territory to be annexed, and
  - a declaration of the desirability of annexation.

If a city has adopted zoning, it may provide for the zoning or land use regulation of the area proposed for annexation before adopting the annexation ordinance as prescribed (KRS 100.209).

- **Step 2:** Publication of the ordinance. Notification of the right of the residents of the area being annexed to remonstrate must also be published pursuant to KRS 424.130 and 424.140. It is not sufficient to merely republish the ordinance required by KRS 81A.420, because that publication is not reasonably calculated to inform the public of its rights.<sup>15</sup>
- **Step 3:** Provide written notice to the fiscal court of the county in which the territory is located regarding the proposed annexation, with a map and a description of the area to be annexed.
- **Step 4:** Notification pursuant to KRS 81A.425 is sent to all owners of property in the area proposed for annexation. This must be done at least 14 days before the meeting at which the annexation ordinance is to receive its second reading.
- **Step 5:** Within 60 days of the publication of the first ordinance, residents of the area to be annexed may file with the mayor of the annexing city a petition remonstrating against the annexation effort. If the petition contains the names of 51 percent or more of the resident voters or owners of real property within the area to be annexed, the annexation will be stopped.
- **Step 6:** If no petition is received during the 60-day period of Step 5, the legislative body of the annexing city may enact the second ordinance, formally annexing the territory to the city. If the city elected to predetermine the zoning of the area before completion of the annexation process, the second ordinance must include a map showing the zoning of the newly annexed area (KRS 81A.420).

#### **Cities Wholly Contained Within Two Counties Annexing Into An Additional County.**

Cities contained wholly within two counties may proceed with annexation in an additional county if the annexation is consensual and the proposed territory abuts the city's boundaries, is urban in character or is suitable for development for urban purposes without unreasonable delay, is not within the boundary of another incorporated city, and contains infrastructure of the city intending to annex that territory. The city must also notify the fiscal court of the annexation at least 30 days prior to the annexation (KRS 81A.415).

#### **Provisions Applicable To All Cities**

**Assumption Of Liabilities.** Whenever any city annexes territory, it becomes liable for all debts that might be attached to the area by reason of its having been a part of a taxing district (KRS 81A.450).

**Recording Boundary Changes.** Whenever a city changes its boundaries, whether through annexation, transfer, or reduction, it must notify state and local officials of that action within 60 days. The city must file with the secretary of state

- a certified paper or electronic copy of the final ordinance annexing or otherwise amending the territory of the city;
- an electronic or paper map and description depicting the parcel annexed, transferred, or severed; and

- an electronic file containing the geometric figure of the territory using specified computer-aided design software (KRS 81A.470).

The city must file with the county clerk

- a certified paper or electronic copy of the final ordinance annexing or otherwise amending the territory of the city; and
- an electronic or paper map and description depicting the parcel annexed, transferred, or severed (KRS 81A.475).

The clerk does not receive the electronic geometric figure that the secretary of state receives. Failure to file that notice bars the city from levying taxes on the residents or property in the annexed territory (KRS 81A.470).

**Reattempting Annexation.** If voters defeat a city's annexation effort, it may not reattempt the annexation of that area for 5 years from the date of rejection (KRS 81A.460). Because the language of this statute refers to rejection by the voters, it does not apply to annexation of unincorporated territory by a city of the first class that has no cooperative compact in effect with its county.

**Annexation Of Property Of Consenting Landowners.** Consensual annexation can be accomplished with the agreement of the landowners. This can be a simple process as it, being either at the request of the landowners or with their permission, is not subject to being put on the ballot. In those cases, the property must still meet the requirements of KRS 81A.410, but the city is not required to enact the notification ordinance required by KRS 81A.420 to comply with the notice requirements of KRS 81A.425, and the city is not required to wait 60 days before proceeding with the annexation (KRS 81A.412).

Even if an annexation effort is being challenged under nonconsensual annexation protocols, the city may proceed to annex any land within the area proposed to be annexed if the land is contiguous to the city and the owner of the land consents (KRS 81A.500).

**Industrial Plant Statute.** KRS 81A.510 imposes additional restrictions on a city attempting to annex an unincorporated area in which an industrial plant is located. Such an area may be annexed only if

- it is embraced within a broad, comprehensive plan of annexation;
- it is both contiguous and compact;
- it is contiguous to the boundary of the city; and
- the number of registered voters in the area is at least equal to 50 percent of the average number of persons employed by the industrial plant in the last year.

### **Provisions Applicable To Cities Located In A County Subject To Occupational License Tax Crediting**

A county subject to the crediting provisions set forth in KRS 68.197 has standing to challenge an annexation by a city on the basis that the city failed to comply with any of the requirements concerning annexation (KRS 81A.481). Cities located in a county subject to occupational license tax crediting as set forth in KRS 68.197 are subject to additional requirements, the details of

which are laid out in KRS 81A.429. Generally, these provisions are designed to encourage cooperation between cities and counties when an annexation would lead to the loss of occupational license tax revenue for the county.

### **Technical Requirements For Annexation**

Because annexation efforts are usually challenged, it is of the utmost importance that the city be extremely scrupulous in complying with the technical requirements of annexation. Four requirements are fundamental:

- The annexation ordinance must be duly enacted pursuant to KRS 83A.060.
- Proper publication of the ordinance and required notices must be made.
- The area to be annexed must be accurately described.
- The area to be annexed must be contiguous to the city.

### **Annexation Priority**

If two cities are competing to annex the same territory, or if a city is attempting to annex the same territory that the residents are seeking to incorporate, the municipality that first takes the statutory steps toward acquiring territory has priority.<sup>16</sup>

City-owned utility infrastructure existing in unincorporated territory can affect the annexation priorities of cities intending to annex that territory. If a city intends to annex unincorporated territory containing utility infrastructure owned by another city, the city must notify the mayor of a city having utility infrastructure in that territory of the intent to annex the territory prior to the second reading of the annexation ordinance. The city having utility infrastructure may object and prevent the annexation of that territory. The two cities may also enter into an interlocal agreement regarding the territory. Should a city fail to object prior to the second reading of the ordinance, it forfeits its right to prevent annexation pursuant to the operation of the statute (KRS 81A.427).

### **Reduction Of Territory**

The reverse of annexation is the reduction of incorporated territory. A city may strike an area from its boundaries by a procedure similar to the one for annexation. The legislative body enacts an ordinance stating the intention, accurately defining the area to be stricken, and providing that the question shall be placed on the ballot at the next regular election. For the question to be considered at the next regular election, the ordinance must be filed with the county clerk by the second Tuesday in August preceding the regular election. The question is voted on only by the registered voters within the area proposed to be stricken. If a majority of those voting on the question approve the proposal, the legislative body adopts an ordinance striking the area from the corporate boundaries of the city within 10 days of the election certification (KRS 81A.440). If a majority of the voters reject the proposal, no attempt to strike off the same area can be made for 5 years from the date of the rejection (KRS 81A.460).

The primary provisions of KRS 81A.440 contemplate areas with residents. In the case of an area with no residents, no one can vote for the disposition of the question to strike the territory.

In such a case, the city adopts an ordinance declaring its intent to strike the territory and notifies the county. The county may refuse to accept the territory back into its unincorporated status by passing an ordinance objecting to the city's intent to strike territory. If the county does nothing, the striking of the territory proceeds upon the adoption by the city of a final ordinance declaring the territory stricken.

Even though KRS 81A.440 applies to reduction of territory by all cities, there continues to exist a separate statute, KRS 81A.010, for reduction of territory by a city of the first class. The status of that statute is unclear in light of the enactment of KRS 81A.440. Pursuant to KRS 81A.010, a city of the first class may strike off territory by the same procedure used to annex unincorporated territory—that is, unilaterally, by ordinance, subject to remonstrance, which requires the Circuit Court to decide the question.

### **Transfer Of Territory**

When two cities sharing a boundary find that a specified area within one city can best be served by the other, the area may be transferred. This type of transfer requires

- enactment of identical ordinances by each city that
  - define the area to be transferred,
  - state the financial considerations and terms of any financial agreements,
  - resolve any tax or revenue questions, and
  - state any land use or zoning regulations applicable to the area being transferred (if planning and zoning is in effect pursuant to KRS Chapter 100 in either city);
- a petition in support of the transfer with signatures from 51 percent of the number of registered voters in the area to be transferred. No petition is required when the area proposed for transfer has no residents and the property owners consent in writing to the transfer; and
- the filing of a metes and bounds description of the transferred area and a copy of the ordinance with the Office of the Secretary of State, the county clerks' offices of the cities involved, and the Department for Local Government.

When the transfer is complete, the newly transferred area assumes the local option status of the city of which it is now a part (KRS 81.500).

### **Merger**

Cities may not annex other cities or any portion of other cities (excepting the transfer of territory as set out previously in KRS 81.500). Two or more contiguous cities, however, may become a single city through merger.

To initiate the process of merger, the legislative body of each affected city enacts an ordinance calling an election on the question of merger. The question is then placed on the ballot at the next regular election if the ordinances passed by both city legislative bodies have been filed with the county clerk by the second Tuesday in August preceding the regular election. The question on the ballot shall read: "Are you in favor of merging or consolidating the City of \_\_\_\_\_ and the City of \_\_\_\_\_ into one city to be known as the City of \_\_\_\_\_?" If a majority of the legal votes cast in all cities—each city being a separate election unit—are for merger or consolidation, then the cities are merged 30 days after certification of the election results. The classification and

organizational structure of the new city will be that of the largest of the old cities (KRS 81.410 to 81.440).

### **Alternative Method Of Rendering Services In County Containing City Of The First Class**

The mayor of a city of the first class, with the approval of the board of aldermen, may submit to the fiscal court of the county a “plan for the improvement of local government in the county.” The plan is placed on the ballot for approval by the residents of the county at the next general election if the plan is delivered to the fiscal court at least 90 days before the election and if the certified copy of the plan is filed with the county clerk by the second Tuesday in August preceding the general election. The votes are tabulated separately for each city and for the unincorporated territory of the county. The plan is adopted only if approved by a majority of those voting within the city of the first class and in the area of the county outside the city. Except for a city of the first class, any city in the county may be excluded from the plan if less than a majority of those voting in the city approves the plan (KRS 81.300 to 81.360).

## **Contracting**

A city is a legal entity with the power to contract with other entities or individuals for the furnishing or providing of goods and services (KRS 82.081). The Kentucky Revised Statutes impose limitations or requirements on that power.

### **Model Procurement Code**

A city may elect by ordinance to adopt the provisions of KRS 45A.343 to 45A.460, which provide a comprehensive code for the procurement of goods and services. If the code is adopted, all purchases made by the city must conform to the provisions of the code.

The basic requirement of the procurement code is that all contracts and purchases, with exceptions where bidding would be inappropriate, must be awarded by competitive sealed bidding. Invitations for bids must be advertised in a newspaper, and the bids must be opened publicly at an announced location. The contract must be awarded to the responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price (KRS 45A.365).

Because competitive sealed bidding is not always feasible, the code permits the use of alternative methods in the following situations:

- Competitive negotiation may be used where
  - specifications are too vague;
  - sources of supply are limited, time and place of performance cannot be determined, price is regulated by law, or a fixed-price contract is not applicable; or
  - bids received are unreasonable or identical (KRS 45A.370).
- Negotiations may be conducted if all the bids received through competitive sealed bidding exceed available funds (KRS 45A.375).
- Noncompetitive negotiations may be used where

- an emergency exists,
  - there is only one supplier,
  - the contract is for the services of a licensed professional, the purchase of perishable items brought at frequent intervals, replacement parts where the need cannot be anticipated, proprietary items for resale, purchases on trips, purchase of supplies sold at auction, insurance, or supplies at reduced prices, or
  - the contract is with a private real estate developer and is for increasing the size or collection capacity of a sanitary sewer or storm water pipe when the local public agency is responsible for paying only for the increased size or collection capacity (KRS 45A.380).
- Small-purchase procedures may be used where the aggregate amount of the contract is less than \$40,000 (KRS 45A.385).

The code prohibits any employee of the local government who has procurement authority from participating in a purchase where there is a conflict of interest (KRS 45A.450 to 45A.460).

Another method allows an alternative for procuring architectural and engineering services. Local public agencies (including cities and urban-counties) may adopt KRS 45A.730 to 45A.750 and procure those services by qualification-based negotiations. Firms are to be chosen for negotiations based on the qualifications and performance data they submit for review.

All contractors awarded state and local government contracts must reveal any previous violation of applicable Kentucky laws and must comply with all Kentucky laws for the duration of the contract. Failure to reveal any of those violations or to comply with laws is grounds for cancellation from future contracts for 2 years (KRS 45A.343 and 45A.485). Further, a contract may not be awarded to a bidder that employed an executive agency lobbyist who was convicted of a crime related to their efforts to procure similar contracts, for a period of 5 years following that lobbyist's conviction (KRS 45A.328).

### **General Bidding Requirement**

If a city does not adopt the provisions of the Model Procurement Code, it must take bids for any contract, lease, or other agreement for materials, supplies (excluding fresh perishable food items), equipment, or nonprofessional services involving an expenditure in excess of \$40,000 (KRS 424.260).

Also relative to purchasing, KRS 45A.500 to 45A.540 encourage local governments to purchase through the state central purchasing office. These statutes also allow the Finance and Administration Cabinet to require contractors to follow the recycled materials guidelines for projects receiving state funding (KRS Chapter 224).

### **Guaranteed Energy Savings Contract**

Local public agencies may enter into a guaranteed energy savings contract for innovative solutions for energy efficiency in public agency buildings (KRS 45A.352 and 45A.353).

## **Interlocal Cooperation**

Cities may contract with other cities or counties, agencies of the state, agencies of other states, or agencies of the US government to perform a function or service jointly using the Interlocal Cooperation Act (KRS 65.210 to 65.300). No function may be performed jointly unless all parties to the agreement are empowered to perform the function independently (KRS 65.240). Public agencies that themselves are created by a city (such as a board, commission, special purpose governmental entity, or interlocal agency) must receive approval from the city to enter into an interlocal agreement (KRS 65.241).

An interlocal cooperation agreement, unless exempted under KRS 65.260, must be approved by the attorney general or Department for Local Government, depending on the nature of the agreement, and must contain

- the purpose and duration of the agreement;
- if the agreement creates an interlocal agency:
  - the organization, composition, authority and nature of the interlocal agency, including details regarding the governing authority membership;
  - a statement of the powers delegated to the interlocal agency, and any restrictions, limitation, or conditions placed on it; and
  - a general statement of the responsibilities of the interlocal agency to the parties that established it;
- the manner of financing the activity;
- the procedure for terminating the agreement;
- if the interlocal agreement concerns tax revenue sharing between a city and county and the county that is subject to the contract is subject to the crediting provisions set forth in KRS 68.197 or KRS 91A.080, a statement that the contract shall not be terminable without the consent of each party to the contract; and
- any other necessary and proper matters (KRS 65.250).

Agreements involving the construction, reconstruction, or maintenance of a municipal road or bridge (with a written agreement from each affected governing body of the public agency or administrative head of a public agency when there is no governing body) and agreements between school boards and local governments are exempt from the need for the approval of the attorney general or Department for Local Government (KRS 65.260).

## **Joint Contracting**

Any city may contract with any other city in the same county, or with any other county, for the performance of governmental services (KRS 79.110). The legislative bodies of the participating local governments must approve the contract, which must specify

- the type of service to be provided,
- the local government that is to provide the service,
- the area where the service is to be performed, and
- the means of payment for the service (KRS 79.120).

Where one party to the contract is the county, the contract must take into account that city residents pay county taxes as well as city taxes (KRS 79.120).

Any joint contract must be for a period of not less than 2 nor more than 4 years (KRS 79.170).

Additional rules appear in KRS 79.130 to 79.180.

Also, KRS 79.190 permits cities and counties to share the cost of construction and maintenance of streets and sidewalks, and KRS 67.083 authorizes the cooperative exercise of powers by local governments or the exchange of services, including personnel and equipment.

### **Local Government Codes Of Ethics**

KRS 65.003 requires the governing body of each city and county, including urban-county, charter county, and consolidated local governments, to adopt by ordinance a code of ethics for all elected and appointed officials and specified employees. It also requires candidates for specified local government elective offices to comply with the annual financial disclosure statements contained in local government ethics codes. All codes of ethics must include, but are not limited to, standards of conduct, requirements for financial disclosure, nepotism policies, and designation of a person or group to enforce the code. The code of ethics ordinance may be amended but cannot be repealed. Upon enactment of a code, local governments must deliver a copy of the code of ethics ordinance, proof of publication, and subsequent amendments to the Department for Local Government.

Failure to comply with the code of ethics provisions set out in KRS 65.003 will result in a loss of services and payments of money from the Commonwealth of Kentucky.

### **Recordkeeping**

#### **City Clerk**

Home rule cities must employ a city clerk, who is responsible for the maintenance and safekeeping of the permanent records of the city, the performance of the duties required of the “official custodian” or “custodian” under the Open Records Act, and the annual reporting of prescribed municipal information to the Department for Local Government (KRS 83A.085).

#### **Open Records Act**

The Open Records Law gives residents of the commonwealth the right to examine public records of public agencies, within certain limits (KRS 61.870 to 61.884). Without a court order, the following public records are exempt from the Open Records Law:

- Records containing personal information, the disclosure of which would constitute an unwarranted invasion of privacy
- Certain records confidentially disclosed to an agency and maintained for scientific research

- Records confidentially disclosed to an agency by an entity whose competitors would gain an unfair commercial advantage if the records were openly disclosed; materials disclosed in connection with a loan application or for the regulation of commercial enterprises are the records specified under this exemption
- Records pertaining to a prospective location of a business where no public disclosure has been made of the business's intention to move
- Studies made relative to acquisition of property, until the acquisition is complete
- Materials relating to examinations
- Materials of law enforcement agencies that would disclose the identity of confidential informants, prior to use; however, records compiled and maintained by county or commonwealth's attorneys pertaining to criminal investigations or litigation shall remain exempt even after use
- Preliminary drafts, notes, and certain correspondence with private individuals
- Preliminary recommendations and memoranda
- Access to databases or geographic information systems used for commercial purposes
- Records that relate to public safety that themselves relate to counterterrorism, terrorism response, or threat assessments and response, as well as other defined records
- Public or private records having historic, literary, artistic, or commemorative value accepted for archiving when nondisclosure is requested by the donor or depositor of the records, unless otherwise required to be disclosed by law
- Purely personal communications unrelated to a governmental function
- Client and case files maintained by the Department of Public Advocacy or any person contracting with the department for the provision of legal representation under KRS Chapter 31
- Photographs or videos, with exceptions, that depict certain violent crimes
- Records confidentially maintained by a law enforcement agency dealing with a law enforcement agency wellness program and early intervention system described in KRS 15.409
- Records otherwise prohibited from disclosure (KRS 61.878)

Any person has access to any public record relating to him or her personally, except that public agency employees do not have the right to inspect or copy any documents relating to ongoing criminal or administrative investigations by an agency.

Public agencies (including local governments) must display prominently, in locations accessible to the public, and on their websites

- rules and regulations pertaining to public records;
- the mailing address, email address, and phone number of the official custodian, or the custodian's designee, of the records to whom all records requests are to be made; and
- the standardized form developed by the attorney general for requesting public records that is available for use, although not necessarily required (KRS 61.876).

People generally have the right to abstract or copy (at their expense) any record not exempted from the law. During regular working hours, agencies must make suitable facilities available for inspecting nonexempt public records. The official custodian may require a written application

describing the records to be inspected. Applications may be delivered by hand, mailed, faxed, or emailed to the designated official's attention; the public agency mails copies of requested records to a person whose residence or principal place of business is outside the county where the records are located. No particular form can be designated, but the standardized form prepared by the attorney general must be accepted. Prepayment of a fee for copies of public records may be required. The fee must reflect the actual cost of the copies without including the cost of staff services required to make the copies.

An application may be refused if it places an unreasonable burden on the agency to produce the records or if it seems clearly intended to disrupt other essential functions of an agency. Blanket requests for information or for the preparation of lists not already in existence need not be honored.

A public agency must determine within 5 working days whether to comply with a request to inspect records and so notify the requesting party. Any denial for inspection is to include a statement giving the specific exception that authorizes the denial and a brief explanation of how the exception applies to the record withheld.

Public agencies are not responsible for notifying the attorney general when they deny a request to inspect a public record. If the attorney general is asked to review a denied request, that decision may be appealed to the Circuit Court within 30 days of the decision. If no appeal is filed within 30 days, the attorney general's decision has the force and effect of law.

Public agencies may charge a reasonable fee for making copies in specialized formats, to include the cost of the media and mechanical processing. If a person asks that public records be mailed, the official custodian is to mail the copies upon receipt of all fees and the cost of postage (KRS 61.872).

## **Records Retention**

The Kentucky Department for Libraries and Archives, pursuant to KRS Chapter 171, establishes rules and procedures for the maintenance and retention of public records of local governments. Pursuant to that authority, the department has promulgated administrative regulations governing the procedures for the disposal of public records and has developed model records retention and disposal schedules to be used by cities.<sup>17</sup> State law prohibits destruction of public records, except as provided by law, and also requires permanent retention of all records likely to be of continuing value to the city, state government, or researchers. The department has also established rules for the reproduction of public records by photographic, micro photographic, or digital process, as well as publications informing interested parties of the guidelines.<sup>18</sup> The General Assembly provides funding for a program for grants to local governments, to assist in the preservation and maintenance of records. The Department for Libraries and Archives administers the program.

## **Affidavits For Lost, Damaged, Or Destroyed Records**

The state requires local governments and their officers to periodically submit information to various state government agencies. One example is the uniform financial information report (UFIR) that must be submitted to the Department for Local Government. Tornadoes, flooding, and other catastrophes can damage local government offices and equipment, resulting in the loss, damage, or destruction of records beyond the control of the local government. Many times, funding is tied to the submission of these records. In the case of UFIRs, a government that fails to submit one has all state funds withheld until the local government submits it.

When Kentucky law requires the transmittal of a particular record to a governmental entity and that record has been lost, damaged, or destroyed (other than through purposeful tampering with the record to avoid having to submit the record), the city legislative body or governing boards of a special purpose governmental entity and fire departments may generate an affidavit of the problem with the record that will be sufficient for compliance with the requirement to transmit that record, preventing the levying of a punishment to the government. Certain records are exempted from this option. The local unit of government must make a good-faith effort to replace or re-create the record in question before creating and filing the affidavit with the relevant governmental entity (KRS 65.037).

## **Release Of Autopsy Media**

Autopsy photos or images, videos, or audio recordings are not generally released to the public unless the spouse or personal representative of the deceased person provides a waiver to the individual in possession of the media. Public officials are required to make the media available to certain individuals, agents, and other entities. Use of the media by authorized possessors is strictly controlled (KRS 72.031).

## **Legal Publication**

The Kentucky Revised Statutes require cities to routinely publish information concerning their activities so that the public can be informed. KRS Chapter 424 sets out detailed rules for publishing those activities. Publication can be by newspaper, including digital newspapers when applicable, by direct mail, or, in limited circumstances, via the internet.

## **Qualification Of Newspapers**

Notices to be published by newspaper may be published only in a newspaper possessing the following qualifications:

- It maintains a known office in the city for which the notice is required to be made or, if no newspaper is published in that city, it is the newspaper qualified to publish advertisements for the county.
- It is a regular issue, has a bona fide circulation, is published at least once a week in at least 50 weeks of the calendar year, and has been published for the preceding 2 years. However, a newspaper shall be deemed a regular issue even if it has not been published in the area for the

preceding 2 years, if it meets the other criteria for a regular issue, is the only paper in the publication area, and has a paid circulation equal to at least 10 percent of the population in the publication area.

- It has a name, consists of not less than 4 pages, and is the type of publication “to which the general public resorts for passing events ... and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices” (KRS 424.120). Qualifications for digital newspapers are also set out in KRS 424.120.

If more than one newspaper in a publication area meets the above qualifications, the newspaper having the largest paid circulation—as shown by the average number of paid copies of each issue listed in its published statement of ownership as filed on October 1—is the paper of record.

### **Times And Periods Of Publication**

The nature of the matter being advertised governs the timing of legal advertisements:

- Advertisements of a completed act (for example, an ordinance or report), the purpose of which is not to inform the public “that they may or shall do an act or exercise a right within a designated period,” shall be published once, within 30 days of the completed act.
- Advertisements that have the purpose of informing the public that they, on or before a certain date, may perform some act, such as filing a petition, remonstrance, objection, bid, or claim, shall be published at least once but may be published two or more times, provided that one publication occurs not less than 7 days nor more than 21 days before the date referred to.
- In the case of advertisement of delinquent taxes, or notice of the sale of tax claims, the advertisement is published either once a week for three consecutive weeks, or once, preceded by a half-page notice of advertisement the preceding week. The advertisement must identify a website where the delinquent tax list is posted; the list must be posted for a minimum of 30 days and must be updated weekly.
- Advertisements not falling within the above categories, such as notices of inspections, public hearings, due dates of taxes, or examinations, shall be published at least once, but may be published two or more times, provided that one publication occurs not less than 7 nor more than 21 days before the event (KRS 424.130).

### **Alternative Methods Of Publication**

**Direct Mailing.** Cities must publish legal notices in zoned editions of qualified newspapers that target the area for which the notice is intended (KRS 424.120). Cities may mail notices by first-class mail to all city residents in lieu of newspaper publication, if the cost of that mailing, including postage, supplies, and reproduction costs, would be less than the cost of newspaper publication (KRS 424.190).

**Internet Publication In Lieu Of Newspaper Publication.** All local governments, except counties containing a population of less than 80,000 and any cities or districts within those counties, may use “notice websites” to publish matters required to be published in newspapers. A one-time newspaper notice to the public meeting technical, time, subject matter, and internet address information is required for each advertisement. The local government must post and

maintain the publication for different times depending on the nature of the advertisement. Proof of the posting must be retained for 3 years (KRS 424.145).

### **Responsibility For Publication**

The responsibility for publication rests on whomever statute charges with the duty to publish. If a particular officer is so charged, it is the officer's responsibility to ensure proper publication; if it is the city generally that is charged to publish, responsibility rests with the city clerk or, if there is no such officer, the mayor (KRS 424.150).

### **Matters To Be Published**

**Year-End Financial Statements.** All cities, consolidated local governments, and urban-county governments must publish either a copy of their annual or biennial audit prepared pursuant to KRS 91A.040 or a copy of the financial statement prepared in accordance with KRS 424.220 (see Chapter 6 for the requirements of those statutes). Any city that contracts for an audit, before the publication of the auditor's report or a financial statement, must within 90 days after the close of the fiscal year publish a notice that it has prepared the KRS 424.220 financial statement and that the statement has been provided to each local newspaper, each news service, and each local radio or television station that has a written request for the statement on file (KRS 91A.040).

If a city only intends or is only required to publish a financial statement, it must publish the statement within 60 days after the close of the fiscal year (KRS 424.220).

**Ordinances.** Except in cities of the first class or charter county governments, ordinances cannot become enforceable before a city publishes them. Ordinances may be published in summary form, in which case the summary is to be prepared and certified by an attorney licensed to practice law in Kentucky and is to include

- the title of the ordinance;
- a brief narrative that clearly and understandably informs the public of the meaning of the ordinance; and
- the full text of each section that imposes fines, penalties, forfeitures, taxes, or fees.

All ordinances may be published in summary form. Ordinances declared to be emergency matters become effective without publication, but they must still be published within 10 days of their enactment (KRS 83A.060).

**Miscellaneous Matters.** KRS Chapter 424 requires publication of the following:

- Summary of budget, except in cities of the first class or consolidated local governments (KRS 424.240)
- Advertisement for bids for contracts or leases for materials, supplies (excluding fresh perishable food items), equipment, or nonprofessional services, involving an expenditure in excess of \$40,000 (KRS 424.260)
- General regulations of uniform application imposing liabilities or restrictions on the public, not including ordinances, promulgated by any city officer or agent (KRS 424.270)
- Due dates of ad valorem taxes (KRS 424.280)
- Invitations to bid on the sale of municipal bonds (KRS 424.360)

KRS 424.330 allows cities to publish a list of uncollected delinquent taxes that shows the name of and the amount due from each delinquent taxpayer.

## Legislative Procedure

### Open Meetings

KRS 61.805 to 61.850, popularly known as the Sunshine Law, ensure citizen access to the workings of government. These statutes require that the public be admitted to any meeting of a public agency at which a quorum is present, public business is discussed, or action is taken. *Meeting* is defined broadly to mean not just formal meetings, but “all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting.” *Public agency* includes city legislative bodies, boards, and commissions. *Quorum* is a majority of the membership of a legislative body. Even if the first three elements are present, the Open Meetings Law does not apply unless public business is discussed or action is taken. *Action taken* means “a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body” (KRS 61.805).

If the above conditions exist, the meeting must be open to the public and the press must be notified in advance of the meeting, unless one of the exceptions to the Open Meetings Law applies. If an exception is applicable, the governmental body may conduct a closed meeting. Situations for which a closed meeting may be conducted include:

- Deliberations on the future acquisition or sale of real property, but only where publicity would affect the value of the property
- Discussions relating to the appointment, discipline, or dismissal of a particular employee
- Discussion of proposed or pending litigation
- Collective bargaining negotiations
- Local cabinet meetings and executive cabinet meetings
- Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, nor the person’s representatives, nor any other individual not a member of the agency’s governing body or staff is present—this does not include any meetings of planning commissions, zoning commissions, or boards of adjustment
- Discussions with the representative of a business entity and discussions concerning a specific proposal if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business
- Meetings required to be private by federal or state law (KRS 61.810)

Closed meetings for the first two purposes listed above may be conducted only if

- notice of the meeting, the general nature of its subject matter, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session are announced at an open meeting;
- the closed meeting is approved by motion adopted by majority vote at an open meeting;

- no final action is taken at the closed meeting; and
- no matters other than those announced at the open meeting are discussed (KRS 61.815).

Additionally, the Open Meetings Law requires that regular meetings be held at specified times and places convenient to the public and that a schedule of those meetings be made available (KRS 61.820). For a special meeting to be held, it must be called by the presiding officer or a majority of the members of the public agency. Written notice must be mailed or delivered at least 24 hours before the meeting to each member of the legislative body and to each newspaper, news service, and local radio or television station that has requested notification of the meetings. Also, a written notice is to be posted at least 24 hours in advance in a conspicuous place in the building where the special meeting is to take place and in the building that houses the headquarters of the agency. A public agency may annually inform media organizations that they must submit a new written request to continue to receive notice of special meetings.

In the case of an emergency, a public agency must make a “reasonable effort” to notify the members of the agency, appropriate media organizations, and the public. At the beginning of an emergency meeting, the person chairing the meeting describes the emergency circumstances that prevented the giving of 24-hour notice; these comments become a part of the minutes (KRS 61.823). Minutes of all meetings are recorded and made available (KRS 61.835). No undue restrictions may be required for attendance at meetings. For violation of the Act, a court may void the action taken at a meeting not in substantial compliance. Penalties may be imposed on individual violators (KRS 61.991).

### **Conduct Of Meetings**

A city legislative body may take action only upon the approval of an appropriate majority of the duly constituted body. The members of the legislative body, except in commission plan cities, possess no individual municipal powers. The legislative body is to meet regularly, at least once a month, at a time and place fixed by ordinance. Special meetings may be called at any time by the mayor, a majority of the council in mayor-council plan cities, or a majority of the members in commission or city manager plan cities. The call for a special meeting must designate its purpose, time, and place. No business other than that set forth in the call may be considered at a special meeting (KRS 83A.130(11), mayor-council; KRS 83A.140(7), commission; KRS 83A.150(4), city manager).

A legislative body may take no action unless a quorum is present. A majority of the members constitutes a quorum (KRS 83A.060). The mayor counts toward a quorum in commission or city manager plan cities but does not in mayor-council plan cities. Regardless of plan, the mayor presides over the legislative body. In the mayor’s absence, the legislative body appoints one of its members to preside. The mayor may vote on all matters in commission and city manager plan cities but may vote only to break a tie in mayor-council plan cities (KRS 83A.130, 83A.140, and 83A.150).

The legislative body may speak only collectively, pursuant to votes of its members. Written devices through which a city legislative body speaks are ordinances, resolutions, and orders.

An ordinance is “an official action of a city legislative body, which is a regulation of a general and permanent nature and enforceable as a local law or is an appropriation of money” (KRS 83A.010).

A resolution is not statutorily defined but is distinguished from an ordinance as being “an act of a special or temporary character, not prescribing a permanent rule of government, but . . . merely declaratory of the will or opinion of a municipal corporation in a given matter.”<sup>19</sup>

A municipal order is “an official act of the legislative body of a municipality which is binding upon the officers and employees of the municipality and any governmental agency over which the municipality has jurisdiction” (KRS 83A.010). Orders are for such internal purposes as appointing members of city boards or commissions, or establishing procedural personnel rules.

Members of city legislative bodies have the same immunities as members of the General Assembly for statements made in debate (KRS 83A.060). Section 43 of the state constitution states that members of the General Assembly “shall not be questioned in any other place” for any speech or debate during sessions.

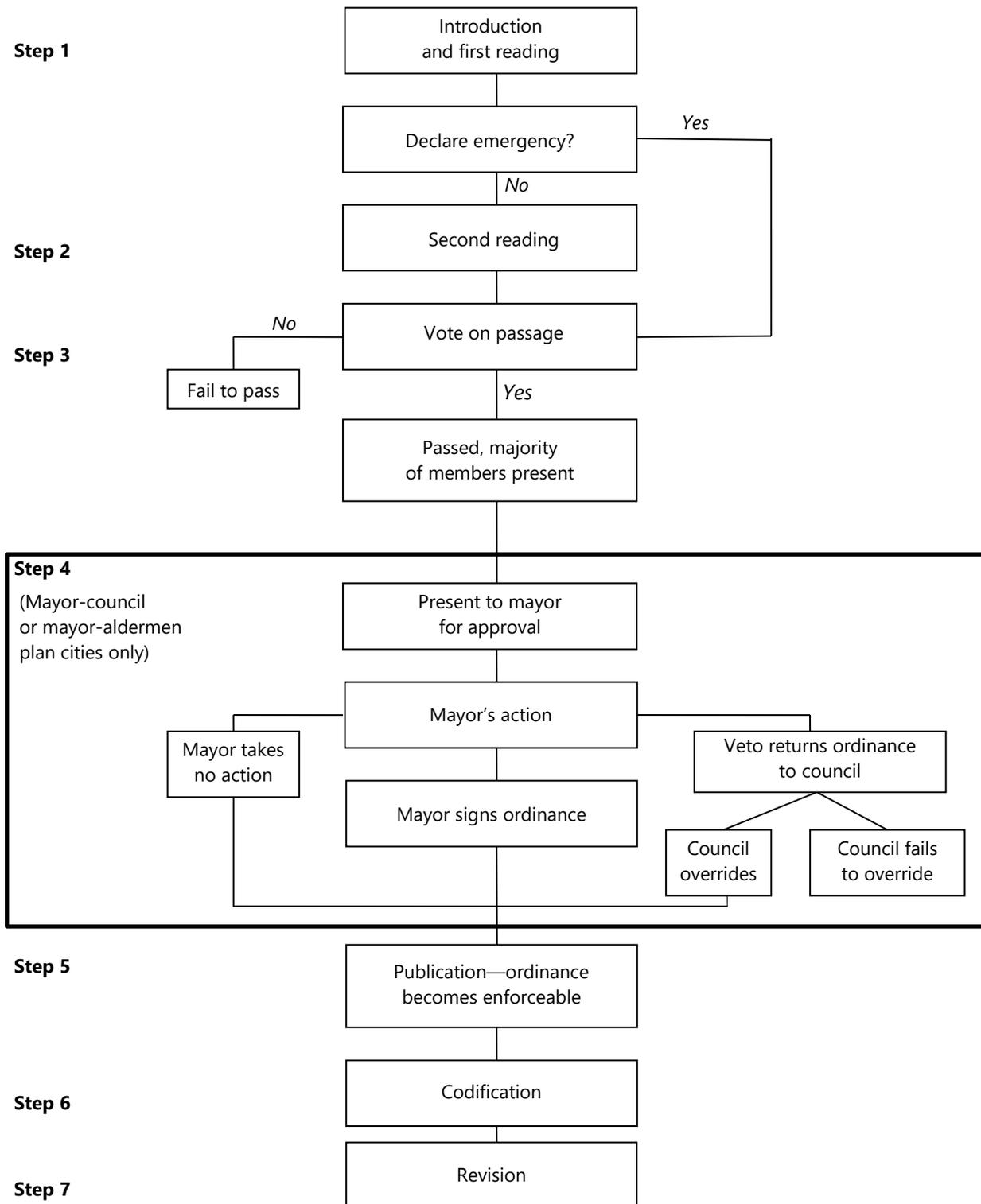
### **Enactment Of Ordinances**

KRS 83A.060 mandates a procedure for the enactment of ordinances. The procedure does not apply to orders or resolutions. It represents the minimum steps that must be followed for the enactment of ordinances. The legislative body may adopt additional requirements.

- **Step 1: Introduction Of Ordinance And First Reading.** Only a member of the legislative body may introduce an ordinance (the mayor in a mayor-council plan city is not a member of the legislative body). The requirement of a first reading may be satisfied by stating the title and reading a summary prepared by a licensed attorney that succinctly covers the main points of the ordinance and informs the public in a clear and understandable manner as to its meaning (KRS 83A.010).
- **Step 2: Second Reading.** An ordinance must be read before the legislative body twice, on separate days.<sup>20</sup> The ordinance is not voted on at the first reading; it is merely read.<sup>21</sup> The requirement of a second reading may be waived if an emergency is declared, and the ordinance is voted on after the first reading. An emergency may be declared if two-thirds of the membership of the legislative body votes to declare the emergency. The nature of the emergency must be declared in the ordinance (KRS 83A.060).
- **Step 3: Vote Upon Passage.** The ordinance may be voted on at the meeting where it is read for the second time, or after the first reading if an emergency is declared as discussed above. The vote on the ordinance must be by roll call, and a permanent record of the vote must be maintained. For an ordinance to be approved, it must receive the affirmative vote of a majority of the members voting on the ordinance (KRS 83A.060).
- **Step 4: Mayoral Approval** (mayor-council and mayor-aldermen plan cities only). Upon approval, an ordinance must be presented to the mayor for signing. Chapter 5 discusses the specific procedures for the mayor’s approval or veto relative to different forms of government. In commission or city manager plan cities, the mayor must sign ordinances, but it is a ministerial act, in that the mayor has no power to veto an ordinance.

- **Step 5: Publication.** Except in cities of the first class, in charter county governments, or in cases when an emergency has been declared, no ordinance may become enforceable until published pursuant to KRS Chapter 424. All ordinances may be summarized or published in full as determined by the legislative body. A summary must include the title of the ordinance, a brief narrative clearly explaining its meaning, and the full text of each section that imposes fines, penalties, forfeitures, taxes, or fees. It must be certified and prepared by a licensed attorney. Summaries of ordinances containing descriptions of real property may use maps in lieu of metes and bounds descriptions. Emergency ordinances, though enforceable without prior publication, must nevertheless be published within 10 days of enactment (KRS 83A.060).
- **Step 6: Indexing And Recording.** At the end of each month, all ordinances that have been adopted must be indexed and recorded as follows:
  - City budget, appropriations, and tax levies are maintained and indexed by fiscal year.
  - All other ordinances are kept in a minute book, in the order adopted, and indexed in a composite index, arranged alphabetically by subject matter, or they may be kept in a code of ordinances (KRS 83A.060).
- **Step 7: Revision.** At least every 5 years, the ordinances in the composite index or code of ordinances are to be examined and revised to eliminate “redundant, obsolete, inconsistent, and invalid provisions” (KRS 83A.060). See Figure 3.A.

**Figure 3.A**  
**Steps In Enactment Of Ordinances By Legislative Body**



Source: KRS 83A.060.

## Ordinance Format

An ordinance may be introduced before the legislative body only if it conforms to the format prescribed by KRS 83A.060. An ordinance must be in writing, relate to only one subject, have a title that clearly states its subject matter, and have an enacting clause that reads “Be it ordained by the City of \_\_\_\_\_.” Figure 3.B illustrates a sample ordinance.

**Figure 3.B**  
**Annotated Ordinance Form**

|  |   |
|--|---|
| <p>Ordinance No. ____</p> <p>AN ORDINANCE relating to _____</p> <p>Whereas ...<br/>Whereas ...</p> <p>Be it ordained by the City of _____</p> <p>Section 1. _____<br/>_____</p> <p>Section 2. _____<br/>_____</p> <p>Section 3. This ordinance shall be enforceable after its passage and upon publication.</p> <p>Enacted this ____ day of ____, [Year]</p> <p style="text-align: right;">_____<br/>Mayor</p> <p>ATTEST:<br/>_____<br/>City Clerk</p> | <p>←Title, clearly reflecting subject</p> <p>←“Whereas” clauses—not required by law, but useful in explaining intent</p> <p>←Enacting clause—all that follows is enacted as a general law; all that is above is not enacted.</p> <p>←Text</p> <p>←Effective date—may be immediate or delayed</p> <p>←Signatures—ordinances must be signed as proof that they were properly enacted.</p> |
|--|---|

Source: KRS 83A.060.

**Amending Ordinance.** Existing ordinances may be amended by a subsequent ordinance. The amending ordinance must set out the text of the ordinance to be amended or, if only a section of an ordinance is being amended, that section in full. It is not permissible to amend an ordinance by reference to its title only. To amend an ordinance, the new language being inserted into the ordinance is to be underlined. Language being deleted must be bracketed and stricken through (KRS 83A.060).

Figure 3.C illustrates how an ordinance is amended.

### Figure 3.C Amending Ordinance

|   |  |
|---|--|
| An ordinance relating to _____  |  |
| Be it ordained by the City of _____   |  |
| Section 1. Ordinance _____ is amended to read as follows:   |  |
| No person shall operate a <del>truck, automobile, or other</del> vehicle upon any city street or other thoroughfare on a <u>federal holiday or other day that is not a workday</u> <del>[Saturday or Sunday].</del> | <p>← Deleted language, no replacement</p> <p>← Added language</p> <p>← Deleted language replaced by added language</p> |

Source: KRS 83A.060.

**Repealing Ordinance.** An existing ordinance or section thereof may be repealed in its entirety by a subsequent ordinance without setting out the language of the repealed ordinance in the repealing ordinance. The ordinance being repealed must be clearly identified. Suggested language to use in repealing an ordinance is “Ordinance No. \_\_\_\_, passed \_\_\_\_\_, relating to \_\_\_\_\_, is repealed.”

**Incorporation By Reference.** The legislative body may enact an ordinance that adopts the provisions of any “local, statewide, or nationally recognized code and codifications of entire bodies of local legislation” by reference only, so that the text need not be set out in its entirety in the ordinance. For an incorporation by reference to be effective, the following requirements must be met:

- The ordinance shall identify the subject matter by title, source, and date.
- The ordinance shall state that the material is to be incorporated by reference thereto.
- A copy of the material shall accompany the ordinance.
- The material shall be made a part of the permanent records of the city (KRS 83A.060).

### Municipal Orders

The legislative body may adopt municipal orders in lieu of ordinances for either

- matters relating to the internal operation or functions of the city; or
- removal or appointment of members of boards, commissions, and agencies over which the city has control.

Orders are to be in writing and may be adopted only at an official meeting. An order may be amended either by a subsequent order or by an ordinance. Orders are kept in an official order book (KRS 83A.060).

### Ordinance Enforcement

Cities have the power to enforce violations of their ordinances. Cities may establish fines, penalties, and forfeitures, and they may secure injunctions and abatement orders to ensure compliance with ordinances (KRS 83A.065). Ordinances may expressly designate

noncompliance to be a misdemeanor or a violation. The penalties that may be imposed for these categories are

- for misdemeanors: \$500 or less, 12 months of imprisonment or less; and
- for violations: \$250 or less.<sup>a</sup>

As an alternative to or in conjunction with the above penalties, an ordinance may expressly provide that an offender will be subject to a civil penalty to be recovered in the nature of debt for failure to pay the penalty within a prescribed period of time. Ordinances may also penalize an act or an omission to act that is also a violation of the Kentucky Revised Statutes. The penalty must be equal to that imposed by statute for the same offense. Violations of city ordinances that prescribe a criminal penalty are prosecuted in the District Court by the county attorney, but violations involving civil penalties, forfeitures, injunctive relief, or abatement are the responsibility of the city attorney (KRS 83A.065).

### **Local Government Code Enforcement Board**

Effective ordinance enforcement has been difficult for cities because heavily loaded District Court dockets tend to place less emphasis on ordinance violations. The Local Government Code Enforcement Board Act—KRS 65.8801 to 65.8839—allows cities to create code enforcement boards with the power to issue remedial orders and fines for local ordinance violations, including enforcing ordinances providing for the decontamination of buildings contaminated by methamphetamine.

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<sup>a</sup> A concurring opinion of a Kentucky Supreme Court Justice (which is not case law and is still subject to further court examination) in a case before the Supreme Court of Kentucky suggested that cities may have constitutional impediments when assigning a penalty of incarceration for an ordinance. City leaders should apply caution if they wish to draft new ordinances that use jail time as a penalty, or wish to enforce existing ordinances that do so. See *Johnson v. Commonwealth of Kentucky*, 449 S.W.3d 350 (Ky. 2014).

## Chapter 4

### Municipal Powers—Home Rule

Kentucky cities possess only those powers granted by the constitution and statutes enacted by the General Assembly. This principle, called Dillon’s Rule, has been adopted in almost every state. In Kentucky, the Supreme Court has stated that as a

general rule ... a city possesses only those powers **expressly** granted by the Constitution and statutes plus such powers as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out declared objects, purposes and expressed powers [emphasis added].<sup>a 22</sup>

Before 1980, the General Assembly granted powers to cities through very specific statutes granting a narrow range of powers to perform a specific function. Those statutes had been enacted over the course of almost 100 years; many were outdated, obsolete, or conflicting. It had become very difficult for cities to cull through this vast body of laws to determine what duties and powers they possessed. The 1980 General Assembly sought to remedy this problem by repealing hundreds of these specific enabling statutes and replacing them with a single statute, KRS 82.082, that grants general powers to cities. This grant is designed to give cities the broadest possible discretion in carrying out their affairs.

As mentioned in Chapter 2, an amendment creating Section 156B of the constitution was proposed to and adopted by the electorate in November 1994, enshrining general home rule authority to cities in the constitution in addition to the prior statutory authorization in KRS 82.082.

#### Analysis Of KRS 82.082

The home rule grant is codified as KRS 82.082. It states:

A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.

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<sup>a</sup> Kentucky, until 1945, held to the minority position that cities had an inherent right to self-government in purely municipal concerns. See *McDonald v. City of Louisville*, 68 S.W. 413 (Ky. 1902). That minority position was not firmly rejected until 1960. In *Board of Trustees of Policemen’s & Firemen’s Retirement Fund v. City of Paducah*, 333 S.W.2d 515, 517 (Ky. 1960), the Court of Appeals rejected the position that cities have any inherent right to self-government: “The theory that the right of local self-government inheres in the municipalities of this state is essentially unsound, and is based upon the now discarded doctrine that the Constitution of this state is a grant or delegation of power by the people of the state to the state government, and is not, as is now generally recognized, a limitation upon a power which, merely by virtue of its sovereignty, would otherwise be absolute” (quoting *Board of Trustees of Policemen’s Pension Fund v. Schupp*, 3 S.W.2d 606, 609 (Ky. 1928)).

By enacting KRS 82.082, the General Assembly delegated all possible municipal powers to cities, subject to three significant limitations. A city may exercise any power or perform any function that is

- within the boundaries of the city,
- in furtherance of a public purpose of the city, and
- not in conflict with a constitutional provision or statute.

All three conditions must be met for a power to be properly exercisable.

### **“Within its boundaries”**

The first limitation is a territorial limitation on the exercise of the city’s power, which is effective only within the corporate area of the city. The area of a city is composed exclusively of the initial area incorporated and any additional area acquired through annexation. The powers granted by KRS 82.082 may not be exercised in an unincorporated area or in another city. However, as noted in later chapters, various statutes grant cities powers to perform specific acts extraterritorially.

### **“Is in furtherance of a public purpose of the city”**

The public purpose requirement is a somewhat novel concept for Kentucky municipal law. Before home rule, cities were limited to exercising powers that furthered a public purpose. It was presumed that if a statute granted a power, it was in furtherance of a public purpose. Therefore, individual actions of cities were examined not for whether they furthered a public purpose but for whether they conformed with statutory authority. Public purpose issues usually arose only in cases involving the use of bond proceeds or eminent domain. When the court did bring up public purpose, it seldom explained its analysis.

A typical case is *Thomas v. Elizabethtown*, where the Court of Appeals considered whether a certain use of police automobiles by the city was appropriate. The court dispensed with the argument that no public purpose was involved by blithely stating: “To take the easy phrase first, there can be little doubt but that the police automobiles are used by the city for purely ‘public purposes.’”<sup>23</sup>

Cases involving bonds issued by municipalities are also instructive. In *Industrial Development Authority v. Eastern Kentucky Regional Planning Commission*, for example, the court permitted the expenditure of public funds for the purpose of private industries because such use would help to eliminate unemployment and to develop the natural and manufactured resources of the state; hence, they furthered a public purpose.<sup>24</sup> In *City of Owensboro v. McCormick*, the court spent much time in distinguishing public use from public purpose—albeit without ever defining *public purpose*. The gist of the discussion was that *public purpose* could encompass an act that only incidentally benefited the public, while *public use* is a much narrower standard.<sup>25</sup>

Essentially, *public purpose* means that an act must benefit the city’s public at large. In an early case, *Smith v. City of Kuttawa*, the Kentucky Court of Appeals quoted with approval a New York court’s definition of *public purpose*. “[I]t is impossible to formulate a perfect definition of what

is meant by a city purpose. . . . The purpose must be primarily the benefit, use or convenience of the city as distinguished from that of the public outside of it.”<sup>26</sup>

In *Nourse v. City of Russellville*, the court stated that the purposes of municipalities are “to promote the safety, convenience, comfort, and the common welfare of their citizens by establishing and maintaining those things which tend to do so and by regulating or prohibiting those things which are hurtful.”<sup>27</sup>

### “And not in conflict with a constitutional provision or statute”

Notwithstanding the broad sweep of the grant to cities of every possible municipal power, a city is forbidden to exercise a power that is in “conflict” with either a constitutional provision or statute. The “conflict” language merely restates the well-established common law in Kentucky on the relationship of local ordinances to state law. As stated by the Kentucky Court of Appeals (now the Supreme Court): “It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid.”<sup>28</sup>

KRS 82.082 sets out a statutory definition of conflict:

A power or function is in conflict with a statute if it is **expressly prohibited** by a statute or there is a **comprehensive scheme** of legislation on the same general subject embodied in the Kentucky Revised Statutes. [emphasis added].

The definition of *conflict* covers two types of clashes between state and local laws.

The first type of conflict occurs when statute expressly prohibits a “power” or “function” and there is a direct contradiction between the laws—which may be called a grammatical conflict. Actually, the language of the statute too narrowly defines this type of conflict, because the common law will void an ordinance that prohibits an action specifically permitted by state law as well as an ordinance that permits an action prohibited by state law. The common law rule, as applied by Kentucky courts, has been stated as follows: “A conflict exists between an ordinance and a statute when the ordinance permits conduct which is prohibited by statute or prohibits conduct which is permitted by the statute.”<sup>29</sup>

The second type of conflict exists when the local government attempts to legislate in an area where the state has enacted a “comprehensive scheme of legislation on the same general subject.” Again the statute is restating a principle of common law. In *City of Harlan v. Scott*, the court struck down Harlan’s attempt to expand the list of retail establishments required to be closed on Sunday by state law: “An ordinance may cover an authorized field of local laws not occupied by general laws but cannot forbid what a statute expressly permits and may not run counter to the public policy of the state as declared by the Legislature.”<sup>30</sup>

The court elaborated on this principle in *Harlan in Boyle v. Campbell*, another case concerning Sunday closings. The court explained that “where the state has occupied the field of prohibitory legislation on a particular subject, a municipality lacks authority to legislate with respect thereto.”<sup>31</sup> Thus the theory behind preemption is that once the state legislates in such a manner as to “occupy the field,” the power of a city to legislate in the same area is removed. It follows

that, even if a local ordinance is identical to state legislation in a preempted field, “there is created a conflict of jurisdiction which nullifies the ordinance.”<sup>32</sup>

The court in *Boyle* stated that when “[t]he subject matter was fully and completely covered by this general law which expressed a state-wide public policy and by its terms indicated a paramount state concern not requiring or contemplating local action,” the state legislation will be considered to “cover the field.”<sup>33</sup>

Because it was unnecessary for decision of the case, the *Boyle* court did little more than mention the problem of determining the test for when state legislation will be said to cover the field. The court, in dicta, did cite with approval the test laid out by a California court in *In Re Hubbard*.<sup>34</sup> The court in that case was ruling on an activity of a city pursuant to a home rule constitutional provision almost identical to KRS 82.082. The California constitutional provision read: “Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”<sup>35</sup> The court set out the premise that as long as there is no grammatical conflict between the local regulation and the constitutional provision, the local laws may operate on the same subject matter embodied in state legislation when “the local regulations purport only to supplement the general [law] by additional reasonable requirements or are in aid and furtherance thereof,” provided that the state legislation did not occupy the field.<sup>36</sup>

The California court lists three situations in which it would be said that the state legislation foreclosed any local regulation of the same area. The proposition was stated in the negative, implying a presumption on the part of the court that state legislation does not as a rule totally occupy the field. State legislation on a particular subject will not be deemed to have occupied the field unless

- “the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern”;
- “the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action”; or
- “the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.”<sup>37</sup>

The Kentucky Supreme Court, in *Commonwealth v. Do, Inc.*, endorsed the *Hubbard* test for preemption as set out in *Boyle*.<sup>38</sup> However, it appeared to reject the position that state legislation can remove a local government’s ability to enact identical or nonconflicting local legislation.

The doctrine of preemption is often confused with the doctrine that provides that there can be no conflict between state and local regulation. Municipal regulation is not always precluded simply because the legislature has taken some action in regard to the same subject. The true test of concurrent authority is the absence of conflict. The mere fact that the state has made certain regulations does not prohibit local governments from establishing additional requirements, as long as there is no conflict between them.<sup>39</sup>

KRS 82.082(2) was not based on the language used by the court, but it is clear that, when it speaks of a “comprehensive scheme of legislation,” it means legislation that covers the field.

### Home Rule For Cities Of The First Class

KRS 83.420, granting home rule powers to cities of the first class, was not repealed by the 1980 General Assembly. Before Louisville was consolidated with Jefferson County, it was Kentucky’s only city of the first class, and under KRS 67C.101 it presently has access to the powers of a city of the first class. Since KRS 82.082 applies to all cities in the commonwealth, Louisville is in the curious position of having dual home rule powers. KRS 83.420 is functionally identical to KRS 82.082: “The inhabitants of each city of the first class shall constitute a corporation, with power to govern themselves by any ordinances and resolutions for municipal purposes not in conflict with the Constitution or laws of this state or of the United States.”

KRS 83.420 is the basic home rule grant, but it is the board of aldermen that implements the powers, so KRS 83.520 restates the grant in equally broad language in setting out the powers of the board. The board

shall have the power to exercise all of the rights, privileges, powers, franchises, including the power to levy all taxes, not in conflict with the Constitution, and so as to provide for the health, education, safety and welfare of the inhabitants of the city, to the same extent and with the same force and effect **as if the General Assembly had granted and delegated all of the authority and powers that are within its powers to grant to a municipal corporation as if expressly enumerated herein** [emphasis added].

In theory, at least, KRS 83.410, 83.420, and 83.520 grant cities of the first class all the power that the General Assembly may grant to a municipal corporation, but there is still a large body of laws making specific grants of power. The General Assembly, unsure of the validity of home rule, deemed it unwise to repeal the specific grants. Instead, KRS 83.520 provides that, if nothing to the contrary is contained therein, the provisions of KRS Chapters 65, 66, 76, 77, 79, 80, 91, 95 to 99, 103, 104, and 106 to 109 are to be considered permissive instead of mandatory with respect to cities of the first class. Additionally, all the powers, rights, and duties delineated in those chapters may be “modified or delegated by the legislative body to different departments and agencies of city government and any restrictions therein set forth shall not be considered abridging in any manner the complete grant of home rule set forth in this grant of power” (KRS 83.520).

This provision was designed to enable the city to have flexibility and not to be bound strictly by the forms and powers created by the statutes. If the board decides that a particular authorized procedure is inappropriate to the city’s needs, it may modify or even ignore the statute. In effect, therefore, the provision repeals the named chapters with respect to cities of the first class, so although the statutes in those chapters use *shall* as well as *may*, for cities of the first class, they are permissive.



## Chapter 5

### Organization

#### Organizational Plans

Cities may adopt three organizational plans: mayor-aldermen (limited to cities of the first class) or mayor-council; commission; and city manager.

Regardless of the plan a city chooses, all cities possess the same broad powers, those granted by home rule (KRS 82.082). When a city changes its organizational plan, it is changing only its organizational structure, not its governing authority.<sup>a</sup> Under the various organizational plans, the powers remain the same but are distributed differently. Table 5.1 shows the distribution of powers among the three most common organizational plans.

**Table 5.1**  
**Distribution Of Executive And Legislative Powers**

| Power  | Organizational Plan |            |              |
|--|---------------------|------------|--------------|
|  | Mayor-Council       | Commission | City Manager |
| Exercise executive authority                           | M                   | C          | C            |
| Supervise employees                                    | M                   | C          | CM           |
| Appoint officers                                       | M*                  | C          | C            |
| Hire employees   | M                   | C          | C            |
| Fire officers and employees                            | M                   | C          | C            |
| Act as liaison with local government                   | M                   | M          | CM           |
| Execute contracts                                      | M                   | M          | M            |
| Propose budget   | M                   | C          | CM           |
| Promulgate administrative procedures                   | M                   | C          | CM*          |
| Preside over council                                   | M                   | M          | M            |
| Exercise legislative authority                         | C                   | C          | C            |
| Establish offices                                      | C                   | C          | C            |
| Adopt budget   | C                   | C          | C            |
| Establish rules for public health, safety, and welfare | C                   | C          | C            |
| Investigate city activities                            | C                   | C          | C            |
| Remove elected officers                                | C                   | C          | C            |
| Appoint mayor pro tempore                              | M                   | C          | C            |

Note: M = mayor; C = council, commission, or board of commissioners; CM = city manager.

\* With approval of council.

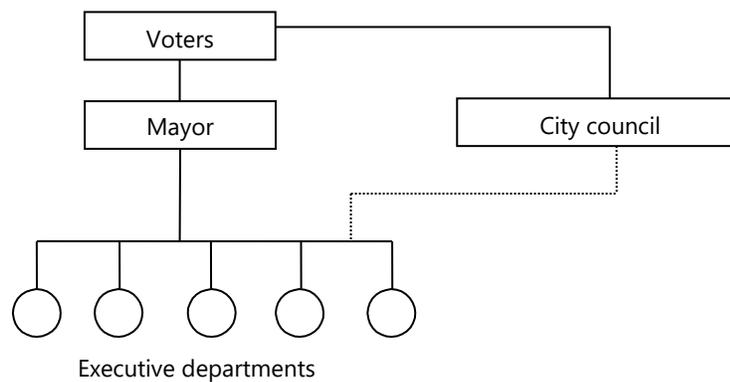
Source: Compiled by LRC staff.

<sup>a</sup> Note that under the limited circumstance of changing to or from a mayor-aldermen form of government, an organizational change can also mean a change in city class. See KRS 81.005.

## Mayor-Council Plan

The mayor-council plan is the most common structure for governance used by cities in Kentucky and in the United States. The distinguishing characteristic of the plan is a strict separation of powers between executive and legislative branches, as shown in Figure 5.A.<sup>b</sup>

**Figure 5.A**  
**Mayor-Council Plan**



Source: Compiled by LRC staff.

**Mayor.** The executive authority of the city is vested in the mayor, who

- enforces the mayor-council plan, city ordinances and orders, and applicable state statutes;
- supervises all city departments and the conduct of all city employees;
- maintains liaison with local governments with respect to all interlocal contracting and joint activities;
- reports no less than annually to the city council regarding the activities and condition of the city;
- promulgates procedures for administering city government, subject to disapproval by the council;
- presides at all meetings of the city council but is not a member of the council and does not have a vote, except to break a tie;
- makes or executes all bonds, notes, contracts, and written obligations of the city;
- appoints all city employees, except for the staff of the city council; and
- administers, at the mayor's discretion, the official oath to any elected or appointed officer of the city (KRS 83A.130 and 83A.180).

Additionally, as the executive authority, the mayor possesses the power to appoint all city officers, subject to approval by the council (discussed further in Chapter 7), and is charged with preparation and administration of the city budget (discussed further in Chapter 6).

<sup>b</sup> Most of the largest cities in the United States possess some form of a mayor-council plan of government. As the name implies, this plan vests substantial power in the hands of the chief executive. The plan is roughly analogous to the structure of private corporations. The mayor functions much as a corporate president, overseeing the day-to-day operations of the city. The legislative body functions as the board of directors, by setting policy, ratifying major decisions made by the mayor, and generally staying removed from the day-to-day operations.

The mayor possesses a strong veto power over all ordinances passed by the city council; however, if the mayor fails to either sign or veto an ordinance within 10 days, it becomes effective without a signature. When vetoing an ordinance, the mayor returns it to the council with a statement of objections. The council may override the mayor’s veto on a vote of one more than a majority of the membership (KRS 83A.130).

Via an executive order, the mayor may delegate powers and duties to subordinate officers and employees. All executive orders are kept in a permanent file (KRS 83A.130).

When temporarily absent from the city or otherwise “unable to attend to the duties of his office,” the mayor may appoint a person to perform duties, except for the duty to preside over the council, in order to provide for the orderly continuation of the functions of city government. The choice for substitute mayor is not limited to members of the council or even to city officers, although approval of ordinances or promulgation of administration procedures may be delegated only to elected officers. The mayor may rescind any action taken by the acting mayor within 30 days after that action, with approval of the council. If a mayor’s disability continues for 60 consecutive days, the council may declare the office vacant and appoint a new mayor pursuant to KRS 83A.040 (KRS 83A.130).

**City Council.** Legislative power in a city operating under the mayor-council plan is vested in a unicameral legislative body called the city council, and the council may not perform any executive function except those expressly permitted by statute (KRS 83A.130). The size of the city council is determined by its classification as either a city of the first class or a city of the home rule class.

These are the sizes of councils for cities operating under the mayor-council plan:

- For cities of the first class—12 members (KRS 83.440)
- For home rule cities—6 to 12 members, as determined by the council, by ordinance (KRS 83A.030)

The council must hold regular meetings, no less than monthly, at times and places as fixed by ordinance. The mayor or a majority of the members may call special meetings of the council. Sufficient notice of a special meeting must be given, to comply with the provisions of the Open Meetings Law (see Chapter 3 for more discussion of the Open Meetings Law). Only business specified in the call may be considered at a special meeting. Minutes are kept of the proceedings of all meetings of the council. The city clerk and the presiding officer sign the minutes. The mayor presides at meetings. The council may set by ordinance the manner in which a member of the council shall be selected to preside in the absence of the mayor (KRS 83A.130).

**If a city of the home rule class does not operate under the mayor-council plan, it operates under either the commission plan or the city manager plan, with a commission composed of four commissioners and the mayor.**

**A city could adopt the aldermanic form (city of the first class), but Louisville was the only city to do so, and no other cities are likely to adopt that form. Louisville is now merged with Jefferson County as a consolidated local government.**

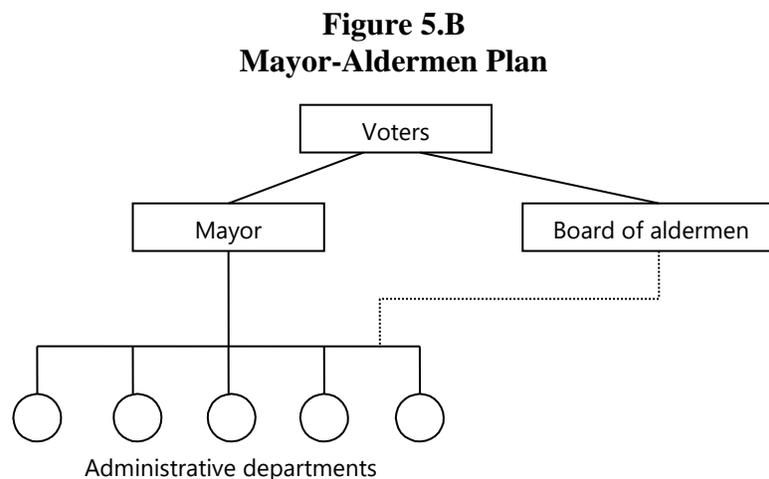
The council possesses only legislative powers. The council

- establishes all appointive offices and their duties and responsibilities;
- provides for sufficient revenues to operate the city and appropriates all those funds in an annual budget;
- establishes codes, rules, and regulations for the public health, safety, and welfare; and
- may investigate all activities of city government and, in furtherance of an investigation, may require any officer to submit a sworn statement regarding the performance of duties; if the officer under investigation is under the jurisdiction of the mayor, the mayor must be given written notice and has the right to review any statement to the council and to appear on behalf of any department, office, or agency (KRS 83A.130).

### Mayor-Aldermen Plan In Cities Of The First Class

KRS 83A.020 specifically excludes cities of the first class operating under the KRS Chapter 83 mayor-aldermen plan from the provisions of the mayor-council plan set forth in KRS 83A.130. Generally, provisions in KRS Chapter 83 relate only to the organizational structure of cities of the first class. The provisions of KRS Chapter 83A governing elections, officers, and procedure in the legislative body—KRS 83A.010 to 83A.120, 83A.160, and 83A.170—apply to cities of the first class except where specifically excepted.

Elected officials in a city of the first class are the mayor and a 12-member unicameral legislative body. Figure 5.B diagrams the organization of the government of a city of the first class.



Source: Compiled by LRC staff.

There is a strict separation of powers between the executive and legislative branches, and neither branch may exercise any power properly belonging to the other, unless specifically authorized by statute (KRS 83.430).

**Mayor.** The executive power of a city of the first class vests in the mayor, who is the chief executive officer, and in any departments and agencies as the board of aldermen appoints (KRS 83.530 and 83A.010).

When the mayor is temporarily absent or disabled, the president of the board, who is elected by the board, acts as mayor pro tempore. The board may provide additional compensation to a president serving as mayor pro tempore and may deduct that increment from the compensation paid the mayor (KRS 83.560).

The mayor, like all executive and ministerial officers, is subject to removal for cause. The removal is by impeachment before the board of aldermen. The procedure is initiated by five or more members of the board preferring charges against the mayor. Upon the preferment of charges by the five or more members, the remaining members, sitting as a court under oath, shall try the charge. The statute is silent on the minimum number of members necessary to try the charges, but a quorum is necessary for the board to take any action. Only a simple majority is needed for removal. If removed, the mayor may appeal to the Circuit Court (KRS 83.660).

KRS 83.580 generally states the powers and duties of the mayor. The powers and duties are divided into mandatory and permissive categories.

The mayor *shall*

- cause the ordinances and laws to be executed and enforced;
- keep the board informed in yearly statements of the financial and general condition of the city and provide whatever related information the board may request;
- recommend legislation by written message to the board;
- fill all executive and ministerial offices and all other positions, the filling of which is not otherwise provided, subject to approval of the board;
- exercise general supervision over all executive and ministerial officers and see that their duties are honestly performed;
- send by January 31 of each year to the Department for Local Government prescribed city information, which includes
  - names of the mayor and members of the board of aldermen;
  - name of clerk of the board of aldermen;
  - name of city treasurer;
  - name of city attorney;
  - name of finance director;
  - name of police chief;
  - name of fire chief;
  - names of public works directors;
  - name, mailing address, and phone number of the city; and
  - name and phone number of contact person who may be reached between 8 a.m. and 4:30 p.m.; and
- appoint to those seats that are not subject to prior qualification on a board or commission an equal number of members from each county commissioner's district into which the authority of the board or commission extends.

The mayor *may*

- remove from office, by written order, any officer appointed by the mayor, unless otherwise provided by law;

- appoint personal staff and remove them at pleasure;
- require information concerning duties from any executive and ministerial officer; and
- administer oaths.

The mayor may recommend reorganization of any agency or administrative department under mayoral control. A proposed reorganization may be effected only by ordinance. The mayor may also appoint advisory or study commissions to assist in the task of reorganization (KRS 83.590). Ordinances or resolutions passed by the board, except a resolution to adjourn, are subject to veto by the mayor. Appropriation ordinances are subject to a line-item veto power.

The mayor's veto power may be exercised only actively; if the mayor fails to sign or disapprove a measure, it becomes effective without signature on the day the board holds its next meeting, if at least 3 days have elapsed since its presentation to the mayor (KRS 83.500). The board may override a veto at not later than the second meeting after a measure has been returned to it, by a vote of two-thirds of the membership.

KRS 83.580 gives the mayor the power to fill all vacancies, subject to the approval of the board. However, KRS 83.570 gives the mayor an unrestrained power to appoint and remove at pleasure all department heads.

**Board Of Aldermen.** The legislative authority of a city of the first class vests in the 12-member board of aldermen (KRS 83.440). Members are elected by ward pursuant to KRS 83A.100. There is no provision for removal of aldermen except for impeachment by the General Assembly. KRS 83.660, which gives the board the power to remove city officers, applies only to executive and ministerial officers, not to legislative officers. KRS 83A.040 does not apply to cities of the first class. Any member of the board may be punished for disorderly conduct (KRS 83.470).

The first meeting of the board is to be held within 7 days after the members take office. Thereafter, the board is to hold two regular meetings each month. The mayor may call special meetings at any time (KRS 83.480). The location of the meetings must be in the city, is fixed by ordinance, and cannot be changed, except by a vote of two-thirds of the board (KRS 83.480).

The majority of the membership of the board constitutes a quorum. A lesser number may adjourn from day to day. The board adopts rules to govern proceedings and may prescribe fines to enforce the attendance of members (KRS 83.480).

KRS 83.500 sets out procedural requirements for the enactment of ordinances and resolutions by the board:

- **Step 1:** The ordinance or resolution is introduced. An ordinance encompasses only one subject, and the title must reflect that subject.
- **Step 2:** The ordinance or resolution is read in full at a succeeding meeting. Free discussion must be permitted. The ordinance or resolution may be put to a vote.
- **Step 3:** Any ordinance or resolution enacted by the board, except for a resolution to adjourn, is immediately be presented to the mayor for signature or veto. If the mayor fails to take any action on an ordinance or resolution presented by the time of the next regular meeting of the

board, and if at least 3 days have elapsed since presentation, the ordinance or resolution becomes effective without signature.

- **Step 4:** If vetoing the ordinance or resolution, the mayor returns it to the board and enters any objections in the journal. If the board reconsiders the vetoed measure, it must do so within two meetings after the measure is returned. A two-thirds majority of the board is needed to override the veto. If the veto is overridden, the measure becomes effective without the mayor's signature.

Any ordinance enacted may be repealed or amended through the enactment of another ordinance.

KRS 83A.060 also provides a procedure for the enactment of ordinances that is applicable to all cities and forms of city government. There is no conflict between the statutes, except for the majority required to override a veto, and they may easily be read together. This does not mean that cities of the first class may ignore KRS 83A.060; instead, it means they must follow the procedure set out therein and in KRS 83.500.

KRS 83.520 grants broad home rule powers to the board of aldermen, as discussed in Chapter 4.

The board of aldermen establishes any executive departments of the city as it “deems necessary and proper for the efficient administration of governmental matters of the city” (KRS 83.570). The board also designates the duties and powers of those offices. The offices must be under the supervision of a director appointed by the mayor. The directors hold office until they resign or are removed. They appoint and remove at pleasure (unless civil service laws apply) the employees of their offices. All offices and agents of the city not required by law to be elected or appointed in any other manner are elected or appointed as prescribed by the board (KRS 83.610).

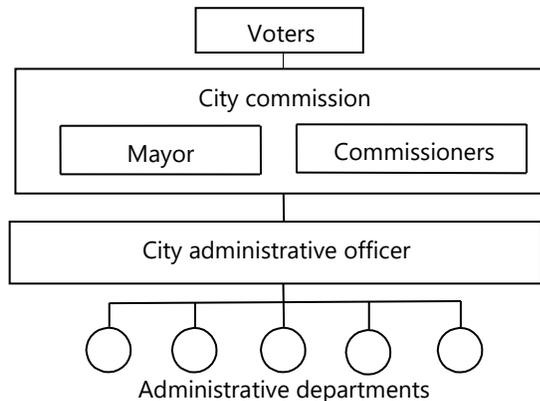
It is also the board that is charged with implementing any reorganization of city agencies or departments suggested by the mayor (KRS 83.590). Appointments made by the mayor require board approval unless otherwise provided (KRS 83.580).

Unless otherwise provided, the board may impeach and remove any executive or ministerial officer of the city. Charges may be preferred against any officer by the mayor or by two members of the board or, if the charges are against the mayor, by five members of the board. The board, sitting as a court under oath, shall try the charge. Any person removed may appeal to the Circuit Court (KRS 83.660).

### **Commission Plan**

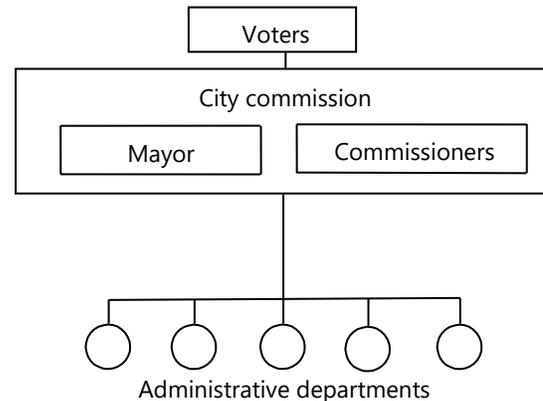
The commission plan is a significantly different organizational arrangement from the mayor-council plan. Instead of powers being divided between the executive and legislative branches, all executive, legislative, and administrative powers vest in the unicameral legislative body called the city commission. The organizational chart for a commission plan is shown in Figures 5.C and 5.D. Two options are available, since the commissioners may delegate their administrative duties to a city administrative officer. The commission plan government is composed of a mayor and four commissioners, who together make up the city commission (KRS 83A.140).

**Figure 5.C**  
**Commission Plan**  
**With City Administrative Officer**



Source: Compiled by LRC staff.

**Figure 5.D**  
**Commission Plan**  
**With No City Administrative Officer**



Source: Compiled by LRC staff.

**Mayor.** All legislative, executive, and administrative powers of the city vest in the commission. Other than acting as the titular head of the city, the mayor's only formal duties are presiding at meetings of the commission, calling special meetings of the commission, administering oaths, and executing and signing all bonds, contracts, notes, and written obligations of the city. As a member of the commission, however, the mayor is a fully participating member with the right to vote on all matters.

Unlike the mayor in the mayor-council plan, the mayor, when temporarily absent, may not appoint a substitute. Instead, the commission designates one commissioner as mayor pro tempore. If the mayor's disability continues for 60 consecutive days, the commission may declare the office vacant and appoint a new mayor (KRS 83A.140).

**City Commission.** All legislative, executive, and administrative power of the city vests in the city commission. Commissioners have two roles. First, as a group they perform corporately the familiar legislative functions as well as executive functions. Second—and this is the unique aspect of the commission plan—the commission members individually perform administrative functions.

In its legislative/executive configuration, the commission

- enforces the commission plan, ordinances, orders, and applicable statutes;
- maintains liaison with other units of local government respecting interlocal contracting and joint activities;
- classifies the various administrative and service functions of the city under departments and prescribe functions and duties;
- prepares a report on the condition of the city not less than annually;
- supervises all departments of the city and the conduct of the officers and employees, and may require any officer or employee to submit a sworn statement regarding the officer's or employee's performance;

- promulgates codes, rules, and regulations necessary for the public health, safety, and welfare of the residents of the city;
- establishes all appointive offices;
- provides for sufficient revenue to operate the city and appropriates such funds in an annual budget;
- promulgates procedures to ensure the orderly administration of city government;
- may declare the office of mayor to be vacant if the mayor’s disability continues for 60 consecutive days and may appoint a new mayor; and
- delegates, at its first meeting, which commission member has supervision over each city department; or may delegate responsibility for overall supervision to a city administrative officer (KRS 83A.140).

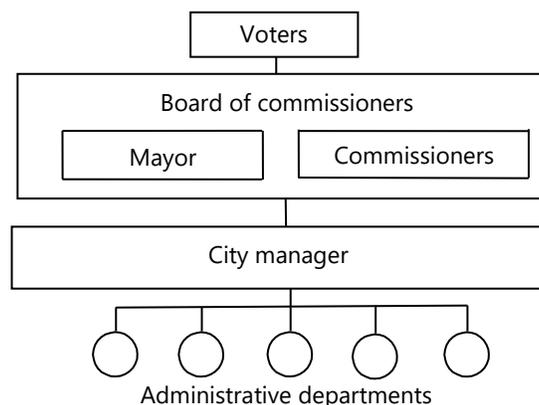
The commission is to meet at least monthly, at times and places fixed by ordinance. The mayor or a majority of the commission may call special meetings. Only subjects specified in the call may be considered at a special meeting. The presiding officer and the city clerk take minutes of all meetings and sign them (KRS 83A.140).

In a model commission plan, the commissioners act in their individual capacities as heads of the city departments. KRS 83A.140 merely states that the commission shall create the necessary city departments and delegate a commission member to have supervision over each department. The commissioners may delegate their responsibility for supervision of the city departments to a city administrative officer established pursuant to KRS 83A.090 (KRS 83A.140).

### City Manager Plan

The city manager plan is similar to the commission plan, in that it provides for a mayor and four commissioners, who together make up the board of commissioners, which possesses the legislative and executive powers of the city, but it differs by vesting the administrative powers in an appointed official called the city manager (KRS 83A.150). Figure 5.E illustrates the organizational chart for the city manager plan.

**Figure 5.E**  
**City Manager Plan**



Source: Compiled by LRC staff.

**Mayor.** The mayor in the city manager plan, outside of the position as a member of the board of commissioners, is only the titular head of the city. KRS 83A.150 explicitly states that aside from being recognized as the head of government by the governor for purposes of military law, the mayor has no regular administrative duties. All executive power vests in the board. The only duty of the mayor outside the position as a member of the board is to administer oaths and to make and execute all bonds, notes, contracts, and written obligations that the board authorizes. As a member of the board, the mayor is the presiding officer. As in the commission plan counterpart, the mayor, if temporarily absent, cannot appoint a substitute; instead, a mayor pro tempore is elected from among the commissioners. If the mayor's disability extends for 60 consecutive days, the board may declare the office vacant (KRS 83A.150).

**Board Of Commissioners.** The board of commissioners is composed of four commissioners and the mayor (KRS 83A.030). All legislative and executive authority vests in the board. The commission

- establishes all appointive offices;
- promulgates codes, rules, and regulations necessary for the health, safety, and welfare of the residents of the city;
- provides for sufficient revenue to operate the city and appropriates funds in an annual budget;
- requires any officer or employee of the city to make a sworn statement regarding the performance of official duties; and
- creates the office of city manager and sets the qualifications for office (KRS 83A.150).

The board is to meet at least monthly, at times and places fixed by ordinance. The mayor or a majority of the board may call special meetings of the board. No business other than that specified in the call is considered at the special meeting. The mayor (or, in the mayor's absence, the mayor pro tempore) presides at meetings. The board may meet in a closed session to conduct a performance evaluation of the city manager but may only do so twice per calendar year. The presiding officer and the city clerk take minutes of the proceedings of the board and sign them (KRS 83A.150).

**City Manager.** In a city operating under the city manager plan, the board of commissioners must establish the office of city manager.<sup>40</sup> The manager is appointed by vote of a majority of the members on the board for an indefinite term and is removable only by a vote of a majority of the board. The manager may be removed only after the following procedure: Thirty days before the proposed date of termination, the board adopts a preliminary resolution setting out the reasons for dismissal. The preliminary resolution may suspend the manager, who continues to be paid compensation for the next calendar month after the adoption of the resolution. Upon receipt of the resolution, the manager may request a full public hearing before the board. If requested, the board must hold a hearing not earlier than 20 days or later than 30 days after the request. The board may then adopt a resolution of removal if necessary (KRS 83A.150).

The board sets qualifications for the manager, which include "professional training or administrative qualifications with special reference to actual experience in or knowledge of accepted practice regarding duties of the office" (KRS 83A.150)."

The manager is the chief administrative officer of the city and exercises the following executive powers and whatever other powers may be delegated by ordinance. The manager

- has direct responsibility to the board for the proper administration of all assigned duties;
- recommends personnel decisions to the board for its action;
- may appoint persons to temporary positions without approval of the board, subject to any conditions the board may impose;
- prepares and submits a budget proposal to the board and is responsible for its administration once adopted;
- keeps the board advised of the financial condition of the city and makes recommendations as deemed advisable;
- maintains liaison with other local governments regarding interlocal contracting and joint activities;
- supervises all city departments and the conduct of the employees and officers and requires reports from them as deemed desirable;
- enforces the city manager plan, ordinances, and applicable statutes; and
- promulgates procedures to ensure the orderly administration of the functions of the city, subject to approval by the board (KRS 83A.150).

The city manager may delegate powers and duties to subordinate officers, and all of those delegations are to be by municipal order (KRS 83A.150).

### **Procedure To Change Plan**

Pursuant to KRS 83A.160, a city may change its plan of government, if approved by the city's residents, pursuant to the procedure outlined for public questions under KRS 83A.120. Any city may elect to be governed under any of the three plans. However, a city may not change its plan of government more often than every 5 years.

When voters approve a change, the effective date of the change will depend on when the proper number of legislative body members can be secured. If the new plan results in a reduction of members, the effective date will be the date of the expiration of the terms of the members (if they are all elected at the same time) or when the terms of enough members have expired to have compliance (if the members are elected on a staggered basis). If the change results in an increase in membership of the legislative body, the effective date is to be designated at the time a sufficient number of members can be elected. A city is to be in compliance no more than 2 years after the voters adopt the new plan. After the change, the corporate entity of the city remains the same, and all statutes or ordinances in force not inconsistent with the new plan remain in effect (KRS 83A.160).

**When Change In Plan Of Government Means Reclassification.** If a city goes either to the mayor-aldermen form of government or from the mayor-aldermen form of government to a mayor-council, mayor-commission, or city manager plan, such a change also initiates a city classification change. The city classification system in force after January 1, 2015, is based on the city governance model, rather than being based on population as in the old system. See "Classification" under Chapter 3 of this publication for more information regarding classification.

## Elected City Officers

No matter which plan of government a city elects, KRS 83A.030 requires a mayor and a legislative body. No other elected offices are authorized by statute, nor may they be created by ordinance. If there were other elected offices as of July 15, 1980, the offices may continue until expressly abolished by ordinance passed by the legislative body.<sup>c</sup> No elected office may be abolished until the termination of the term of the current officeholder (KRS 83A.080). Section 160 of the constitution discusses municipal officers; see Chapter 2 of this publication for more discussion of that section.

### Mayor

Every city has a separately elected official who is called the mayor (KRS 83A.030). A mayor's powers and organizational position depend on the plan of government adopted by a city.

**Qualifications.** To qualify for the office of mayor, a person must

- be 25 years of age,
- be a qualified voter in the city,
- reside in the city for the duration of the term (KRS 83A.040), and
- not be interested in any contract with the city (KRS Chapter 61).

**Election And Tenure.** The mayor is elected for a 4-year term or until a successor qualifies. The mayor is elected at the regular election in November and takes office on January 1 (KRS 83A.040). In cities of the first class and in cities included on a registry compiled by the Department for Local Government as set out in KRS 83A.024, the mayor may serve only three successive terms.<sup>41</sup> The mayor may be elected on a nonpartisan basis if the voters adopt such a plan (KRS 83A.050).

**Vacancies.** The filling of temporary vacancies in the office of mayor differs depending on governmental plan. The legislative body fills any permanent vacancy in the office within 30 days. If it fails to act within that period, the governor fills the vacancy (KRS 83A.040).

**Removal.** The mayor, except in cities of the first class, may be removed for reasons of "misconduct, incapacity, or willful neglect in the performance of the duties of his office." The mayor is afforded the right to a "full public hearing" and has a right of appeal to the Circuit Court. Removal may be accomplished only by a unanimous vote of the entire legislative body. If removed, the mayor is ineligible "to fill the office vacated before the expiration of the term to which originally elected" (KRS 83A.040).

In cities of the first class, the mayor, like all executive and ministerial officers, is subject to removal for cause. The removal is by impeachment before the board of aldermen. The procedure is initiated by five or more members of the board preferring charges against the mayor. Upon the preferment of charges by those members, the remaining members, sitting as a court under oath,

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<sup>c</sup> Before 1980, the following offices could be elective: comptroller and inspector (first class); jailer (second class); treasurer, assessor, and attorney (second and fourth classes); marshal (third and sixth classes); and clerk, collector, and chief of police (fourth class) using the classes established in the former, repealed classification system.

try the charge. If removed, the mayor may appeal to the Circuit Court (KRS 83.660). As a note for removal of all elected officers, a public official convicted under KRS 522.050 for “abuse of public trust” could be subject to removal from office and prevented from holding further public offices.

**Compensation.** The compensation of the mayor, as for all elected officers, is fixed not later than the first Monday in May in the year of election. The compensation cannot be changed during the term of office (KRS 83A.070). The compensation of the mayor may not exceed the annual maximum set by the Department for Local Government. (See the discussion of Section 246 of the Kentucky constitution on page 11 for limitations on the amount of compensation that may be paid as well as Section 160 regarding changes in pay after election or appointment or otherwise during the officer’s term.)

**City Officer Training Program—Mayor’s Participation.** The General Assembly established a city officer training program that allows city officers, including mayors, to receive additional payment for the completion of 15 hours of qualifying training per year (KRS 64.5277 to 64.5279). The base amount awarded is no less than \$100 and no more than \$500. There is also an annual multiplier for years of training completed consecutively. This training incentive does not count as compensation for the calculation of retirement benefits. Any officer training program established by a city is established by ordinance. The Kentucky Revised Statutes do not mandate this incentive program. The statutes establishing the program make it purely permissive, depending on the decision of each city to enact or not enact such a training incentive program.

### **Legislative Body Members**

Every city has a unicameral legislative body. The name of that body, as well as the number of its members, varies according to the plan and the class of the city (KRS 83A.030).

**Qualifications.** To qualify as a member of a city legislative body, a person must

- be 21 years of age,
- be a qualified voter in the city,
- reside in the city for the duration of the term (KRS 83A.040), and
- not be interested in any contract with the city (KRS Chapter 61).

**Election And Tenure.** A member of a city legislative body is elected for a 2-year term. The election is at the regular November election, and newly elected members’ terms commence January 1 in the year after their election (KRS 83A.040).

There are two options that a city may adopt with respect to the election of legislative body members:

- Ward election (KRS 83A.100)
- Nonpartisan elections (KRS 83A.170)

The legislative body may by ordinance require that members be elected by ward. If so, the city is divided into a number of wards equal to the number of legislative body members. The wards are to be as nearly equal in population as practicable and are reapportioned at least as often as every

federal census. Each member of the legislative body must reside in a different ward. Members continue to be voted on citywide in the general election but are nominated in the primary election only by the voters in the ward they seek to represent. Nomination by the voters of the ward in the primary applies only where the candidates are seeking the nomination of a political party and does not apply in nonpartisan elections. Wards may be abolished by ordinance. No creation, abolition, or alteration of wards can occur later than the first Wednesday after the first Monday in November of the year preceding the year in which the city legislative offices will appear on the ballot (KRS 83A.100).

The legislative body in any city may by ordinance provide that all elected officers are to be elected on a nonpartisan basis. Adoption of the ordinance may not be later than 23 days before the date established by law for filing notification and election declaration forms. The manner of election may not be changed more often than every 5 years (KRS 83A.050).

In nonpartisan elections, candidates run without reference to political beliefs or associations. No person may be a candidate in the November election unless nominated in the primary election, except in cities that opt not to hold a nonpartisan primary (KRS 83A.045). To run in the primary, a person must, no later than the first Friday following the first Monday in January before the day fixed by KRS Chapter 118 for holding a primary for nominations for the office, file with the county clerk or secretary of state a petition signed by at least two registered voters in the city (KRS 83A.045, 83A.047, and 83A.170). In the primary election, the two applicants receiving the highest number of votes for each office are nominated (or, in the case of at-large election for legislative body members, a number of applicants receiving the highest number of votes equal to twice the number of seats on the legislative body to be filled). If no more than two persons apply for an office (or, for at-large legislative body races, if the number of applicants is no more than twice the number of seats), no primary is held and those persons are deemed to be nominated. In the general election, the nominee receiving the highest number of votes for each office is elected; in the case of at-large election for legislative body members, a number of nominees receiving the highest number of votes equal to the number of vacancies on the legislative body are elected (KRS 83A.170). KRS 83A.045 permits cities to forgo nonpartisan primaries.

If a city does not adopt the provisions of KRS 83A.170, the election of officers is governed by the general elections laws as provided in KRS Chapters 116 through 121 (KRS 83A.050).

**Vacancies.** A vacancy on the legislative body is filled within 30 days by the legislative body. If it is not filled within that period, the legislative body loses the power to fill the vacancy and it may be filled only by the governor.<sup>42</sup> If there are two or more vacancies, they are filled serially, so that the earlier appointees may vote on the later appointments. As long as one member remains on the legislative body, the legislative body has the power to fill vacancies.<sup>43</sup> If all seats become vacant, the governor appoints a sufficient number of members to constitute a quorum, and those members subsequently appoint persons to the remaining vacancies. The legislative body has no power to fill a vacancy until the vacancy actually occurs (KRS 83A.040). Any person appointed to fill a vacancy serves only until the next regular election, unless the election occurs less than 3 months after the vacancy occurs. At the election, a person is elected to fill the term remaining. If there is less than 3 months between the actual vacancy and the election, the appointee serves until the second succeeding election, at which time the position

would be filled for any remaining portion of the original term.<sup>44</sup> When legislative body members are elected on a nonpartisan basis pursuant to KRS 83A.170, additional requirements apply. If the vacancy occurs more than 160 days before the date of the primary, candidates seeking election to the vacated office must be nominated in the primary and be elected in the regular election in accordance with KRS 83A.170. If the vacancy occurs 160 days or fewer before the primary, candidates do not run in the primary; they run only in the regular election.<sup>45</sup> However, to appear on the ballot for the regular election, a candidate must follow the procedures required of candidates seeking nomination pursuant to KRS 83A.045, 83A.047, 83A.175, 118.365, and 118.375 (KRS 83A.165).

**Removal.** Except in cities of the first class, a member of the legislative body may be removed for reasons of “misconduct, incapacity, or willful neglect in the performance of the duties of his office.” The member is afforded the right to a public hearing and may appeal the decision of the body to the Circuit Court. A unanimous vote of the members of the body, excluding the member who is the subject of the removal action, is necessary for removal (KRS 83A.040).

In cities of the first class, there is no provision for removal of an alderman except impeachment by the General Assembly, since KRS 83A.040 is made specifically inapplicable to cities of the first class and since KRS 83.660, which gives the board of aldermen the power to remove city officers, applies only to executive and ministerial officers, not to legislative officers.

Any member of the board of aldermen in a city of the first class may be punished for disorderly conduct by a vote of the board (KRS 83.470). As a note for removal of all elected officers, a public official convicted under KRS 522.050 of “abuse of public trust” could be subject to removal from office and prevented from holding further public offices.

**Compensation.** The compensation of members of the legislative body is fixed no later than the first Monday in May in the year of their election. The compensation is not to be changed during the term of the members (KRS 83A.070). The compensation of a legislative body member may not exceed the rate set by the Department for Local Government (KRS 83A.075). The discussion of sections 246 and 160 of the Constitution of Kentucky in Chapter 2 of this document covers limitations on the amount of compensation that may be paid. Elected officers may be paid by salary or on a per diem basis. This change came in response to an Opinion of the Attorney General that said members may not be paid on a per-meeting basis.<sup>46</sup>

**City Officer Training Program—City Legislative Body Members’ Participation.** The General Assembly established a city officer training program (KRS 64.5277 to 64.5279). This optional program allows city officers, including city legislative body members, to receive additional payment for the completion of 15 hours of qualifying training per year. The base amount awarded is \$100 to \$500. There is also an annual multiplier for years of training completed consecutively. This training incentive does not count as compensation for the calculation of retirement benefits. Any officer training program established by a city is established by ordinance. The Kentucky Revised Statutes allow each city to decide whether to enact such a training incentive program.



## Chapter 6

### Finance And Revenue

This chapter provides an overview of three major topics related to municipal finance:

- Financial administration—the structure and requirements for budgets, audits, and financial oversight of cities
- Taxation and fees—revenue sources for cities
- Bonding—parameters for borrowing by cities

#### Part 1: Financial Administration

This section provides an overview of the legal requirements for cities relating to adoption of a budget, financial recordkeeping, and audits.

#### City Budgets

The budget is the primary fiscal document under which cities operate. Preparation of the budget requires estimation of both revenues and expenditures for each fiscal year. Budget requirements for cities are included in the constitution and in KRS Chapter 91A. Section 157b of the constitution provides as follows relating to budgets:

Prior to each fiscal year, the legislative body of each city, county, and taxing district shall adopt a budget showing total expected revenues and expenditures for the fiscal year. No city, county, or taxing district shall expend any funds in any fiscal year in excess of the revenues for that fiscal year. A city, county, or taxing district may amend its budget for a fiscal year, but the revised expenditures may not exceed the revised revenues. As used in this section, “revenues” shall mean all income from every source, including unencumbered reserves carried over from the previous fiscal year, and “expenditures” shall mean all funds to be paid out for expenses of the city, county, or taxing district during the fiscal year, including amounts necessary to pay the principal and interest due during the fiscal year on any debt.

KRS Chapter 91A provides additional details and establishes requirements for the preparation, adoption, and administration of city budgets.

#### Preparation Of The Budget Proposal (KRS 91A.030)

- **Budget Preparation Ordinance.** The legislative body adopts a budget preparation ordinance to guide the executive authority in preparing the proposed budget.
- **Budget Preparation Is An Executive Function.** The executive authority or city manager (depending on the form of government) prepares the budget proposal and budget message in accordance with guidelines established by ordinance. There is no required form or format for the budget.

- **Required Budget Message.** The budget message must include an explanation of the goals established by the budget; must identify important features and activities anticipated in the budget; must explain differences from prior-year goals, programs, and appropriation levels; and must explain major changes in fiscal policy.
- **Time For Submission.** The budget proposal and budget message must be submitted to the legislative body by 30 days before the beginning of the fiscal year the budget covers.

### **Budget Adoption (KRS 91A.030)**

- **Legislative Body Must Adopt An Annual Balanced Budget.** The legislative body of each city must, before July 1 of each year, adopt a budget ordinance covering 1 fiscal year. Anticipated appropriations may not exceed anticipated revenues in the adopted budget.
- **Debt Service.** The budget must include the amount necessary to meet debt service payments during the fiscal year.
- **Prior Year Budget Applies If Legislative Body Fails To Adopt A Budget.** If a city fails to adopt a budget ordinance, the budget ordinance of the previous fiscal year has full force and effect as if readopted.
- **Expenditures Must Match Budget.** No expenditures may be made that are not in accordance with the budget ordinance.
- **Budget Amendments.** The legislative body of the city may amend the budget after adoption (KRS 91A.030).
- **Publication.** Immediately after the adoption of the budget, every city (other than a city of the first class or a consolidated local government) must publish a summary of the budget or the text of the budget in the newspaper (KRS 424.240).
- **Maintenance Of City Records.** The city budget, appropriations of money, and tax levies must be maintained and indexed so that each fiscal year is kept separate from other fiscal years (KRS 83A.060).

**Budget Administration.** Administration of the city budget is the responsibility of the executive authority of the city (KRS 83.530, 83A.130, and 83A.140), or of the city manager in cities that use that system (KRS 83A.150).

- **Accounting System.** The accounting system used in administering the budget must be organized and operated on a fund basis, must comply with all statutory provisions, and must “determine fairly and with full disclosure the financial operations of constituent funds and account groups of the city in conformity with generally accepted governmental accounting principles” (KRS 91A.020). The principles are “those standards and procedures promulgated and recognized by the Governmental Accounting Standards Board,”<sup>a</sup> an independent body that establishes standards of accounting and financial reporting for state and local governments (KRS 91A.010).
- **Reporting Requirements.** The executive authority or city manager must file with the legislative authority of the city operating statements including budgetary comparisons for each fund included in the annual budget at least every 3 months.
- **Contracts, Obligations, And Agreements Beyond Appropriations Void.** The statutes prohibit any city agency or any member, director, officer, or employee of a city from binding

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<sup>a</sup> gasb.org

the city beyond the amount appropriated for any individual purpose. Any contract, agreement, or obligation beyond existing appropriations is void (KRS 91A.030).

### **Audit And Reporting Requirements**

KRS 91A.040 establishes requirements for city audits. KRS Chapter 424 establishes general publication requirements.

#### **Requirements For All City Audits**

**Who May Conduct Audits.** Audits must be performed by the auditor of public accounts or a certified public accountant pursuant to a written contract. In a consolidated local government, KRS 67C.133 requires that the auditor of public accounts conduct the audit.

**Completion Date.** Audits must be completed by February 1 of the year immediately after the fiscal year subject to the audit.

- **Presentation.** The audit must be presented to the governing body of the city.
- **Reporting.** Within 10 days after completion of the audit and presentation to the city governing body, three copies of the audit must be submitted to the Department for Local Government. The department must forward a copy of the audit to the Legislative Research Commission.
- **Publication Requirements.** Within 30 days of presentation of the audit to the governing body, an advertisement must be published in accordance with KRS Chapter 424, including the information required by KRS 91A.040. Cities may use alternative publication methods when the cost of standard publication exceeds the cost of delivering notice by first-class mail to each residence (KRS 424.190).
- **Sufficiency Of Information In The Audit.** Except for statutory or judicial requirements or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.950 to 6.975, a copy of the audit is sufficient for any official request for financial data (KRS 91A.040).

#### **Audit Requirements For Cities Of 1,000 Persons Or Fewer**

A biennial audit is permitted at the close of each odd-numbered year with an electronic copy of a financial statement in even-numbered years forwarded to the Department for Local Government (KRS 91A.040).

#### **Audit Requirements For Cities Of Fewer Than 2,000, But More Than 1,000 Persons**

A city with a population between 1,000 and 2,000 may elect to have an audit performed every other fiscal year to cover the 2 fiscal years occurring since the prior audit

- by having the auditor of public accounts or a CPA audit the funds of the city at the close of each odd-numbered fiscal year and by forwarding an electronic copy of its financial statement to the Department for Local Government; or

- in lieu of a formal audit, by forwarding an electronic copy of its financial statement to the Department for Local Government at the end of each even-numbered fiscal year (KRS 91A.040).

### **Audit Requirements For Any City That Receives Or Expends Less Than \$150,000 And Has No Long-Term Debt In Any Year**

Any city, no matter the population, that has no long-term debt and receives or expends from all sources and for all purposes less than \$150,000 does not have to complete an audit for that year. Instead, the city must prepare an annual financial statement in accordance with the publication requirements of KRS 424.220 and immediately forward a copy to the Department for Local Government. Additionally, if the city is exempted for more than 4 consecutive years, it must prepare an attestation engagement regarding the fourth year (KRS 91A.040). The requirements of the attestation engagement are discussed in KRS 91A.040.

**Penalties.** Failure to comply with audit requirements may result in a fine of \$50 to \$500 and, for a city officer, forfeiture of \$50 to \$500 for each failure. Recovery is contingent on successful prosecution of a civil action by a resident of the city.

**Uniform Financial Information Reporting Requirements (KRS 65.905 to 65.925).** Cities must annually report certain financial information to the Department for Local Government. KRS 65.905 requires cities to complete a uniform financial information report by May 1 each year. The department must forward a copy to the Legislative Research Commission.

The auditor, as part of the audit required by KRS 91A.040, may complete the uniform financial information report. If the city is not required to have an audit, the legislative body may designate an elected or nonelected official to be responsible for completing and submitting the report.

Any agency, board, or commission that receives any funding from a city must be identified on the uniform financial information report, along with the amount annually appropriated.

## **Miscellaneous Financial Requirements**

### **Official Depositories**

KRS 91A.060 requires municipalities to designate one or more official depositories.

### **Disbursement Requirements**

All disbursements from city funds must be made by written authorization approved by the executive authority and must state the name, the purpose of the payment, and the fund from which the amounts are payable. Each authorization must be numbered and recorded (KRS 91A.060).

## **City Appropriations To A County**

A city's governing body may appropriate city funds to the county in which the city is located to enable the county to perform functions in the public interest of the citizens of the city (KRS 65.157). The ordinance authorizing the appropriation must specify the purpose of the appropriation, and the county must provide a biennial accounting to the city regarding the expenditure of funds.

## **Part 2: Municipal Revenues**

Kentucky cities receive revenue from many sources. Funding sources include appropriations and allocations from the state government, the federal government, and other local governments; short- and long-term borrowing; and fees and taxes imposed by the governing body of the city. This section focuses on revenues generated by city-imposed fees and taxes.

### **Taxation—General Constitutional Provisions**

The Kentucky constitution includes several provisions relating to the taxing authority of cities, granting broad authority to the General Assembly to establish the parameters of the taxing authority of local governmental units.

The broadest authorization for the delegation of authority to cities is found in Section 156b of the constitution:

The General Assembly may provide by general law that cities may exercise any power and perform any function within their boundaries that is in furtherance of a public purpose of a city and not in conflict with a constitutional provision or statute.

This provision, ratified by the voters in 1994 and codified as KRS 82.082, is the basis for the broad taxing authority granted to cities. The taxing authority of cities is provided in general in KRS 91.260, 92.280, and 92.281; for urban-county governments in KRS 67A.850; and for consolidated local governments in KRS Chapter 67C.

The scope and application of the broad grant of home rule authority as it relates to imposition of taxes and fees by cities remains unclear. It seems, based on the authority granted by Section 156b and the accompanying statutory provisions enacted by the General Assembly, that a city could levy any type of tax or fee not prohibited by the constitution, and that a myriad of separate provisions granting specific authority for the levy of certain taxes or fees discussed in this chapter would no longer be necessary. However, those provisions still exist in the statutes, and their existence creates some confusion and ambiguity with regard to the authority of cities to levy taxes and fees. Thus, although this discussion will focus on specific levies authorized by statute, interaction of the broad grant of authority under the home rule provisions and the hundreds of statutes authorizing specific levies remains unclear.

## Constitutional Limits On Taxation

Limits on the General Assembly relating to local taxation appear primarily in Section 181 of the constitution. It prohibits the General Assembly from levying taxes for the benefit of any county, city, town, or other municipal corporation but allows the General Assembly to pass general laws granting local governmental units the power to assess and collect taxes.

Section 181 also limits the powers of taxation that may be delegated to counties, towns, cities, and other municipalities to the following:

- License fees on stock used for breeding purposes
- License fees on franchises, trades, occupations, and professions
- Taxation on tangible or intangible personal property, based on income licenses or franchises in lieu of an ad valorem tax. Cities of the first class cannot omit the imposition of an ad valorem tax on the property of any gas, water, heating, steam railroad, street railway, ferry, bridge, telephone, telegraph, electric light, or electric power company.

The Kentucky courts have interpreted these provisions as prohibiting the levy of excise taxes, including income and sales taxes, by local governments, while upholding various occupational tax levies as valid and distinguishable from income taxes.<sup>47</sup>

Every ordinance or resolution passed by any local legislative body levying a tax must specify the purpose for the tax, and any tax collected for one purpose shall not be devoted to another purpose.<sup>48</sup> All city taxes in cities of the home rule class are levied by ordinance, the purpose of the tax is specified in the ordinance, and amounts collected from the tax may not be expended for any purpose other than that specified in the ordinance. Failure to specify the purpose of the tax in the ordinance renders the ordinance invalid (KRS 92.330). KRS 92.340 establishes personal liability for any officer, agent, or employee of cities of the home rule class who could have prevented improper expenditure of funds.

Whenever any city, county, taxing district, or municipality is authorized to contract for indebtedness, it is required at the same time to provide for the collection of an annual tax sufficient to pay the interest on the indebtedness and to create a sinking fund for the payment of the principal within 40 years from the time the indebtedness was contracted for.<sup>49</sup>

## City Taxes In General

The statutory scheme authorizing the imposition of taxes by cities is complicated. Historically, some levies have been limited to certain classes; for example, under the former classification system, only cities of the fourth and fifth classes could levy a restaurant tax. Further complications arise because the impact of the enactment of broad home rule tax provisions on narrower tax authorizations is unclear. Finally, there are special rules that apply to urban-county and consolidated local governments. It is therefore difficult to provide a concise and comprehensive picture of the taxing authority of cities. This being said, cities derive much of their tax revenues from three sources: the ad valorem property tax, the occupational license tax, and the insurance premium tax. In 2012, approximately 55 percent of all nonutility city revenues came from taxes. Within the tax revenue category, 60 percent of all city tax revenues statewide

were from the occupational license tax, 25 percent were from the ad valorem property tax, and approximately 15 percent were from the insurance premium tax.<sup>50</sup>

The discussion in this section focuses on these three taxes; appendices list other taxes and fees that cities may levy. Although the list of taxes, fees, and levies is thorough, it may not include all permissive levies or exemptions found in the Kentucky Revised Statutes.

**Imposition.** All city taxes must be imposed by ordinance (KRS 91.260 for cities of the first class; KRS 92.280 and 92.330 for cities of the home rule class).

### **Ad Valorem Property Taxes**

The oldest form of taxation for raising revenue is the property tax. When Kentucky's current constitution was adopted in 1891, property taxes were the only revenue-raising tax levied, and there had been many issues with the way those taxes were levied, including special and specific exemptions, assessments at less than full fair market value, and uneven application of the tax. The constitution therefore includes several provisions relating to property taxes, with a focus on fair and uniform taxation, a limitation on exemptions, and assessment based on 100 percent of fair market value. As noted previously, the General Assembly is granted some authority in the constitution regarding taxation, especially as it relates to local governments. Over the years, the General Assembly has used this authority to create separate classes of property; to exempt some property from local taxation; and to establish special rules, requirements, and exceptions. The General Assembly also established an annual process for the levy of local property taxes that requires public input under certain conditions. Because of the exemptions, exceptions, different rates, and different requirements for different classes of cities, the property tax is the most complicated tax to administer and understand. However, the basics are relatively simple.

### **City Taxation—The Basics**

**Yearlong Process.** The process of assessing property and collecting the property tax takes approximately a year.

**Assessment Of Value.** All real and personal property subject to taxation within a taxing jurisdiction is assessed at 100 percent of its fair market value. Taxes are assessed against the owner of the property as of a specific date. The assessment date varies depending on the classification of the city and the method of assessment and collection that the city chooses. Cities may use the assessment that the property valuation administrator determines, or they may do their own assessments.

**Protest Period.** After the assessed value of property is established, there is a period when taxpayers can challenge the assessment. After the challenge period expires, assessed values are finalized and certified.

**Annual Levy Of A Property Tax Rate.** All cities must levy a property tax rate annually by ordinance. The requirements for the levy, including the requirement for a public hearing and whether any portion of the proposed rate may be recalled, depend on the rate being proposed

and the class of city proposing the rate. All property taxes are levied based on a rate imposed per \$100 of assessed valuation.

**Mailing Of Tax Bills And Payment Of Taxes.** Tax bills are mailed to the owner of record as of the assessment date. Taxes are typically collected over approximately 3 months. A city may have city taxes collected by the sheriff, along with state, county, school, and special district taxes, or it may collect its own taxes. Most cities provide a discount if taxes are paid early.

**Delinquent Taxes.** Delinquent taxes incur penalties and interest. Cities receive a great deal of latitude in collecting delinquent taxes.

### City Taxation—The Details

**Tax And Assessment Base.** All property is subject to the ad valorem tax unless exempted by the constitution or statute (Kentucky Constitution of Kentucky, sec. 3; KRS 132.190). The ad valorem tax is imposed against all property based on its assessed value. Cities must levy an ad valorem tax on all property subject to taxation in the jurisdiction (KRS 91.260 for cities of the first class; KRS 92.280 for cities of the home rule class). The tax must be imposed at a uniform rate on all property of the same class subject to tax in the territorial limits of the authority levying the tax.<sup>51</sup> Cities of the first class may levy a license or franchise tax in lieu of an ad valorem tax on tangible personal property, except that an ad valorem tax must be imposed against the personal property of any gas, water, heating, steam railroad, street railway, ferry, bridge, telephone, telegraph, electric light, or electric power company Kentucky (KRS 91.260).<sup>52</sup>

Ad valorem taxes are paid annually, and the assessment is based on 100 percent of the fair cash value of all property subject to tax, unless the property qualifies as agricultural or horticultural property, in which case the property is assessed at its agricultural or horticultural value (KRS 132.450).<sup>53</sup>

**Exemptions From Property Tax.** Section 170 of the constitution exempts the following from property taxation:

- Public property used for public purposes
- Places of burial not held for private or corporate profit
- Real property owned and occupied by religious institutions, and tangible and intangible personal property owned by religious institutions
- Property owned by institutions of purely public charity
- Property held by institutions of education not used for gain, the income of which is devoted solely to the cause of education
- Public libraries, their endowments, and income of property used exclusively for their maintenance
- Household goods used in the home
- Crops grown in the year of the assessment and in the hands of the producer
- Real property that meets the requirements for the homestead exemption for individuals over 65 years of age or disabled. The Kentucky Department of Revenue has set the maximum homestead exemption at \$46,350 for the 2023 and 2024 tax periods. By statute, the amount of the homestead exemption is recalculated every 2 years to adjust for inflation.

Section 171 provides that the General Assembly may divide property into classes and may determine which classes are subject to local taxation. All real property is subject to taxation by all taxing districts of which it is a part. The General Assembly has addressed the classification of personal property and exemption of personal property for local tax purposes in KRS 132.200. Appendix B lists property exempt from local taxation.

Section 172a permits the General Assembly to provide for reasonable differences in the rate of ad valorem taxation on real property in different areas of the same taxing districts. The differences must relate to the areas' access to non-revenue-producing governmental services and benefits giving land an urban character. Differential rates are statutorily authorized for cities by KRS 82.085, for urban-county governments by KRS 67A.150, and for consolidated local governments by KRS 67C.145 and 67C.147. Differential rates may be imposed to support police protection, fire protection, streets, street lighting, sidewalks, water service, and sewer facilities. Section 157 of the constitution limits the maximum ad valorem tax rate imposed by cities, counties, and taxing districts other than for school purposes, as shown in Table 6.1.

**Table 6.1**  
**Maximum Municipal Tax Rates**

| <b>Type Of Government</b>   | <b>Population</b> | <b>Maximum Rate Per \$100 Taxable Property</b> |
|-----------------------------|-------------------|--|
| City                        | 15,000+           | \$1.50   |
| City                        | 10,000–14,999     | \$1.00   |
| City                        | Up to 9,999       | \$0.75   |
| County* and taxing district | Any               | \$0.50   |

\*Under Section 157a of the constitution, a county may levy up to an additional 20 cents per \$100 of assessed valuation for the purpose of paying the indebtedness on debt issued for public roads if approved by the voters. Source: Kentucky. Constitution of Kentucky, sec. 157.

## Real Property

Virtually all real property in the commonwealth is subject to the ad valorem tax. The constitution limits the ability of the General Assembly to enact real property tax exemptions through legislation, so all real property tax exemptions are either found in the constitution or specifically authorized by the constitution (KRS 132.190 and 132.200).

The constitution permits the General Assembly to authorize favorable property tax treatment by local governments relating to real property in two situations:

- **Manufacturing Exemption.** Section 170 authorizes the General Assembly to allow any incorporated city or town to exempt manufacturing establishments from municipal taxation for up to 5 years as an inducement to locate in the city or town. The General Assembly has provided for this exemption in KRS 91.260 and 92.300.
- **Assessment And Reassessment Moratoriums.** Section 172b provides that the General Assembly may provide by general law that the governing bodies of county, municipal, and urban-county governments may declare property assessment or reassessment moratoriums for qualifying units of real property for the purpose of encouraging the repair, rehabilitation, or restoration of existing improvements thereon.

The language requires property qualification standards and a 5-year limit on any moratorium. The General Assembly has authorized cities to adopt an ordinance deferring the assessment of the value of improvements to commercial and residential structures that are at least 25 years old for encouraging their repair, rehabilitation, restoration or stabilization (KRS 99.595 to 99.605).

### House Bill 44 Limitations

House Bill 44, enacted during the 1979 Special Session of the General Assembly, generally limits the overall revenue growth from a tax levied on real property without the possibility of voter recall to 4 percent per year, exclusive of new property. (As an example, when a subdivision is built, the extra tax revenue from the taxation of the new housing in the first fiscal year it is assessed is ignored for purposes of determining the maximum rate that may be levied under the 4 percent limitation.) This legislation was enacted in response to high rates of inflation that were causing property values, and the resulting tax, to increase quickly. The result of the HB 44 limitations is that, in many jurisdictions, the property tax rate decreases each year as the property values increase. Appendix C describes the rate-setting process under HB 44.

### Special Rates Or Variations On Rates

**Abandoned Urban Property (KRS 132.012).** Cities, consolidated local governments, and counties containing a city of the first class may levy a rate on abandoned urban property that is higher than rates levied against other real property.<sup>b</sup>

Before levying a tax on abandoned urban property, the legislative body of a city must have the vacant properties review commission or another department or agency of city government determine which properties are abandoned urban properties. The list is furnished to the property valuation administrator before the annual assessment of real property. Property that is rehabilitated, repaired, or returned to productive use may be removed from the abandoned urban property list if the owner notifies the city and the city finds that the property is no longer abandoned urban property (KRS 91.285 and 92.305).

**Real Property Exempted From Local Taxation (KRS 132.200).** The following categories of real property are exempted from local taxation:

- Privately owned leasehold interests in industrial buildings owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority—the exemption will not apply to the proportion of the value of the leasehold interest created through private financing
- Property certified as a pollution control facility, alcohol production facility, or fluidized bed energy production facility
- Qualifying voluntary remediation property—this exemption applies for 3 years

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<sup>b</sup> Under KRS 132.012, *abandoned urban property* means any vacant structure or vacant or unimproved lot in a predominantly developed urban area that has been vacant or unimproved for at least 1 year and is dilapidated, unsafe, infested with vermin, or unfit for its intended use, or that has been tax delinquent for at least 3 years.

## Personal Property

Using authority granted under Section 171 of the constitution, the General Assembly has exempted several types of personal property from local taxation. These exemptions, scattered throughout the statutes, are found primarily in KRS 132.200 and are listed in Appendix B. In addition to statutory exemptions, Section 171 provides that bonds issued by the state, counties, municipalities, taxing districts, and school districts are not subject to state or local taxation.

### Special Rates, Variations On Rates, And Assessment Practices

**General Rates (KRS 132.029).** A local taxing jurisdiction may increase the personal property tax rate in any year when the taxing authority's real property tax rate, applied to the personal property base, will produce a percentage increase in revenue from personal property that is less than the percentage increase in revenue from real property. The rate that may be levied is that which will produce the same percentage increase in revenue from personal property as the percentage increase from real property. A rate increase imposed under these circumstances is not subject to the public hearing or recall provisions.

**Business Inventories (KRS 132.028).** Cities and urban-county governments can levy a rate on business inventories not otherwise exempt from taxation that is less than or equal to the prevailing rate of taxation on other tangible personal property.

**Unmanufactured Agricultural Products (KRS 132.200).** Cities may impose an ad valorem tax up to 1.5 cents on each \$100 of the fair cash value of all unmanufactured tobacco and up to 4.5 cents on each \$100 of the fair cash value of all other unmanufactured agricultural products that are not on hand at the facilities of the manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or its agent for the purpose of sale.

**Taxable Capital Of Insurance Companies (KRS 136.320).** The county and city where the principal office of an insurance company is located may impose a tax of 15 cents per \$100 of taxable capital of the insurance company.

**Aircraft (KRS 132.200).** The local taxing district may exempt aircraft from local tax.

**Federally Documented Boats (KRS 132.200).** The local taxing district may exempt federally documented boats from local tax.

### Special Ad Valorem Tax Levies

In addition to the general ad valorem tax levy described above, cities may levy special ad valorem assessments, listed in Appendix D. In most cases, the special levies are made in addition to the general levy and are not considered in determining whether the city has surpassed the maximum levy permitted under Section 157 of the constitution.

## Administration Of The Property Tax

### City Assessments

Cities may choose one of two methods for assessing property:

- **County Assessment.** The assessment made for state purposes, when supervised as required by law, is the basis for the levy of ad valorem taxes for all county, school district, and special district purposes (KRS 132.280). Cities may, by ordinance, elect to use the county assessment. Cities electing to use the county assessment must notify the Department of Revenue and the property valuation administrator before the next assessment to be used for city levies. Cities using the county assessment must pay the property valuation administrator for the use of the county assessment and must use the same assessment dates and due dates as the county, even if other statutes establish different dates for the city (KRS 132.280). Cities using this assessment cannot change to separate city assessment without notifying the Department of Revenue and the property valuation administrator at least 6 months before the next assessment date (KRS 132.285).
- **Separate City Assessment.** Cities may establish a city assessment office to assess all taxable property in the city, except motor vehicles, motorboats, and other centrally assessed property. The procedures are found in KRS Chapter 91 for cities of the first class, and in KRS Chapter 92 for home rule cities. If a city chooses not to use the annual county assessment as the basis for ad valorem tax levies, it uses the provisions of KRS 92.412.

The Department of Revenue centrally assesses several classes of property. In most cases, central assessment is undertaken because of the nature of the property, or because the property is used in many local jurisdictions. Taxes imposed against the centrally assessed property are usually collected locally; however, the Department of Revenue assesses and collects some levies on behalf of local jurisdictions. Appendix E lists centrally assessed property.

### Collection Of Taxes

KRS Chapter 91 establishes requirements for cities of the first class for the issuance and delivery of tax bills and the payment of taxes.<sup>c</sup> KRS Chapter 92 establishes similar separate requirements for cities of the home rule class. KRS 91A.070 provides additional guidance. All cities must publish the due date of ad valorem taxes (KRS 424.280).

Cities may choose one of two methods for collecting taxes other than those required to be centrally collected:

- **Collection By The Sheriff.** Any city may, by ordinance, elect to have the sheriff collect all city property taxes, including delinquent taxes. The ordinance must be forwarded to the sheriff, and a copy of the ordinance levying the tax must be forwarded to the county clerk. The clerk must prepare tax bills for the city assessment, and the sheriff must collect the city taxes, including delinquent taxes, as provided in KRS Chapter 134. The sheriff is entitled to compensation for collecting the city taxes, in an amount not to exceed 4 percent (KRS 91A.070).

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<sup>c</sup> KRS 67C.123 generally provides that the assessment and collection statutes applicable to counties also apply to Louisville, rather than the statutes relating to cities.

- **Collection By The City.** A city may elect to collect its own property taxes. A city collecting its own taxes must adopt an ordinance establishing the processes and procedures for collection, including the manner of billing (which may be in installments), place for payment, discounts (if any), penalties and interest for late payments, and any other necessary procedures (KRS 91A.070).

**Collection Of Delinquent Property Taxes.** Taxes not paid by the due date are delinquent.

**City Lien.** When property taxes become delinquent, the city is granted a lien under KRS 134.420 and 91A.070. Tax liens in cities of the first class are also addressed in KRS 91.560. The lien applies to all real and personal property of the taxpayer, not just the property to which the delinquent taxes relate.

- The tax lien is superior to all other liens and is effective for 11 years after the date the taxes become delinquent.
- The lien includes all taxes, penalties, interest, fees, charges, and costs associated with the delinquent tax bill.
- Cities of the home rule class use the provisions of KRS 91A.070 for the placement of liens on delinquent taxes (KRS 92.412).

### **Legal Action To Collect Delinquent Taxes**

**Collection By The Sheriff.** If a city has the sheriff collect its regular taxes pursuant to KRS 91A.070, the sheriff also collects delinquent taxes in the manner used to collect county taxes. This means taxes not collected by the sheriff are turned over to the county clerk along with the county taxes and are subject to the same sale and purchase provisions as the delinquent county tax bills under KRS Chapter 134.

**Collection By The City.** If the city collects its own delinquent taxes, the process for collection must be set forth in the ordinance adopted pursuant to KRS 91A.070. Methods that cities may use include the following:

- **Individual Action.** KRS 91A.070 and 134.546 allow a city to enforce its lien against delinquent property by action in the name of the city in Circuit Court or to obtain a personal judgment against the delinquent taxpayer for the tax, penalties, interest, and cost of the suit. KRS Chapter 91 provides additional individual remedies to cities of the first class.
- **Mass Foreclosures.** KRS 91.484 to 91.527 establish a process for expedited foreclosure actions against property by cities of the first class. KRS 92.810 makes the process applicable to cities of the home rule class.
- **Participation In A Land Bank.** Cities can join with the state, local school districts, and any interested counties to create a land bank authority. Property not sold for the full value of the tax (and all related penalties, interest, and fees) at a foreclosure sale is deemed to be acquired by the land bank authority, at which point all taxes, fees, penalties, and charges are extinguished. The land bank can manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any property under its control (KRS 65.350 to 65.375).

**Notice.** Cities may, but are not required to, publish or advertise a list of delinquent taxpayers. If a city elects to publish such a list, it must be published in accordance with the provisions of KRS 424.300 (which requires the name of each delinquent taxpayer and the amount due) and with the provisions of KRS 424.130. The city may add a fee equal to the prorated cost of publication per taxpayer per publication to offset publication costs (KRS 424.330).

## **License Tax On Insurance Companies**

### **Levy Authority**

City, county, charter county, and urban-county governments, as well as consolidated local governments and unified local governments, may impose a license tax against insurance companies. Fees and rates take effect on July 1 of each year on a prospective basis only (KRS 91A.080). The tax is based on premiums received for risks within the corporate limits of the taxing jurisdiction. Local governments may tax or exempt seven lines of insurance at different rates. Rates must be filed with the commissioner of insurance at least 100 days before the effective date, and the Department of Insurance must provide the information to all insurance companies at least 85 days before the effective date. The Department of Insurance publishes an annual list of jurisdictions imposing a tax, the rate, the base, and whether or not a city/county setoff applies.

### **Advisory Council**

The commissioner of the Department of Insurance must establish a local premium tax advisory council to advise on the imposition, administration, and collection of insurance premium taxes (KRS 91A.0808). Members of the council include the commissioner of the Department of Insurance, city officials, county officials, and representatives from the insurance industry.

### **Allocating Taxes To The Appropriate Jurisdiction**

Insurance companies that issue more than 2,000 policies a year in Kentucky must use a risk location system for locating risks that are subject to taxes and fees under KRS 91A.080, except in limited circumstances (KRS 91A.0802 and 91A.0806). The Department of Insurance sets parameters for the risk verification systems. Insurance companies using a verified risk location system and performing due diligence to identify where the risk of loss is located may be able to avoid penalties associated with nonpayment (KRS 91A.0806).

### **Exemptions**

Local jurisdictions cannot impose the insurance premium tax against certain premiums (KRS 91A.080):<sup>54</sup>

- Premiums received on policies of group health insurance provided for state employees under KRS 18A.225
- Premiums received on policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under KRS Chapter 342

- Premiums for health insurance policies issued to individuals
- Premiums on policies issued through Kentucky Access
- Premiums on policies for high-deductible health plans defined in 26 USC sec. 223(c)(2)
- Premiums paid on multistate surplus lines
- Premiums paid on annuities
- Premiums paid on flood insurance
- Premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a unit of local government, nonprofit corporation, or other political subdivision of the commonwealth.

The following additional exemptions also apply:<sup>55</sup>

- Policies of insurance insured or reinsured by the Federal Crop Insurance Corporation<sup>56</sup>
- Policies insuring or naming the state or one of its agencies or political subdivisions as an insured and surety bonds where the state or one of its agencies or political subdivisions is the obligee. For purposes of local government premium tax payments, school districts are agencies of the state; policies insuring school districts and bonds with school districts as the obligee are exempt from local government premium taxes.
- Entities issued a certificate of authority to do business in Kentucky only as a health maintenance organization pursuant to KRS 304.38-060
- Entities issued a certificate of authority to do business in Kentucky as a captive insurer pursuant to KRS 304.49-010
- Domestic life insurance companies electing to be taxed under KRS 136.320

In addition to the statutorily required exemptions, local jurisdictions may also provide other exemptions.

### **Collection Fees**

The Department of Insurance is to provide for a reasonable collection fee to be retained by the insurance agent or company for collecting the tax. The fee cannot exceed 15 percent of the fee or tax collected or 2 percent of premiums subject to the tax, whichever is less (KRS 91A.080).

### **Payment And Reporting Requirement**

Insurance license fees and quarterly returns are due 30 days after the end of each calendar quarter. Payments are made to the assessing local governmental unit. By March 31 of each year, each insurer must furnish each city, county, or urban-county government with a breakdown of all collections in the preceding calendar year by category of insurance (KRS 91A.080). Any insurer not paying local insurance premium taxes must file an annual reconciliation electronically with the Department of Insurance along with a payment of \$5.

### **Interest And Penalties**

After the due date, any unpaid amounts accrue interest until paid. A 10 percent penalty may be assessed if the fee is not paid within 30 days of the due date (KRS 91A.080).

## **Audit And Review**

Any jurisdiction imposing a license tax on insurance companies may, at its own expense, ask the Department of Insurance to audit the books and records of any insurance company. If the department finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax, it may assess a penalty of up to 10 percent of the additional taxes determined to be due (KRS 91A.080 and 91A.0804).

## **Refund Process**

Companies that overpay taxes may request a refund within 2 years of the due date of the annual reconciliation required by KRS 91A.080 (KRS 91A.0804).

## **Offset Of City Taxes Against County Taxes**

A credit is provided for city license tax against the county license tax in cities and counties where both jurisdictions impose the tax. The credit applies to fees or taxes levied by the county on or after July 13, 1990. In 2024, the offset applied in nine counties.<sup>57</sup>

## **Levy Statistics**

For the 2024-2025 fiscal year, 364 cities imposed some type of insurance premium tax (not including Lexington, Louisville, or the Louisville Urban Services District). The range of rates was 3 percent to 16 percent.<sup>58</sup> Some cities also imposed a minimum monetary amount; insurance companies must pay the greater of the minimum monetary amount or the percentage-based tax. The taxes are classified by categories of risk:

- Fire and allied perils
- Casualty/liability
- Automobile
- Inland marine
- Health
- Life
- All other risks

Compliance with the insurance premium tax is difficult for insurance companies because of the number of jurisdictions that impose the tax, the variation among jurisdictions regarding the types of premiums subject to the tax, and the rates applied to each type of premium. Each insurer must file a separate return with each locality. Group filings are not permitted. If the tax is imposed by both the county and a city in the county, the insurer must determine where the insured risk is located and which jurisdiction is entitled to tax payment (if not both the city and the county).

## **Occupational License Tax**

Any county or city may impose an occupational license tax; requirements vary depending on the population of the county or the classification of the city. The occupational license tax is an

advantageous source of revenue for cities and counties with a strong business and employment base, but it is not as productive for jurisdictions without significant business activity. Broad-based occupational license taxes are revenue-raising measures imposed under the taxing powers of a city, rather than regulatory levies imposed under the police powers of the city. Courts on several occasions have upheld the power of cities to levy occupational license taxes.

### **Cities Of The First Class**

Cities of the first class are authorized to impose franchise and license fees at a rate of 1.25 percent on wages and net profits (KRS 91.200).

### **Other Cities**

Cities, regardless of population, are permitted to levy franchise and license fees with no maximum rate specified, at a percentage rate (KRS 92.280 and 92.281). Prior to 2019, cities with populations less than 1,000 could levy only a set fee, not one based at a percentage rate. That statutory restriction has been repealed.

### **Statutory Exemptions**

The following are exempt from occupational license taxes:

- Public service companies and telecommunications service providers
- Banks, trust companies, and savings and loan companies
- Income received by members of the Kentucky National Guard for active duty, training, unit training assemblies, and annual field assemblies
- Income received by precinct workers for election training or work at elections
- Any profits, earnings, or distributions from an investment fund meeting the requirements of a Kentucky Investment Fund under KRS 154.20-250 to 154.20-284 to the extent the profits, earnings, or distributions would not be taxable to an individual
- Profits earned or income received for work done during a disaster response period by a disaster response business or a disaster response employee (KRS 91.200)

In addition, no local governmental unit may levy any occupational, license, excise, severance, or other tax upon the severance, processing, sale, use, transportation, or other handling of coal (KRS 143.100).

### **Offset Provisions**

Certain crediting provisions apply depending on when the taxes were imposed (KRS 68.197).

### **Uniformity Of Administration**

KRS 67.750 to 67.795 establish uniform imposition, administrative, and enforcement provisions for all local governments levying occupational license taxes on compensation paid to individuals and gross receipts or net profits taxes imposed against businesses. The administrative structure

includes allocation and apportionment provisions; mandatory return provisions; and provisions addressing claims for refund, statutes of limitations, auditing, and assessment.

### **Centralized Filing Of Forms**

**Submission To Secretary Of State Required.** Every local government that imposes an occupational license tax on net profits or gross receipts must submit to the secretary of state a copy of its occupational license tax form and instructions, along with a copy of its ordinance imposing the tax (KRS 67.766). Any local government imposing a new occupational license tax or amending its ordinance must also submit the required information. The secretary of state maintains an online database<sup>d</sup> of occupational license taxes by jurisdiction (tax district).

**Standardization Of Forms.** The secretary of state must prescribe standard forms that all tax districts will accept (KRS 67.767). A local government must adopt the standard forms as the exclusive return or must accept the standard forms in addition to its own forms unless the secretary of state grants an exemption.

**Penalties Relating To Standard Forms.** Failure to comply with the requirements relating to the acceptance of standardized forms could result in the withholding of services and payments from state agencies.

### **Other Permissive Taxes And Fees**

The taxes listed in this section are separate local tax levies authorized by the General Assembly other than special ad valorem rates or assessments, which are listed in Appendix D.

#### **Emergency Telephone Service (KRS 65.760)**

A city, county, or urban-county government may levy a special tax, license, or fee to establish and operate 911 emergency telephone service. The special tax, license, or fee may include a subscriber charge levied on an individual exchange line basis.

In 2013, Campbell County levied an annual service fee on each occupied residential and commercial unit in lieu of a landline subscriber fee. The fee was challenged in court, and the Supreme Court of Kentucky upheld it.<sup>59</sup> The court said, “We must clarify that the nexus required to sustain a fee imposed under KRS 65.760(3) need not necessarily be direct. Rather, a fee that bears a reasonable relationship to the benefit received is sufficient.”

In August 2012, the Garrard County Fiscal Court enacted an ordinance levying a \$0.25 fee on all water meters located in the county. A lawsuit ensued, and the Kentucky Court of Appeals upheld the fee in 2017 with direction from the Kentucky Supreme Court.<sup>60</sup>

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<sup>d</sup> [web.sos.ky.gov/occupationaltax](http://web.sos.ky.gov/occupationaltax)

### **License Fee On The Rental Of Motor Vehicles And Other Vehicle Services (KRS 68.200)**

A county containing a city of the first class, an urban-county government, or a city listed in a registry described in KRS 68.200 may levy a license fee on the rental of motor vehicles and other modern car-sharing services including peer-to-peer car sharing programs and transportation network companies. The fee may not exceed 3 percent of the gross rental charges from rental agreements of 30 days or less or in the case of transportation network companies, the gross rental charges from the provision of the companies' services. The fee does not apply to car rental services that receive less than 75 percent of their gross revenues in the county from gross rental charges. The retailer passes on the fee to the renters. Revenues from the rental of vehicles that are more than 11,000 pounds, or that are part of services provided by a funeral director are exempt from the state sales and use tax are not included in the tax base. The revenues from the tax must be deposited in a separate account and must be used for economic development.

### **Transient Room Tax (KRS 91A.390, 153.440, And 153.450)**

To promote recreation, conventions, and tourism, any city, county, urban-county, consolidated local government, or combination thereof may create a tourist and convention commission (KRS 91A.350). To support the commission, the local governing body establishing it must levy a transient room tax of up to 3 percent of the rent for every room occupancy. The local governing body may also impose a 1 percent levy for operating expenses of a convention center.

Local governing bodies that have formed multicounty tourist and convention commissions may impose a tax not to exceed 1 percent of room rents. Revenues fund regional tourist and convention efforts.

Counties including authorized cities, which were cities of the second class as of August 1, 2014 (except those in a multicounty tourist and convention commission), may levy an additional tax of up to 2 percent of room rates. Proceeds fund the retirement of bonds to finance the expansion of a convention center or fine arts center. After retirement of the bonds, the additional tax is void. The Department for Local Government maintains a registry of authorized cities (KRS 91A.392).

An urban-county government may levy up to 4 percent of the rent for every room occupancy (KRS 91A.390). It may also impose the following levies:

- An additional tax of up to 2 percent of room rent, with proceeds to retire bonds financing a nonprofit corporation created for the funding, construction, and management of a convention center, and to defray the operating expenses of the nonprofit corporation (KRS 153.450)
- An additional tax of up to 1 percent of room rent, to fund the purchase of development rights program created under KRS 67A.845

A county with a city of the first class may impose the following additional levies:

- A tax of up to 1.5 percent of room rent, to fund promotion of tourist and convention business
- A tax of up to 1 percent of room rent, with proceeds to defray operating expenses of the Kentucky Center for the Arts Corporation (KRS 153.440).
- A tax of up to 2 percent of room rates, imposed by a consolidated local government or a county containing a city of the first class (except those included in a multicounty tourist

and convention commission). Proceeds help retire bonds financing the expansion of a convention center or fine arts center. After retirement of the bonds, the tax is void (KRS 91A.392).

Transient room taxes are paid monthly to the local government and must be maintained in a separate account. The types of accommodations subject to the tax also include cabins, lodgings, and campsites and accommodations rented out by “any hotel, motel, inn, tourist camp, tourist cabin, campgrounds, recreational vehicle parks, or any other place in which accommodations are regularly furnished to transients for consideration or by any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations” (KRS 91A.390).

**Use Of Funds.** Cities that establish tourist and convention commissions must fund the commission and levy the 3 percent transient room tax (KRS 91A.390). Cities may also use revenues from the transient room tax, upon the advice and consent of the commission, to finance the acquisition, construction, operation, and maintenance of facilities useful in the promotion of tourism and conventions. The remainder of funds must be used for purposes set forth in KRS 91A.350. Funds may not be used for subsidies to any hotel, motel, or restaurant. Restrictions are placed on a consolidated local government’s use of the transient room tax to fund the operations of certain convention facilities. Pursuant to the tax set out in KRS 91A.392 to finance in part the expansion or construction or operation of a governmental or nonprofit convention center or fine arts center in a county having a population between 75,000 and 100,000, excess funds collected in any single year may be used to defray the costs to operate, renovate, or expand such a center.

### **Restaurant Tax—Authorized Cities**

In addition to the transient room tax discussed above, legislative bodies of authorized cities may levy a restaurant tax of up to 3 percent of retail sales by all restaurants doing business in the city (KRS 91A.400). All receipts are provided to the tourist and convention commission. This is the only specific authorization for the levy of a tax on restaurants by units of local government.<sup>e</sup> The Kentucky Supreme Court has held that counties may not levy a restaurant tax under the taxing authority permitted by KRS 67.083 because “[w]here the General Assembly has given the power to impose a specific tax to one government entity, a fiscal court may not also impose such a tax without violating the expressed limitations on its taxing power contained in KRS 67.083.”<sup>61</sup> The court also found it relevant that the legislature has specifically limited counties from imposing more than a \$10 license fee on a restaurant under KRS 137.115.

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<sup>e</sup> Fiscal courts in counties containing cities of the first class or consolidated local governments may levy a 0.25 percent tax on gross receipts from the sale of food and beverages of all restaurants in the county to defray the operating expenses of a multipurpose arena, as provided in KRS 153.460. The fiscal court can impose a 10 percent surcharge on ticket sales for events at the multipurpose arena.

## **Public Utilities In Cities—Franchise Fees And User Fees**

### **Constitutional Provisions Relating To Franchises**

Section 163 of the constitution requires public utilities to obtain a franchise from any city or town where utility infrastructure will be constructed, erected, or provided before construction begins. Section 164 limits the term of a franchise to no more than 20 years and requires cities to issue bids for franchises.

### **Statutory Provisions**

Cities must provide for the sale of a public utility franchise at least 18 months before it expires (KRS 96.010).

### **Franchise Fees**

A franchise fee differs from taxes or regulatory fees—it is a fee paid pursuant to a contract to use public rights-of-way and to provide services within the jurisdictional boundaries of the city. Franchise fees are typically some percentage of gross revenues generated by the public utility.

### **Exception For Telecommunication Companies**

KRS 136.660 prohibits cities from imposing franchise fees on telephone, cable, or direct broadcast television companies. Instead, a state tax is collected, and a portion of the proceeds is distributed to local governmental entities that would otherwise be authorized to impose a franchise fee. A Supreme Court decision rendered in June 2017 has declared that the provisions of KRS 136.660(1)(a)-(c) that prohibit cities from imposing franchise fees on these companies are unconstitutional.<sup>62</sup>

### **Public Utilities Owned By Cities**

Cities may own and operate public utilities and may impose associated charges and user fees (KRS Chapter 96).

## **Bank Franchise Tax**

The bank franchise tax replaces an ad valorem tax on bank shares (KRS 136.575). County, urban-county, and city governments may impose a franchise tax on financial institutions at a rate of up to 0.025 percent of deposits if imposed by a county or city, and 0.05 percent if imposed by an urban-county. Any local jurisdiction imposing the tax must notify the Department of Revenue of the rate and of any subsequent rate changes.

For local jurisdictions that have enacted the franchise tax, the Department of Revenue must certify by October 1 of each year the amount of deposits within the jurisdiction and the amount of tax due. The local taxing jurisdiction issues bills to the financial institution by December 1 of

each year. Payment is required with a 2 percent discount by December 31, or without discount by January 31 of the following year.

### **Real Estate Transfer Tax**

A mandatory real estate transfer tax is imposed on the grantor named in the deed at a rate of 50 cents for each \$100 of value (KRS 142.050). The county clerk collects the tax and may retain a 5 percent fee. Proceeds are remitted every 3 months to the county treasurer to be deposited in the county general fund.

### **City License Taxes On Trucks, Tractors, And Trailers**

All cities may, by ordinance, impose license taxes on motor trucks, truck tractors, semitrailers, and trailers. No new or increased tax is effective unless the owners or licensees are mailed notice of the new tax at least 10 days before the effective date of the tax. This authorization does not specify or limit a rate or base, so cities are free to establish a rate and base within constitutional and other statutory limits (KRS 186.270).

### **Gross Receipts Tax On Alcohol Sales**

An exception applies to qualified cities where, in a local-option election, voters remove prohibitions on alcohol sales (KRS 243.075). The governing body of such a city and the governing body of any county containing the city may impose a regulatory license fee on the gross receipts of each establishment, including direct shippers of alcohol, licensed to sell alcoholic beverages. The rate shall be “reasonably estimated to fully reimburse the local government for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the city and county.” The regulatory license fee is in addition to any other taxes, fees, or licenses, but a credit is allowed in a city for any licenses or fees imposed by the city under KRS 243.070, and if the county and city both levy a regulatory license fee, the county fee applies only outside the jurisdictional boundaries of the city.

### **Permissive Annual Flat Fee Levies**

#### **License Fees On Alcohol**

Consolidated local governments, and cities where the sale and distribution of alcoholic beverages is authorized, may levy an annual license fee for the privilege of manufacturing, selling, and distributing alcoholic beverages (KRS 243.070). Any amount paid to any city within a county as a license fee for the same privilege for the same year may be credited against the county license fee. In a county where the city and county both levy a regulatory license fee, the county license fee is applicable only outside the boundaries of the cities that levy a license

fee (KRS 243.075). There are limits on the amount by which fees may increase over any 5-year period (KRS 243.070).

### **City Tax On Taxicabs Or Limousines**

Cities may impose an annual license tax on certain taxicabs or limousines, not to exceed \$30 per vehicle (KRS 281.631).

### **Municipal Tax On Coin Machines**

Municipal corporations may impose an annual license tax of up to \$10 on coin machines that provide music or other amusement. Cities of the first class may impose an annual license tax of up to \$20 (KRS 137.410).

### **User Fees<sup>f</sup>**

KRS 91A.510 to 91A.530 allow local governments to impose user fees on the use of public services if the service is not also available from a nongovernmental provider. The fee may not generate revenues in excess of the reasonable costs associated with providing the service, and the fees must be maintained in a separate account.

### **Parks And Recreation**

Cities may levy fees, rentals, and charges for the use of parks or recreation facilities. The city may delegate the authority to levy fees, rentals, and charges to a park commission (KRS 97.090).

### **Economic Development Incentives**

The Kentucky Revised Statutes include several provisions authorizing cities to provide tax incentives to induce the location of businesses in the city.<sup>g</sup> Some programs combine incentives from the state and various local governments. A few of the larger programs are discussed below.

### **Tax Increment Financing (KRS 65.7041 To 65.7069)**

Cities may establish local development areas by engaging a qualified independent outside consultant or financial adviser to prepare an analysis of the proposal, by conducting a public hearing, and, consequently, developing and adopting an ordinance detailing the development area's specifics (KRS 65.7047). If state participation will be requested, the development area may be established pursuant to KRS 65.7049.

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<sup>f</sup> Several statutes authorize the imposition of user fees or fees that relate to services provided. This section includes some of those fees but does not provide a complete list.

<sup>g</sup> Property tax incentives available to local governments were discussed under property taxes.

**Occupational License Levy.** A city that establishes a development area or local development area may impose an occupational license fee against each person employed in the area. Proceeds support the development area (KRS 65.7056).

**Pledge Of Other Revenues.** A city may pledge up to 100 percent of incremental local tax revenues generated within the development area for up to 30 years (KRS 65.7057).

**Special Assessments.** A city may impose a special assessment under KRS 91A.200 to 91A.290 and may pledge the amounts collected under the assessment to support the development area.

**Issuance Of Bonds.** A city may issue bonds to support the development area (KRS 65.7059).

**Assessment Moratoriums Not Available.** Real property in a development area is not eligible for programs granting property assessment or reassessment moratoriums under KRS 99.600.

### **Inducement Of Governmental Projects (KRS 82.105 To 82.180)**

To induce governmental entities to locate governmental projects in a city, cities may acquire and improve land for those projects. Cities may transfer property to a governmental entity without compensation (KRS 82.115). Cities may issue revenue bonds to support projects and may exercise eminent domain to acquire land.

### **State Economic Development Programs That Include Local Wage Assessments**

The following state economic development programs include local wage assessment requirements or provisions:

- Kentucky Business Investment Program (KRS 154.32-010 to 154.32-100)
- Kentucky Industrial Revitalization Act (KRS 154.26-010 to 154.26-100)
- Incentives for Energy Independence Act (KRS 154.27-010 to 154.27-100)

In addition to these programs, many other options are available to local governments that may be used to further economic development including grants, loans, employee training, and special bond authorizations. The Kentucky Cabinet for Economic Development and the Department for Local Government can provide additional information.

## **Part 3: Bonding**

### **Indebtedness**

Cities may issue two types of long-term debt: general obligation bonds and revenue bonds. General obligation bonds are secured by the city's full faith, credit, and authority to levy taxes. Revenue bonds are secured by the revenues generated by the project being financed.

## General Obligation Bonds

The issuance of general obligation bonds by cities is limited by Sections 157b, 158, and 159 of the Kentucky constitution and by KRS Chapter 66.

Section 157 of the constitution included provisions that prohibited cities from issuing general obligation bonds that could not be repaid within a year, unless a two-thirds voting majority of the city approved the debt. These provisions were repealed in 1994. Section 157b, added that year, reads:

Prior to each fiscal year, the legislative body of each city, county, and taxing district shall adopt a budget showing total expected revenues and expenditures for the fiscal year. No city, county, or taxing district shall expend any funds in any fiscal year in excess of the revenues for that fiscal year. A city, county, or taxing district may amend its budget for a fiscal year, but the revised expenditures may not exceed the revised revenues. As used in this section, “revenues” shall mean all income from every source, including unencumbered reserves carried over from the previous fiscal year, and “expenditures” shall mean all funds to be paid out for the expenses of the city, county, or taxing district during the fiscal year, including amounts necessary to pay the principal and interest due during the fiscal year on any debt.

Section 158 of the state constitution establishes limits on how much general obligation debt a city may issue based on the city’s population and the value of taxable property in the city:

Cities, towns, counties, and taxing districts shall not incur indebtedness to an amount exceeding the following maximum percentages on the value of the taxable property therein, to be estimated by the last assessment previous to the incurring of the indebtedness: Cities having a population of fifteen thousand or more, ten percent (10%); cities having a population of less than fifteen thousand but not less than three thousand, five percent (5%); cities having a population of less than three thousand, three percent (3%); and counties and taxing districts, two percent (2%), unless in case of emergency, the public health or safety should so require. Nothing shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, county, or taxing district. Subject to the limits and conditions set forth in this section and elsewhere in this Constitution, the General Assembly shall have the power to establish additional limits on indebtedness and conditions under which debt may be incurred by cities, counties, and taxing districts.

Section 159 of the state constitution requires cities to establish a sinking fund:

Whenever any city, town, county, taxing district or other municipality is authorized to contract an indebtedness, it shall be required, at the same time, to provide for the collection of an annual tax sufficient to pay the interest on said indebtedness, and to create a sinking fund for the payment of the principal thereof, within not more than forty years from the time of contracting the same.

In KRS Chapter 66, the General Assembly has established additional conditions under which debt may be incurred. Bonds have a maximum maturity of 40 years, with three exceptions (KRS 66.091). If the bonds are floating rate, the maximum maturity is 5 years. Bonds used

to finance public projects are limited to the useful life of the project being financed (or, if more than one project is being financed, the weighted average of the useful lives of the projects). Finally, if the useful life is revised after the bonds are issued, the city remains in compliance with the statute so long as the original estimate was made in good faith.

Cities must sell bonds on a competitive basis (KRS 66.141). Notes, which mature no later than 5 years after issuance, may be sold either on a competitive or negotiated basis.

The state local debt officer may provide technical and advisory assistance to cities regarding the issuance of bonds if a city requests the assistance (KRS 66.045).

### **Revenue Bonds**

State law authorizes cities to issue revenue bonds for a wide variety of projects. The revenues used to secure these bonds may derive from user fees, special assessment taxes, or rents, depending on the nature of the projects being financed.

#### **Industrial Revenue Bonds**

Revenue bonds used to finance commercial development are known as industrial revenue bonds. Local governments use them to induce businesses to locate within their boundaries. Typically, a city will agree to construct a facility for a business, issuing revenue bonds to finance the construction. Upon completion of the facility, the city will lease the building to the business through a long-term lease agreement with an annual rent sufficient to amortize the bonds. What makes financing arrangements like these attractive is the tax-exempt nature of municipal bonds. Since the bonds are tax exempt, they may be issued at a lower interest rate than taxable bonds. The lower cost of capital serves as an economic development incentive for the company.

Cities may issue tax-exempt industrial revenue bonds on behalf of private businesses and corporations only if the borrower receives an allocation of the state's private activity bond cap. The federal Tax Reform Act of 1986 established a state ceiling, or volume cap, for private activity bonds, which are bonds whose proceeds will be at least partially for private business use. This volume cap represents the maximum amount of tax-exempt private activity bonds that can be issued in a state in a calendar year. (Kentucky's total volume cap is determined by multiplying the state's population by an inflation-adjusted per capita amount.) The Kentucky Private Activity Bond Allocation Committee allocates this volume cap pursuant to KRS Chapter 103.

### **Short-Term Debt**

In 1990, the General Assembly enacted the Short-Term Borrowing Act, KRS 65.7701 to 65.7721. This legislation authorizes governmental agencies, including cities, to borrow money in any fiscal year in anticipation of the receipt of current taxes or revenues. The notes must be secured with current-year appropriations and cannot exceed 75 percent of the taxes or revenues

collected during the fiscal year. Notes must mature before the last day of the fiscal year. For the notes to be valid, the city must notify the state local debt officer in writing of term, interest rate, date of issuance, and date of maturity. The state local debt officer does not have to approve the issuance of notes by cities.

### **Bond Anticipation Notes**

A city may begin a project to be financed by revenue bonds with interim financing through the sale of bond anticipation notes. The maturity of these notes may not exceed 5 years, and they are payable only from the proceeds from the sale of revenue bonds (KRS 58.150).

### **Grant Anticipation Notes**

Any city may sell grant anticipation notes for interim financing of a public project for which it is entitled, as a matter of law, to receipt of federal grants-in-aid. They mature in not more than 3 years (KRS 58.155).



## Chapter 7

### Municipal Personnel

Home rule gives cities the power to function, revenue gives cities the funds to function, and the personnel of the city perform the functions. There are two categories of municipal personnel: officers and employees.

#### City Officers

##### Statutory And Judicial Definition Of *Officer*

KRS 83A.010 defines *officer* as a person who

- holds an office created by the constitution, state statute, or city ordinance;
- possesses a delegation of a portion of the sovereign power of government;
- has power or duties granted directly or implicitly by the city;
- performs duties independently without the control of a superior power;
- has some permanency;
- must give an official oath;
- is assigned by a commission or other written authority; and
- gives an official bond if required.

The statutory definition derives from a judicially formulated definition set out in *Lasher v. Commonwealth*:

Under our decisions a requisite of a position's being a public "office" is that it possess a delegation of a portion of the sovereign power of government—authority to exercise some portion of the sovereign power—dependent of any superior human authority other than a statutorily prescribed general control.<sup>63</sup>

The court further elaborated the definition by stating that the appellant, in this case a mail carrier, possessed no portion of the sovereign power because he "has no supervisory powers or duties; he has no decision-making powers in respect to procedures; he exercises no discretionary powers; he is bound by detailed rules."<sup>64</sup>

##### General Provisions Relative To Officers

A large body of statutes provides regulations for officers. Some statutes apply to all officers within the state, and others apply only to city officers. The provisions are generally restatements of constitutional provisions (see Chapter 2).

No public office may be sold or let (KRS 61.010). No person can be disqualified from a public office having a residency requirement because of alterations in city or district boundaries (KRS 61.015). All officers assume office at the time the constitution or statute prescribes, upon taking the oath of office and executing any required bond (KRS 61.030).

An oath of office must be taken on or before the day the elective term begins. When the first Monday in January falls on January 1, no penalty is applied to elected officers who take their oath within 30 days of that first Monday. Appointive officers take the oath within 30 days of receiving notice of appointment (KRS 62.010). A judge, notary public, clerk of a court, or justice of the peace may administer the oath.

The legislative body of each city sets, by ordinance, the compensation for any elective or appointive city office on a salaried or per diem basis. The legislative body sets the compensation of nonelected officers under a personnel and pay system (KRS 83A.070).

No officer required to execute bond takes office before giving the bond (KRS 62.050). The bond is a covenant running to the state from the principal and his or her surety that the principal faithfully discharges duties (KRS 62.060). An individual may not be a surety on more than one bond of any officer (KRS 62.065).

Any act permitted to be done by a ministerial officer may be delegated to a lawful deputy (KRS 61.035).

No official statement made by an officer on a subject that he or she is required by law to make in writing is to be questioned except in a direct proceeding against the officer, or upon the allegation of fraud in the party benefited thereby or mistake on the part of the officer (KRS 61.060).

**Penalties.** Conviction of bribery, forgery, perjury, or any felony causes forfeiture of office. A pardon will not prevent forfeiture (KRS 61.040). Acts performed by an officer before conviction for any of these offenses are valid (KRS 61.050). Conviction of an officer for dueling causes forfeiture of office and disqualification from holding any office (KRS 61.100). Any public officer who is intoxicated while discharging the duties of office may be fined \$100 to \$1,000 (KRS 61.180).

A public servant (which, as defined in KRS 522.010, includes officers and employees of a city) can be found guilty of official misconduct in the first degree when, with intent to obtain or confer a benefit or to injure another person or deprive another person of a benefit, he or she

- commits an act relating to the office that constitutes an unauthorized exercise of official functions,
- refrains from performing a duty imposed by law, or
- violates any law relating to the office resulting in a misdemeanor (KRS 522.020).

A public servant is guilty of official misconduct in the second degree when he or she

- knowingly commits an act relating to the office that constitutes an unauthorized exercise of official functions,
- refrains from performing a duty imposed by law, or
- violates any law relating to the office.

Conviction under this statute also results in a misdemeanor (KRS 522.030).

A public servant can be convicted of misuse of confidential information, which is a felony (KRS 522.040).

Abuse of public trust is a newer offense and deals with the disposition of money. A public servant who violates these provisions may be convicted of a felony (KRS 522.050).

No officer or city employee is to be interested in any contract with the city or city agency, with the following exceptions:

- Contracts awarded before an elected officer filed as a candidate for office or was appointed
- Contracts awarded after public notice and competitive bidding
- Contracts made pursuant to a specific finding by the governing body that the contract is in the best interests of the public

An officer or employee who violates these provisions may be convicted of a Class A misdemeanor, the contract in question may be voided, and the person may be removed from his or her office or employment (KRS 61.252).

**Resignations, Impeachments, And Vacancies.** An officer resigns a position by tendering a resignation in writing to the officer charged with filling the vacancy (KRS 63.010). If a mayor or a city legislative body member intends to resign, the resignation is sent to the city legislative body (email may be used if the resignation originates from the official's email address and contains the handwritten signature of that official). The resignation is effective at the next regular or special meeting of the city legislative body on or after the date specified in the letter of resignation, or, absent a specified date in the letter, the resignation becomes effective at the first regular or special meeting of the legislative body occurring on or after its receipt (KRS 83A.040).

The General Assembly may impeach any officer. The action may be initiated by petition from any person or by the House of Representatives. The House of Representatives recommends impeachment, and the impeachment is tried in the Senate (KRS 63.020 to 63.075).

If a vacancy in any office arises and no other provision for filling the office exists, the governor fills the office by appointment (KRS 63.190). If a legislative body cannot fill a vacancy as required because all seats are vacant, the governor appoints a number of members sufficient to constitute a quorum. If a vacancy in the office of mayor or the legislative body is not filled within 30 days, the governor promptly fills it by appointment (KRS 83A.040).

### **Incompatible Offices**

Unless prohibited, a person may simultaneously serve in two public offices. Many offices, however, have been determined to be incompatible with certain other offices.

Section 165 of the Kentucky constitution establishes the base set of incompatible offices. KRS 61.080, sharing much language with that section, sets out incompatible offices from a statutory perspective, as summarized below. Pertinent attorney general opinions and court decisions are listed in the annotations to KRS 61.080 and to Section 165 of the constitution in print editions, though not in the version provided at [legislature.ky.gov](http://legislature.ky.gov).

As set out in KRS 61.080, no one may simultaneously fill both a municipal office and

- a state office (including member of the General Assembly),
- a county office, or
- other municipal office.

Additionally, the following offices are deemed incompatible with any other public office:

- Member of the Public Service Commission
- Member of the Workers' Compensation Board
- Commissioner of the fiscal court in a county containing a city of the first class
- County indexer
- Member of the legislative body of a city of the first class
- Mayor or member of the legislative council of a consolidated local government
- Mayor or member of the legislative body in cities of the home rule class

While the constitution and KRS 61.080 set out explicit incompatibilities as noted, there can also exist common law and functional incompatibilities. An example of such a potential conflict may be where an individual, functioning in one official capacity, has authority over himself or herself serving in another, so as to possibly influence such matters as compensation or discipline. Consultation with the city attorney or other persons able to provide opinions of the law may prove fruitful when the question arises. If an office holder accepts another office that is deemed incompatible, the first office is automatically vacated (KRS 61.090).

### **Appointed Officers**

A city may choose not to establish elective offices at all, instead establishing nonelected offices by ordinance. Nonelected officers are selected by appointment (KRS 83A.080).

**How Established.** The city legislative body establishes by ordinance all appointive offices as needed. The establishing ordinance specifies the title of the office; the powers and duties of the office; an oath of office; and the amount of bond required, if any (KRS 83A.010). The compensation for a nonelected office is established under the city's personnel and pay system (KRS 83A.070).

Except for a city clerk being required in cities of the home rule class, the Kentucky Revised Statutes require no executive offices (KRS 83A.085). However, all elective and appointive offices in existence on July 15, 1980, remain established until specifically abolished by ordinance. If an office is abolished, the abolition is not effective until the termination of the term of any current office holder who was elected or appointed for a definite term (KRS 83A.080).

**Appointing Authority.** The executive authority of the city appoints persons to fill appointive offices established by the legislative authority. In mayor-council cities, the executive authority is the mayor; in commission or city manager plan cities, the executive authority is the city legislative body. Except in cities of the first class, the executive authority's appointments are not effective until the legislative body approves them, but officers appointed by the executive authority may be removed at any time at the pleasure of the executive authority, without the

approval of the legislative body, unless statute or ordinance protects the tenure of the office (KRS 83A.080).

### **City Clerk**

Each city, except one of the first class, establishes the office of city clerk. The office may be combined with any other nonelected office, but the title of the combined office must contain the word *clerk*. The ordinance establishing the office sets out the powers of the clerk, which at a minimum include

- maintenance and safekeeping of permanent records of the city,
- performance of duties required of “official custodian” or “custodian” pursuant to the Open Records Act under KRS 61.870 to 61.882 (see Chapter 3),
- possession of the seal of the city, and
- annual forwarding of prescribed municipal information to the Department for Local Government (KRS 83A.085).

### **City Administrative Officer**

A city may establish the office of city administrative officer (KRS 83A.090). The office is analogous to the office of city manager. The major difference is that the city administrative officer is directly responsible to the executive authority instead of to the legislative body. In a mayor-council form of government, the executive authority is the mayor; in the commission or city-manager plan, the executive authority is the legislative body.

As with other appointive offices, the city legislative body establishes the qualifications, compensation, and other matters as it sees fit. However, the statute requires that the city administrative officer perform the following duties at a minimum:

- Advise the executive in the formation of policy.
- Have major responsibility for the preparation and administration of the city budget, under the direction of the executive authority.
- Advise the executive on personnel decisions.
- Have continuing direct relationships with city department heads.

In addition to duties established by the legislative body, the city administrative officer carries out such other responsibilities as the executive authority may assign.

### **Members Of City Agencies Or Boards**

A city often establishes independent or semi-independent boards or agencies to perform functions that the city cannot or does not wish to perform through its regular departments. These units are usually administered by a body of persons appointed by the mayor or the city legislative body; they are usually considered officers. Statutes establishing or authorizing these units set out the membership of the governing body and who is the appointing authority. Table 7.1 lists boards and agencies provided for by statute.

**Table 7.1  
Boards And Agencies Authorized By Kentucky Revised Statutes**

| Name                           | Class, Form, Or Population         | How Established                            | Independent Or Joint | Function   | Number Of Members | City                 |              | Comments  |
|--------------------------------|------------------------------------|--|----------------------|--|-------------------|----------------------|--------------|---|
|                                |                                    |  |                      |  |                   | Appointing Authority | KRS Citation |   |
| Board of Adjustment            | All                                | Agreement under which zoning unit operates | Independent          | Grant variances from zoning regulations                            | 3, 5, or 7        | Mayor*               | 100.217      | May be more than one in planning unit                                       |
| Air Board                      | All                                | Ordinance                                  | Either               | Operate airport facilities   | Variable          | Mayor**              | 183.132      | City of 1 <sup>st</sup> class cannot establish 10-member board.             |
| Air Pollution Control Board    | CLG, ≥20,000                       | Joint resolution by city or county         | Joint                | Manage air pollution control district                              | 7                 | Mayor*               | 77.070       |   |
| Artificial Gas Commission      | All                                | Ordinance                                  | Independent          | Operate artificial gas system                                      | 7                 | Unspecified          | 96.545       | System may be under control of city officer or waterworks or electric board |
| Bridge Commission              | All                                | Ordinance                                  | Independent          | Operate and finance bridges  | 4 + mayor         | Mayor*               | 181.570      | Comm. dissolves on redemption of bonds issued to finance bridge             |
| Civil Service Commission       | 1 <sup>st</sup> class              | KRS  | Independent          | Operate civil service system                                       | 6 + mayor         | Mayor                | 90.120       |   |
| Civil Service Commission       | Home rule class                    | Ordinance                                  | Independent          | Operate civil service personnel system                             | 3 to 5            | Mayor                | 90.310       |   |
| Electric and Water Plant Board | Cities presently operating a plant | Ordinance                                  | Independent          | Operate water and electric system pursuant to KRS 96.171 to 96.188 | 5                 | Mayor*               | 96.172       |   |
| Electric Plant Board           | All                                | Ordinance                                  | Independent          | Operate electric plant pursuant to KRS 96.520 and TVA Act          | 4                 | Mayor*               | 96.740       |   |

| Name   | Class, Form, Or Population         | How Established                 | Independent Or Joint | Function  | Number Of Members                 | City                 |              | Comments   |
|--|------------------------------------|---------------------------------|----------------------|---|-----------------------------------|----------------------|--------------|--|
|  |                                    |                                 |                      |   |                                   | Appointing Authority | KRS Citation |  |
| Board of Directors of Emergency Ambulance Service District | All                                | Ordinance                       | Either               | Manage affairs of ambulance district                | 3 or more                         | Legislative body     | 108.110      |  |
| City/County Board of Health                                | 1 <sup>st</sup> class, CLG         | KRS                             | Joint                | Control public health matters                       | 8 + mayor + county judge/exec.    | Mayor*               | 212.380      |  |
| City/County Board of Health                                | ≥15,000                            | Joint action by city and county | Joint                | Control public health matters                       | 9 + mayor + county judge/exec.    | None                 | 212.640      | Secretary of Cabinet for Health and Family Services names members  |
| Urban-County Board of Health                               | UC                                 | KRS                             | Independent          | Control public health matters                       | 7 + mayor + member of council     | Mayor                | 212.632      |  |
| Hospital Building Commission                               | 1 <sup>st</sup> class              | Ordinance                       | Independent          | Supervise construction of hospitals, etc.           | 4 + mayor                         | Mayor                | 98.050       |  |
| Housing Authority  | All                                | Ordinance                       | Independent          | Operate public housing projects                     | 4 + mayor                         | Mayor                | 80.030       | If ownership and operation are transferred, see statute  |
| City/County Housing Authority                              | All                                | Resolutions by city and county  | Joint                | Operate public housing projects                     | 8 (mayor appoints 4)—see comments | Mayor                | 80.266       | Additional member can be appointed under certain conditions; see KRS 80.266(1)(b)                                  |
| Commission on Human Rights                                 | All                                | Ordinance                       | Either               | Administer civil rights law                         | Unspecified                       | None                 | 344.310      |  |
| Development Authority                                      | 1 <sup>st</sup> class; UC; ≥15,000 | Resolution                      | Independent          | Promote land development in designated project area | 7                                 | Mayor*               | 99.625       |  |
| Industrial Development Authority                           | All                                | Ordinance                       | Either               | Develop and operate industrial parks                | 6                                 | Mayor                | 154.50-316   | If a city/county unit, mayor appoints 3 members; if established by multiple cities, mayors appoint members jointly |

| Name                                   | Class, Form, Or Population                     | How Established           | Independent Or Joint | Function  | Number Of Members                                       | City                 |              | Comments  |
|--|--|---------------------------|----------------------|---|---|----------------------|--------------|---|
|  |  |                           |                      |   |   | Appointing Authority | KRS Citation |   |
| Library Board of Trustees              | 1 <sup>st</sup> class                          | Ordinance                 | Independent          | Operate library   | 12  | Mayor                | 173.040      |   |
| City/County Library Board of Trustees  | 1 <sup>st</sup> class, CLG                     | County contract with city | Joint                | Operate library (advisory board may be formed)                              | 12 (mayor appoints 6)—see comments                      | Mayor                | 173.105      | If city and county enter compact under KRS 79.310, board dissolves; library operates as joint entity        |
| Library Board of Trustees              | All  | Ordinance                 | Independent          | Operate library   | 5 in cities <20,000<br>7 in cities ≥20,000—see comments | Mayor*               | 173.340      | May enter contracts with other cities; each city names equal number of members; membership not to exceed 12 |
| Metropolitan Sewer District Board      | CLG; ≥20,000                                   | Ordinance                 | Joint                | Control sewer and drainage system   | 7 (mayor appoints 4)                                    | Mayor*               | 76.030       |   |
| Motor Vehicle Parking Authority        | All  | Ordinance                 | Either               | Operate street and off-street parking facilities                            | 5 if independent; 6 (3 by mayor) if joint               | Mayor*               | 94.815       |   |
| Municipal College Board of Trustees    | Cities of ≥3,000 but not 1 <sup>st</sup> class | Ordinance                 | Independent          | Operate municipal college   | Unspecified   | Mayor                | 165.160      |   |
| Park Board                             | All  | Ordinance                 | Independent          | Operate parks and playgrounds   | Not more than 5   | Elected by members   | 97.550       |   |
| Board of Park Commissioners            | All  | Ordinance                 | Independent          | Advisory board if city operates parks pursuant to KRS 97.465 and other laws | 5 to 7  | Mayor                | 97.455       |   |
| Parks, Playground and Recreation Board | All  | Ordinance                 | Independent          | Operate parks and recreational facilities                                   | 5   | Mayor*               | 97.030       |   |
| Planning Commission                    | All  | Ordinance                 | Either               | Regulate land use   | 5 to 20 (half by mayor when joint with one city)        | Mayor*               | 100.133      | Additional appointments possible depending upon commission configuration                                    |

| Name                                       | Class, Form, Or Population | How Established | Independent Or Joint | Function   | Number Of Members  | City                 |              | Comments  |
|--|----------------------------|-----------------|----------------------|--|--|----------------------|--------------|---|
|  |                            |                 |                      |  |  | Appointing Authority | KRS Citation |   |
| Planning Commission                        | Counties of 300,000+, CLG  | KRS             | Joint                | Regulate land use  | 5 + mayor + county judge/exec. (3)   | Mayor                | 100.137      | Only largest city appoints members  |
| Joint Playground and Recreation Board      | All, CLG                   | Ordinance       | Joint                | Operate parks and recreational facilities, zoo, or museums         | Not fewer than 5   | Mayor**              | 97.035       | If county and city enter compact under KRS 79.310, board dissolves; parks operate as joint department |
| City Recreation Commission                 | All                        | Ordinance       | Independent          | Operate recreational project pursuant to KRS 97.100 and other laws | 3 in cities <20,000; 3-7 in cities ≥20,000   | Mayor*               | 97.110       |   |
| Riverport Authority                        | All                        | Ordinance       | Either               | Operate riverport industrial area                                  | 6  | Mayor                | 65.520       | If established as joint agency, mayor appoints 3 members  |
| Tourist and Convention Commission          | 1 <sup>st</sup> class, CLG | Ordinance       | Either               | Promote tourism  | 9 (1 <sup>st</sup> class and county) 10 (CLG)  | Mayor                | 91A.370      |   |
| Tourist and Convention Commission          | Home rule class            | Ordinance       | Either               | Promote tourism  | 7  | Mayor                | 91A.360      |   |
| Tourist and Convention Commission          | UC                         | Ordinance       | N/A                  | Promote tourism  | 9  | Mayor                | 91A.372      |   |
| Transit Authority Board                    | All, CLG                   | Ordinance       | Either               | Operate transportation systems                                     | 8 if independent; 8 (4 by mayor) if joint and only 1 city; 8 + 1 for each public body over 2 | Mayor                | 96A.040      | If joint agency has more than 2 public bodies, membership appointments are determined by agreement    |
| Urban Renewal Community Development Agency | All                        | Ordinance       | Independent          | Promote development of specified area                              | 5  | Mayor*               | 99.350       |   |

| <b>Name</b>  | <b>Class, Form, Or Population</b> | <b>How Established</b> | <b>Independent Or Joint</b> | <b>Function</b>  | <b>Number Of Members</b>                      | <b>City Appointing Authority</b> | <b>KRS Citation</b> | <b>Comments</b>  |
|--|-----------------------------------|------------------------|-----------------------------|--|---|----------------------------------|---------------------|--|
| City Utility Commission                            | Home rule class                   | Ordinance              | Independent                 | Operate electric light, heat, and power plant pursuant to KRS 96.520 | 3 or 5, independent of population             | None                             | 96.530              |  |
| War Memorial Commission                            | All                               | KRS                    | Independent                 | Operate war memorial established pursuant to 1922 Ky. Acts Ch. 23    | 7   | Elected by members               | 97.630              | Commission required if city built war memorial   |
| War Memorial Commission                            | Home rule class                   | Ordinance              | Independent                 | Operate war memorial established pursuant to 1922 Ky. Acts Ch. 23    | 15  | Mayor*                           | 97.630              | After initial appointment by mayor, members are elected  |
| Board of Waterworks                                | 1 <sup>st</sup> class, CLG        | Ordinance              | Independent                 | Operate water system   | 4 + mayor                                     | Mayor*                           | 96.240              | If waterworks serves 50,000 customers outside city, county judge/exec. appoints 2 more members |
| Commissioners of Waterworks                        | All                               | Ordinance              | Independent                 | Operate water system   | 3 to 6 + member of legislative body           | Mayor*                           | 96.320              | Systems may be operated as department of city in lieu of establishing commission               |
| Waterworks (or Waterworks and Sewerage) Commission | All, in county of >50,000         | Ordinance              | Independent                 | Operate waterworks or sewerage system pursuant to KRS 96.350         | 3 or 5 + mayor, who is non-voting, ex-officio | Mayor                            | 96.351              |  |

Note: In listings such as "1 (3)," the number in parentheses indicates appointments by the governor. CLG = consolidated local government; UC = urban-county government; KRS = Kentucky Revised Statutes.

\*Mayor's appointments subject to approval by legislative body.

\*\*Mayor and county judge/executive appoint members jointly.

Source: Compiled by LRC staff.

## City Employees

It is possible for all positions in a city to be employees, but not for all positions to be offices, since an office must possess the characteristics enumerated in KRS 83A.010 and 83A.080 (also note the discussion of the statutory and judicial definitions of *officer* at the beginning of this chapter). An office is created by ordinance and designated as an office pursuant to KRS 83A.080 using the definition set out in KRS 83A.010; all other positions are employees. Other than status, the only functional difference between classifying a position as an employment or an office is that in mayor-council plan cities, the appointment of officers is subject to approval by the city council.

In mayor-council plan cities, employees are appointed and removed at the sole discretion of the mayor, unless they are employees of the council or their terms of employment are protected by the Kentucky Revised Statutes, ordinance, or contract (KRS 83A.130). For employment purposes, police officers are employees. In city manager and commission plan cities, the legislative body appoints and removes employees, although in city manager cities the manager may make temporary appointments (KRS 83A.140 and 83A.150).

With the exception of employees whose terms of employment are explicitly protected by statute, ordinance, or contract (that is, civil service rules, employee bills of rights, or appointments for definite term), employees of a city are said to be terminable at will. In the words of the state Supreme Court, “ordinarily an employer may discharge his at-will employee for good cause, for no cause or for a cause that some might view as morally indefensible.”<sup>65</sup>

Notwithstanding the employment-at-will doctrine, a discharged employee may be able to maintain a wrongful discharge action against an employer if the employee can show that the discharge violated public policy. Such an action is a tort action instead of a contract action. The public policy exception is narrow, the policy that the dismissal allegedly contravened must be clearly defined by statutory or constitutional law, and that law must be directed at providing protection to the employee in a job. In *Grzyb v. Evans*, the Kentucky Supreme Court cited with approval a Michigan case that stated that there are only two situations where a discharge will be so contrary to public policy that it constitutes grounds for a wrongful discharge action: where the reason for discharge was the employee’s refusal to violate a law, or where the reason for discharge was the employee’s exercise of a right conferred by law.<sup>66</sup> Examples of such public policy violations include *Firestone Textile Co. Div. v. Meadows*, where the employee had been discharged because he filed a claim for workers’ compensation, and *Pari-Mutuel Clerks’ Union v. Ky. Jockey Club*, where the employee was discharged because he authorized a labor union to represent him during collective bargaining.<sup>67</sup> Finally, the court in *Grzyb* stated that a wrongful discharge action will not lie where the statute complained of being violated prescribes its own remedies for violation (in that case, sex discrimination, pursuant to KRS Chapter 344).

Where the Kentucky Revised Statutes provide protections for the employee, these protections may grant the employee a vested interest or property interest in the employment. If such a property interest does arise, the employee may not be discharged without satisfying the due process requirements of the 14<sup>th</sup> Amendment or the Civil Rights Act.<sup>68</sup> Due process requires that the employee be afforded a hearing before termination. Failure to provide a pretermination

hearing for an employee with a property interest in a job could constitute a violation of that person's civil rights.

### **Personnel Pay And Classification Plan**

The compensation of all city employees must be fixed by the legislative body “in accordance with a personnel pay and classification plan which is adopted by ordinance (KRS 83A.070).” A personnel pay and classification plan is two documents: a position classification plan and a pay plan. The purpose behind the requirement for plans like these is to ensure the equitable treatment of city employees—to ensure, for example, that all employees are paid equitably according to the nature of the work they perform, instead of according to non-job-related standards such as whom they know or how generous their immediate supervisor is.

A position classification plan is a plan in which all city jobs are classified according to duties and responsibilities. The construction of the plan may vary, but the following describes the creation of a typical plan.

First, each existing city job is inventoried and evaluated on the basis of the work performed, its difficulty, the skills required, and so on.

Second, jobs are grouped under single titles,

when sufficiently similar in kind of work and difficulty and responsibility of work that the same title can describe them and the same selection standards and processes can fill them, and the same salary range can be applied to them with equity. The title by which the group of these similar positions is known as “class of positions.” A class may consist of many positions or, if the duties are unique, only one position.<sup>69</sup>

Third, after positions have been classified, written specifications are prepared for each class, which define the “contents and limits of the class.”<sup>70</sup> The contents of job specifications vary depending on the needs of the city, but to fulfill its purpose, a specification should contain

- “the title, which is a brief designation identifying the nature of work clearly and separating the class from other classes”;
- “a definition of the kind or nature of work function found in the class”;
- distinguishing characteristics of the class; and
- “brief examples of individual tasks or groups of tasks performed within the class.”<sup>71</sup>

Fourth, existing employees are allocated to the classes. A personnel classification plan typically covers only the regular employees of the city and not elective officers, positions filled by contract, or members of appointive boards and commissions.

Once the classification of positions has been completed, the pay plan may be prepared. The classification plan is a necessary prerequisite to the pay plan because “a sound pay plan provides equal pay for equal work and the same pay for comparable jobs ... [and to achieve] these objectives require a large body of job information that can best be obtained from a classification plan.”<sup>72</sup>

The term *pay plan* applies to a system of compensating employees where pay levels have been established

- in a systematic way;
- with proper attention to the prevailing levels of pay in the community;
- with proper regard for the relative worth of the various kinds of positions;
- on the basis of accurate, current information as to the kind and levels of work each employee performs; and
- in a manner that provides consistent and fair treatment of all employees free from favoritism, partiality, or discrimination for improper reasons.<sup>73</sup>

The basic unit of a pay schedule is the pay range. A pay range is established for each job classification, based on a determination of the minimum and maximum rates of compensation that a class warrants. A range could consist of a single rate, but there is typically a spread between high and low to allow for increments to an employee’s salary. Once the range is established for a class, a person employed in the particular classification may be paid only within the limits of the range, thus ensuring that employees will receive equal pay for equal work, but allowing for differentials based on job-related factors. The range is typically divided into steps, allowing for a uniform progression through the range.

A pay schedule, then, is composed of several of the ranges. A typical pay schedule “usually has the format of a table of numbers in which each horizontal line comprises a pay range and the vertical columns show the successive pay raises in each of the pay ranges.”<sup>74</sup> Table 7.2 illustrates a simple pay schedule. In this example, the steps are in 5 percent increments, which is typical, and the rates are hourly, although they may be daily, weekly, biweekly, semimonthly, monthly, or annually, whichever is most appropriate.

**Table 7.2**  
**Sample Pay Schedule**

| Pay Range<br>Number | Hourly Rate |        |        |        |
|---------------------|-------------|--------|--------|--------|
|                     | A           | B      | C      | D      |
| 1                   | \$7.25      | \$7.62 | \$8.00 | \$8.40 |
| 2                   | 8.00        | 8.40   | 8.82   | 9.26   |
| 3                   | 8.82        | 9.26   | 9.72   | 10.21  |
| 4                   | 9.72        | 10.21  | 10.72  | 11.26  |

Source: LRC staff.

The legislative body of the city adopts the personnel pay and classification plan by ordinance. It may be amended at any time by ordinance. The plan serves as a significant check on the executive’s unilateral appointment powers over employees, because the executive must adhere to the terms of the plan, with regard to the qualifications and number of positions filled and the compensation paid.

### **Administration Of Employees**

The responsibility for administration and supervision of employees depends on the organizational plan a city uses.

**Mayor-Council Plan.** The mayor supervises the conduct of all city departments and the conduct of all city employees. The mayor promulgates procedures to “insure orderly administration of the functions of city government,” subject to the disapproval of the council (KRS 83A.130).

**Commission Plan.** Since there is no separation of legislative and executive functions in the commission plan, the city commission has the sole authority for the administration of city employees. KRS 83A.140 requires that the commission supervise all city departments and the conduct of all city employees. The commission creates the city departments and prescribes their functions and the duties and responsibilities of the department heads and their employees. The individual members of the commission are assigned departments over which they have direct supervision, although that supervision may be delegated to a city administrative officer created pursuant to KRS 83A.090. The commission also promulgates procedures to ensure the orderly administration of the functions of city government. The commission fixes the compensation of city employees pursuant to a personnel pay and classification plan.

**City Manager Plan.** Like the commission plan, the city manager plan vests all executive and legislative powers in the legislative body, the board of commissioners. The distinction is that significant administrative powers vest in the city manager. The manager’s powers usually take the form of recommending certain actions to the board.

The city manager supervises all departments of city government and the conduct of city employees. The manager promulgates procedures for the orderly administration of the functions of the city, although the procedures are effective only if approved by the board.

The board is the appointing authority for all city employees, although it is to act on the recommendations of the manager. Employees may be removed only when “necessary for the good of the service”; the manager may make temporary appointments without the board’s action, pending the making of the permanent appointment by the board, although the manager’s temporary appointment power and the power to employ personnel in temporary positions are subject to “such conditions as may be imposed by the board” (KRS 83A.150).

### **Civil Service Plans**

Civil service laws impose restrictions on the appointing authority’s power to make personnel decisions. Civil service systems grew out of early 20th-century attempts to depoliticize the work forces of governments—especially local governments. Civil service systems “are designed to eradicate the system of appointment to public office for political considerations and to establish in its place a merit system of fitness and efficiency as the basis of appointment and to this end, the appointee is given tenure during good behavior.”<sup>75</sup>

The primary device of a civil service system is the requirement that employees be appointed by merit, as determined by a system of competitive examinations. A system will typically require that all applicants for a position take a test, usually administered by a board established for civil service purposes. The names of a certain number of those making the highest scores are then given to the appointing authority, which must pick from those names to fill the vacancy. After an initial probationary period, the person appointed is removable only for cause.

Civil service systems are optional for all Kentucky's cities except those of the first class. There is one system for cities of the first class, and another system for home rule cities.

**Cities Of The First Class.** KRS 90.110 to 90.230 mandate that a city of the first class have a civil service system, called classified service. The service covers all offices and places of employment in the departments of public safety, public health, and public welfare and the civil service, except for the following offices or positions of employment:

The director of safety and the following positions in that department, to wit: the director of safety's staff, including, but not limited to assistants and his private secretary, the chief of police and his private secretary, assistant chief of police, chief of detectives, chaplain for the police department, chief of firefighters and his private secretary, assistant chief of firefighters, chaplain for the fire department; superintendent and animal catchers, and caretakers, in the division of city pound; supervising inspector of weights and measures, and inspector of weights and measures, and deputy inspector, in the division of weights and measures. ... The director of health and the following positions in that department, to wit: private secretary, kitchen helpers, cleaners, waitresses, housemaids, janitresses, laundresses, hospital resident medical staff, university visiting staff, student nurses, bona fide university students. ... The director of welfare and the following positions in that department, to wit: private secretary, janitors, cleaners, laundresses, night watchman, truck drivers, kitchen helpers, janitresses, park laborers, bona fide university students. ... Members of the civil service board and the personnel director (KRS 90.150).

The classified service is administered by a civil service board composed of six members appointed by the mayor, along with the mayor, serving *ex officio*. The board promulgates rules and regulations for the "appointment, transfer, laying-off, reinstatement, deductions from pay, leave of absence, promotion, demotion, dismissal, and suspension" of all employees in the classified service (KRS 90.160).

All positions in the classified service are filled by competitive examination. Eligibility lists rank applicants according to their scores. To fill positions, an appointing authority chooses from among the three highest-scoring applicants. Any employee under the classified service who is dismissed, suspended, or demoted may demand a hearing before the board, which will then rule on the appropriateness of the action.

The board of aldermen may, at its discretion, expand the classified service to include other departments, boards, or agencies of the city.

**Home Rule Cities.** The civil service system for cities of the home rule class set out in KRS 90.300 to 90.410 is optional. The legislative body may adopt a civil service system and determine which departments and employees are to be included. The system is administered by a civil service board composed of three members appointed by the mayor with the approval of the legislative body. The system is substantially the same as that of the system required for cities of the first class. The city may not adopt a civil service system in November or December of any even-numbered year. The city may abolish any civil service system that it has established. To do so, it must adopt an ordinance repealing the civil service system. The city may not repeal any portion of a civil service system that relates to the maintenance of a pension fund, except that

if there are fewer than 12 active and retired members or beneficiaries of the pension fund, the governing body of the fund may offer individuals entitled to benefits from the fund a one-time option to convert monthly pension benefits from the fund to monthly annuity benefits from an insurance company for the same amount (KRS 90.400 and 90.410).

Before 1982, civil service excluded administrative and directorial positions, but pursuant to a 1982 amendment to KRS 90.300, the city legislative body gained the option to define persons in those positions as employees; in that capacity, they would be covered by civil service. Their election must have been before December 31, 1982.

**Cities Of 1,000 To 7,999 Persons.** The legislative body of a city may adopt an ordinance establishing a civil service system for its police and fire employees. A city may adopt the provisions of KRS 95.761 to 95.766, or those of KRS 90.300 to 90.410. The city may adopt an ordinance establishing a civil service system for employees who are not police or fire employees. The city adopts the provisions of KRS 90.300 to 90.410 for employees who are not police or fire employees (KRS 95.761). The city may not adopt a civil service system in November or December of any even-numbered year.

The city may abolish any civil service system that it has established. To do so, it must adopt an ordinance repealing the civil service system. The city may not repeal any portion of a civil service system that relates to the maintenance of a pension fund.

### **Residency Requirements**

KRS 61.409 prohibits the adoption of residency requirements for police officers and nonpolice employees in a law enforcement agency. This statute also prohibits a local government from requiring police officers and nonpolice employees to be registered voters but permits the local government to establish policies requiring reasonable response time for emergencies. Local governments are prohibited from enacting residency requirements for emergency medical services personnel or volunteers, but policies may be established that require sufficient response time for employees off duty but on call (KRS Chapter 311A; KRS 61.409).

### **Equal Employment Opportunity Laws**

Local governments are subject to the provisions of Title VII of the Civil Rights Act of 1964, as well as the Kentucky Civil Rights Act (42 USC, sec. 2000-e; KRS Chapter 344). These laws prohibit them from discriminating against any individual with regard to compensation, terms, or conditions or privileges of employment because of the individual's disability, race, color, religion, sex, national origin, or age between 40 and 70.

KRS 337.423 prohibits any employer from discriminating between employees on the basis of sex, by paying wages to any employee in any job at a rate less than the rate paid to any employee of the opposite sex for comparable work or in jobs that have comparable requirements.

## Other Employment Laws

Cities may be required to reimburse training costs to the state training unit if the city hires a county deputy sheriff who is under an employment contract before the contract expires.

## Wage And Hour Laws

Cities are subject to state and federal laws that set out minimum levels of compensation for employees and regulate many other aspects of employer-employee relations. Until 1985, municipal employees performing “traditional” functions were not subject to the federal Fair Labor Standards Act, but in that year the US Supreme Court ruled that the Act covers all municipal employees.<sup>76</sup>

That decision has had little effect on Kentucky cities because they were already subject to the provisions of KRS Chapter 337, the Kentucky wage and hour law, which closely tracks the federal law. The major difference between the two laws was removed when the 1986 General Assembly increased the state minimum wage to equal the federal wage.

The Kentucky wage and hour law contains three major provisions:

- With limited exceptions, all employees must receive a wage of not less than the minimum wage established pursuant to KRS 337.275.
- With limited exceptions, any employee who works more than 40 hours in a week must be compensated at a rate 1½ times the regular rate for those hours. For provisions dealing with the awarding of compensatory time to local government employees, see KRS 337.285.
- Employers must maintain detailed compensation records for every employee.

Kentucky law and the Fair Labor Standards Act differ slightly on exceptions and in the determination of overtime. Where differences between the laws exist, state law prevails when more restrictive.<sup>77</sup> For further detail, see KRS Chapters 336 to 344.

## Pension Systems

2018 SB 151 contained an overhaul of the state-sponsored retirement systems. After passage, a lawsuit was filed. The Kentucky Supreme Court struck down the provisions of SB 151.

During the 2020 and 2021 Regular Sessions of the General Assembly, two bills were enacted to effectively separate the governance structure and key benefit statutes of the County Employees Retirement System (CERS) from the Kentucky Retirement Systems while retaining a shared administrative staffing structure:

- HB 484 enacted during the 2020 Regular Session and effective April 1, 2021, established a new nine-member CERS board to govern CERS, modified the existing Kentucky Retirement Systems board whose responsibilities will be to govern the Kentucky Employees Retirement System (KERS) and State Police Retirement System (SPRS), and established an eight-member Kentucky Public Pensions Authority (KPPA) board consisting of Kentucky Retirement Systems and CERS board members to oversee administrative staffing and duties of both Kentucky Retirement Systems and CERS. Daily system activities—including

administrative support, investment management, benefits counseling, accounting and payroll functions, and legal services—are performed by a staff of employees working as the KPPA.

- HB 9 enacted during the 2021 Regular Session primarily established separate benefit statutes for CERS apart from KERS and SPRS for key benefit provisions that were previously contained in a single statute applicable to multiple systems.

HB 398, passed by the 1988 General Assembly, brought a fundamental change in pension administration for cities. Prior to that legislation, there was a patchwork of options for cities of various then-existing classes to place various employees either in the state-administered CERS or in locally administered pension plans. HB 398 closed many cities' locally administered defined-benefit retirement systems to new members; all new employees were to be granted membership in CERS. Employees on the payroll at the time of transition could stay with the local system or transfer to CERS; most chose to transfer.

When employees joined CERS, they received service credit equivalent in time to their service credit under the locally administered plan. Pension assets attributable to the transferring employees' contributions were transferred to CERS. Cities have the option of transferring city contributions attributable to the transferring employees, or of retaining these contributions for investment purposes and paying debts incurred to CERS over a period of up to 30 years (KRS 78.530).

In 2002, KRS 78.530 was amended to require Kentucky Retirement Systems to deny membership to any local government that does not have a state contract for its employees in the state health insurance group. The General Assembly also amended KRS 78.540 to allow those who originally opted out of membership in CERS to again have the option to join and to purchase service time on a delayed-payment plan.

Employees already retired from local pension plans were not transferred to CERS. Cities have the obligation of maintaining retirement funds for these retirees and of assuring that the funds remain sufficient to pay retirement obligations until the death of the last recipient. HB 398 did not change requirements for actuarial evaluations of locally administered retirement funds. Cities must still have an evaluation performed every 3 to 5 years to ensure adequate funding, and a copy of the actuarial report must be sent to the Legislative Research Commission (KRS 65.156).

HB 398 did not affect cities of the first class and urban-county governments. Before enactment of HB 398 in 1988, however, nonuniformed employees and the police in Louisville, the only city of the first class, had already transferred to CERS. KRS 95A.250 gave the firefighters the option of transferring to CERS. With the adoption of a consolidated local government in 2000 in Louisville, city and county employees, except for the fire department, are under one system. Only previous policies regarding pensions remain in effect until changed by the new metro council (KRS Chapter 67C).

In Kentucky's only urban-county, Lexington-Fayette, new nonuniformed employees have been placed in CERS, and the old locally administered plan has been closed to new members. Statute still requires urban-county police and firefighters to belong to a locally administered retirement system (KRS 67A.370).

The net effect of 1988 HB 398, KRS 95A.250, and voluntary or statutory transfers to CERS over a period of decades is that nearly all active city employees covered by a defined-benefit pension plan now belong to CERS, and the Lexington-Fayette Urban County Government's Police and Firefighter Pension System is the only defined-benefit pension administered by a local government that is open to new members. Cities may still establish pension plans that are money-purchase or defined-contribution plans or deferred-compensation plans, and may administer them locally. An amendment in 1992 prohibits any city, county, special district, or consolidated local government, or any agencies or instrumentalities thereof, from creating or maintaining a defined-benefit retirement system that by its nature can have an unfunded liability. Urban-county governments are exempt from this prohibition (KRS 65.156).

The 1990 General Assembly continued pension reform efforts by enacting legislation that built on the 1988 legislation. The amendments allow local government employees previously opting not to participate in CERS to enter the system. KRS 67A.655 permits an urban-county government to put its new police and firefighters in CERS under hazardous-duty coverage and permits current police and firefighters to transfer or to remain in the local plan. The urban-county government may rescind its order if not enough current employees transfer. This statute also permits the urban-county government to transfer funds to CERS that are not needed to fund benefits for current members, retirees, and their survivors in the local plan and allows up to 30 years to pay the cost of the transfer to CERS. The local government must purchase current service credit but may determine the amount to purchase (KRS 78.530). Cities must purchase service credit for former employees who did not take refunds and who are current CERS members with another employer. The city must purchase credit only for that amount of service time during which contributions were made (KRS 78.531). Also, cities with closed pension systems that were funded by special pension fund taxes may continue to levy those taxes to fund CERS contributions and may increase the tax in amounts sufficient to cover only actual CERS costs (KRS 78.530). For more information on local pension systems, see KRS Chapters 61, 65, 67A, 78, 79, 90, and 95.

### **Disability And Death Benefits**

All pension plans discussed above provide disability benefits for employees permanently disabled by a work-related injury and provide death benefits for an employee who dies as a result of a work-related injury. In addition, several statutes provide disability or death benefits to police officers or firefighters not otherwise covered by a pension plan.

- The state Crime Victims Compensation Board may authorize the award of a lump-sum payment not to exceed \$25,000 to the family of any city, county, or urban-county police officer who is killed in the line of duty and who is not otherwise eligible for death or disability benefits under a pension plan (KRS 49.420).
- The family of any city, county, or urban-county police officer whose death occurs as a direct result of an act in the line of duty receives a lump-sum payment of \$80,000 paid out of the State Treasury. That benefit is in addition to any other benefit received. "Police officer" includes auxiliary police officers employed pursuant to KRS 95.445, as well as regular officers (KRS 61.315).
- A monthly payment of \$300 each for life and health insurance is available for firefighters permanently and totally disabled in the line of duty (KRS 95A.070).

- The spouse and children of a firefighter or volunteer firefighter who was killed in the line of duty on July 1, 1989, or thereafter, or who is permanently or totally disabled while in active service or training, are entitled to free tuition at any state-supported university, community college, or vocational training institution (KRS 164.2841 and 164.2842).

### **Miscellaneous Employee Benefits**

**Health And Disability Coverage.** Any city may provide retirement, disability, health maintenance coverage, or hospitalization benefits for its employees and officers. Hospitalization benefits or health maintenance organization coverage may be extended to the families of those officers or employees. A city has several options for establishing the plans, including purchasing coverage either independently or cooperatively or by operating either an independent or cooperative self-insurance program. If a city employs more than 25 persons and provides medical care coverage, it must annually offer its employees the option to elect either standard hospitalization benefits or health maintenance organization coverage (KRS 79.080). For those local governments that are self-insured, KRS 304.17A-800 to 304.17A-844 contain specific provisions regarding these programs. Cities, counties, and urban-county governments that are contributing members to any of the state retirement systems may participate in state health insurance programs (KRS 18A.225 to 18A.2287 and 79.080).

**Unemployment Compensation.** Any city having one or more employees is subject to the Unemployment Compensation Act, KRS Chapter 341, which establishes a state-administered program that provides benefits to unemployed workers. The program is funded by contributions from employers. The contribution rate of an employer is a percentage of wages paid on covered employees. The percentage of contribution is based on the benefits paid that are chargeable to the employer. The law does not cover elected officials.

**Workers' Compensation.** Any city having one or more employees is subject to the Kentucky Workers' Compensation Law (KRS 342.630) and is liable to pay compensation to any employee for any work-related injury, occupational disease, or death caused to the employee (KRS 342.610). A city must establish a method for paying workers' compensation claims. It may purchase insurance from a company authorized to sell workers' compensation insurance. It may self-insure, in which case it must furnish proof to the state that it has the financial ability to directly pay claims under the law. Upon furnishing adequate proof and acceptable security, a city receives a certificate of self-insurance. A city may also join other local governments and form a mutual insurance association or reciprocal of inter-insurance exchanges (KRS 342.340 and related laws).

**Military Service Credit For Retirement.** Persons who participate in CERS can receive service credit for service in the military (KRS 61.552).

## Chapter 8

### Specific Municipal Powers

The Kentucky Revised Statutes contain several hundred statutes relating to cities. They fall into three categories: statutes granting extraterritorial powers, statutes limiting home rule authority, and statutes granting specific municipal powers. The existence of the first two categories of municipal statutes is consistent with the theory of home rule codified as KRS 82.082. The status of statutes in the last category is called into question by the existence of home rule.

Statutes granting powers outside of the city's boundary are necessary because home rule is specifically limited to the corporate limits of the city. If a city is to exercise any power or perform any function outside the city limits, it may do so only pursuant to a specific statutory authorization. Table 8.1 lists statutes granting extraterritorial authority.

**Table 8.1**  
**Specific Grants Of Extraterritorial Authority**

| <b>Authority</b>  | <b>Cities Eligible</b>        | <b>Territorial Limit</b>                                  | <b>KRS Citation</b> |
|---|-------------------------------|---|---------------------|
| Develop riverport                                       | All                           | Economic environs of port                                 | 65.530              |
| Construct water or sanitary/sewer system                | All                           | Territory contiguous to city                              | 96.150              |
| Construct water, light, power, heat, or telephone works | All                           | None  | 96.170              |
| Operate streetcar system outside city                   | Population ≥8,000             | 10 miles  | 96.189              |
| Construct utility works or facilities                   | All                           | None  | 96.190              |
| Provide water service outside city                      | First class                   | Territory contiguous to city, including adjacent counties | 96.265              |
| Construct waterworks                                    | Home rule class               | None  | 96.350              |
| Construct electric light, heat, or power plants         | Home rule class; urban-county | None  | 96.520              |
| Operate mass transit system                             | All                           | Transit area, adjoining areas                             | 96A.020             |
| Establish/maintain parks, cemeteries, public ways       | All                           | None  | 97.530              |
| Condemn property for parks or cemeteries                | All                           | None  | 97.540              |
| Enact subdivision regulations                           | All                           | 5 miles of city   | 100.131             |
| Construct flood control system                          | All                           | None  | 104.030             |
| License sale of alcoholic beverages                     | Population ≥8,000             | Within county   | 243.230             |

Note: This table does not include powers possessed by a city when operating jointly with a county.

Source: Compiled by LRC staff.

Home rule is a revocable grant of powers given to cities by the constitution and the General Assembly, for the legislature retains the right to preempt local legislation by statute. Such preemption generally occurs where a statewide interest supersedes the need for local autonomy. Examples of statutes limiting home rule discretion are KRS Chapter 83A, detailing organizational structure; KRS Chapter 91A, setting out requirements for financial administration; and KRS Chapter 100, providing a framework for land use planning.

The third and largest group of municipal statutes is those laws enacted prior to home rule to grant cities the authority to perform various acts and functions. Since home rule broadly grants all possible municipal powers, these older acts can prompt the question of whether they limit home rule authority. Unlike the statutes discussed previously, these enabling statutes were intended to enable a city to perform a function. The concern with these statutes that predate the enactment of KRS 82.082 is that they might be construed as comprehensive schemes that local legislation cannot vary, thereby providing perhaps unintended limitations of the authority of KRS 82.082.

Some of these statutes are comprehensive schemes of legislation. KRS 82.082 specifically mentions KRS Chapter 95, relating to police and fire departments, and KRS Chapter 96, relating to municipal utilities, as comprehensive schemes. However, many of the statutes are not comprehensive schemes but merely cloud the effectiveness of home rule.

## Public Ways And Services

### Airports

Any city may independently, or jointly with other units of local government, establish a nonpartisan air board. The board is a separate corporate entity and is operated by a nonpartisan board with varying membership depending upon what type of a local government is operating it, and whether or not that local government is operating it in conjunction with another local government or entity. The purpose of the board is to establish, maintain, operate, and expand “necessary, desirable or appropriate” airport and air navigation facilities. The board may borrow money and issue revenue bonds in furtherance of its purposes (KRS 183.132 to 183.160).

### Blighted And Deteriorated Properties<sup>78</sup>

**Urban Renewal Act.** The Urban Renewal Act may be used only for relatively large areas (“development areas”). Its provisions are therefore unavailable for use against single or isolated blighted and deteriorated properties. But KRS Chapter 99 also permits cities to condemn single-property tracts that are blighted or deteriorated. A city must adopt an ordinance establishing a vacant property review commission that serves to certify property as blighted or deteriorated to the city legislative body.

A property may be certified only if

- the property is vacant;
- the property is blighted or deteriorated;
- the owner has been notified that the property is blighted or deteriorated, and the owner has failed to take corrective action within the requisite time;
- the owner has been sent notices that the property violates city codes; and
- the planning commission (if one exists in the city) has determined that reuse of the property for residential or related uses is in keeping with the comprehensive plan.

Upon certification by the commission, the legislative body may institute eminent domain proceedings against the property if it finds that

- the property has deteriorated so as to constitute a serious and growing menace to public health, safety, and welfare;
- the property is likely to continue to deteriorate unless corrected;
- the deterioration will contribute to the blighting of the surrounding area; and
- the owner of the property has failed to correct the problem.

Once the city has acquired title to the property, it has the power to hold, clear, manage, or dispose of it for residential and related uses (KRS 99.700 to 99.730).

**Abandoned And Blighted Property Conservatorship Act.** Cities, as well as other units of local government, may petition the Circuit Court of jurisdiction in the county in which an abandoned and blighted property is located to have a conservator appointed to bring the building into compliance with all applicable housing, building, and nuisance code requirements (KRS 99.780 to 99.855).

Before a conservatorship is granted, process is served to the owner of the property, the city or county that is not the petitioner, and any lienholder with an interest in the property. Persons owning property within 500 feet of the property in question are notified of the hearing date (KRS 99.795).

The court may appoint a conservator if it finds that all of the following conditions exist:

- The building has not been legally occupied for at least the previous 12 months.
- The owner has failed to present sufficient evidence that the property was actively marketed during the preceding 60 days.
- The property is not subject to a pending foreclosure action by an individual or nongovernmental entity.
- The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor.
- The owner has failed to present sufficient evidence of having acquired the property within the preceding 6 months. The evidence cannot include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner.
- The court finds at least three of the conditions meeting the definition of *abandoned and blighted property* in KRS 99.785 have been established (KRS 99.800).

Governing body members and public officers of the local government seeking the conservatorship, and their immediate family members, cannot be appointed as conservators (KRS 99.805).

The owner of the property may be allowed to remedy the conditions during the process, but may be required to post a bond in the estimated amount of repair costs. If the owner fails to do so in a certain time, the conservator is appointed. If the owner fixes or sells the property, the owner must reimburse the petitioning local government for all reasonable costs incurred in preparing and filing the petition (KRS 99.810).

Once appointed, a conservator has all the powers and authorities to repair the property and bring it up to all applicable code requirements (KRS 99.815). The conservator must maintain, protect, and insure the property and must submit a rehabilitation plan to the court and parties in interest. The conservator must complete the work, and may then petition the court for permission to terminate the conservatorship by selling the property at a public or private sale (KRS 99.825 and 99.835). Demolition protocols exist if the property is beyond rehabilitation (KRS 99.830). Proceeds from the sale of the property are distributed to repay rehabilitation costs, settle taxes and liens, and compensate various other interested parties in an order set out in statute (KRS 99.840).

### **Bridges**

Any city or urban-county government may create a bridge commission to erect and control bridges owned by the unit of local government. The commission is composed of the mayor and four persons appointed by the mayor with the approval of the legislative body. The unit of local government may issue revenue bonds to construct or purchase interstate bridges. When the debt acquired to finance the bridge is paid off, the commission dissolves and the unit of local government assumes control of the bridge (KRS 181.570 to 181.840). The unit of local government may also contract with other persons to operate a bridge wholly or partially within the city (KRS 181.510).

### **Cemeteries**

Any city may acquire title to property used as a cemetery if it deems that cemetery property abandoned, by authorizing the city attorney to institute suit to acquire title (KRS 381.720 to 381.767). If a city owns and operates a municipal cemetery, it is subject to regulation by the Office of the Attorney General. The cemetery regulations apply primarily to cemeteries that sell cemetery merchandise (such as memorials and urns), mausoleums, or underground crypts before the death of the person for whom the products are intended.

The following summarizes the major elements of the applicable law:

- All cemeteries must register with the attorney general and file an annual report.
- All cemeteries must maintain certain accounting records and allow the attorney general to audit their records.
- Each cemetery pays to the attorney general
  - for each preneed cemetery merchandise contract entered into, a fee of \$5;
  - for each mausoleum or crypt contract, a fee of \$5 if cost is less than \$500, or a fee of \$10 if cost is more than \$500.
- Cemeteries that sell mausoleums or underground crypts before construction must place 36 percent of the contract price in trust until the completion of construction, must commence construction within 24 months of the contract, and must complete it within 60 months.
- Cemeteries that sell cemetery merchandise on a preneed basis must place 40 percent of the contract price in trust until the merchandise is provided.
- Violation of the trust fund provisions of KRS 367.932 to 367.974 is a Class C felony.
- The officers, owners, and shareholders of any cemetery may be held personally liable for violations of the Act (KRS 367.991).

Whenever land or other property is needed for cemetery purposes, any city may condemn property in or outside the city by the Eminent Domain Act (KRS 97.540).

### **Colleges And Universities**

A city of the first class may support a municipal university by levy of taxes, annual appropriation from general revenues, and other sources. It may appropriate land to the university and issue bonds for the use of the university, although the voters must first approve any bond issue. The city may establish a law school connected with the university (KRS 165.010 to 165.150).

A city with a population of at least 3,000 may establish, acquire, and maintain a municipal college. The council may support the college through the issuance of bonds, a tax levy, or appropriations from funds other than tax revenues. Certain revenue-raising abilities may be restricted to cities of certain populations. The council may deed city-owned real property to the college (KRS 165.160 to 165.200).

Designated cities (cities that were of the former second class as of January 1, 2014) are allowed to establish or acquire municipal junior colleges. These colleges may be supported by a tax as well as tuition charges (KRS 165.210 to 165.260).

### **Flood Control**

For the purpose of protecting property from flood, any city may extend a flood control system outside the boundaries of the city, through the construction, enlargement, maintenance, or operation of walls or other barriers beyond the city boundaries. The city may acquire land or rights-of-way by purchase or eminent domain (KRS 104.030).

### **Homelessness**

A city may designate indoor or outdoor areas separate from areas frequently used by the public as a temporary camping location for unsheltered homeless persons. The area must contain adequate sanitation (KRS 65.145).

### **Housing And Urban Development**

Any city may acquire, establish, or operate low-cost housing for the purposes of “providing adequate and sanitary living quarters for individuals or families” (KRS 80.020). The housing so acquired may be managed and controlled through a housing authority composed of the mayor and four persons appointed by the mayor with the approval of the legislative body. The authority may issue revenue bonds. The authority may engage in the maintenance and enhancement of adequate housing stock for low- and moderate-income persons. An authority may also participate in certain private or public developments for profit, as long as the profits are used to further the maintenance and enhancement of adequate housing stock. By resolution, the city legislative body and a contiguous county may jointly establish a city-county housing authority. A joint authority has a board with eight members—four appointed by the county judge/executive and four by the

mayor. If separate city and county authorities exist, such action may take effect only if the existing housing authorities request it (KRS Chapter 80).

Any city may create an Urban Renewal and Community Development Agency to aid in the redevelopment of slum or blighted areas. The agency is managed by a five-member board appointed by the mayor (KRS 99.330 to 99.590). Each city of the first class, urban-county government, or consolidated local government establishes a development agency. The agency is operated by a seven-member board of commissioners appointed by the mayor with the approval of the legislative body. The agency assists in the preservation and revitalization of historically or economically significant areas. The agency may acquire title to land, issue revenue bonds, and establish a revolving loan fund for housing rehabilitation. The agency may be dissolved at any time by a three-fifths vote of the legislative body that created it (KRS 99.610 to 99.675).

### **Landlord-Tenant Law**

Any city may adopt the provisions of the Uniform Residential Landlord and Tenant Act to regulate the relationship between landlords and tenants. Adoption is permissive but, if adopted, all provisions of the law as set out in the Kentucky Revised Statutes must be adopted without amendment (KRS 383.500 to 383.715).<sup>79</sup> Absent adoption of this Act, the rest of KRS Chapter 383 still provides guidance relative to the duties and obligations of landlords and tenants.

### **Libraries**

Any city of the home rule class may provide library service to its inhabitants by any of the following methods (as provided in KRS 173.300 to 173.410):

- The legislative body may establish a library.
- The inhabitants may petition for an election to be held on the question of the establishment of a library.
- Two or more units of local government may jointly create a regional library via KRS 65.210-300, the Interlocal Cooperation Act.
- The city may contract with an existing library.

Upon the establishment of a library, the city shall “make the necessary appropriation or levy to establish and maintain such library service annually and perpetually” (KRS 173.310). The library is controlled through a board of trustees composed of five to seven members.

A city of the first class or consolidated local government may establish a free public library within the city. The library is managed by a board of trustees composed of 12 persons. The board may support the library through an annual appropriation (KRS 173.030 and 173.040).

In counties containing a city of the first class that have entered into a compact with the city, the county clerk must offer citizens the opportunity to donate funds to the public library when registering a vehicle pursuant to KRS 186.030. The clerk is entitled to the same commission as that payable on county taxes pursuant to KRS 134.805 (KRS 173.106).

### **Local Industrial Development Authority**

Any city may establish a nonprofit Local Industrial Development Authority consisting of six to eight members under the provisions of KRS 154.50-301 to 154.50-350. The purpose is to

- acquire, retain, and develop land for industrial and commercial purposes;
- aid in the development and promotion of industrial sites, parks, and subdivisions to meet industrial and commercial needs;
- encourage the acquisition, retention, and development of land for industrial and commercial needs by other public and private local development organizations;
- cooperate with federal agencies in formulating development plans and in acquiring and developing land for industrial and commercial purposes;
- acquire real or personal property, or rights therein, necessary or suitable for establishing industrial sites, parks, or subdivisions.

The authority may dispose of any real or personal property, or rights therein, which it considers no longer necessary to carry out the purposes of KRS 154.50-301 to 154.50-346. The authority may lease, sell, or convey any or all industrial sites, parks, and subdivisions owned or optioned by it to any public or private organization, governmental unit, or industry for the purpose of constructing or operating any manufacturing, industrial, or commercial facility.

No sale or conveyance of any land can be made to a private organization or industry unless it has executed a written contract providing that if construction of a manufacturing, industrial, or commercial facility has not begun within 10 years, the organization or industry must offer to reconvey the land to the authority. If the authority accepts the offer of reconveyance, it returns 95 percent of the purchase price to the organization or industry (KRS 154.50-320).

### **Management Districts**

A city of the first class or an urban-county government may create a management district to finance economic improvements in designated areas of the city. Management districts are created by ordinance, and improvements are to be financed by assessments that are levied on and collected from all property owners in the district. A board of directors performs oversight of the district and other statutory requirements (KRS 91.750 to 91.762).

### **Mass Transit**

Any city may independently, or jointly with other units of government, establish and operate a transit authority. The purpose of a transit authority is the promotion and development of mass transportation in the area. An operating board manages the authority. A transit authority may provide service outside the transit area (KRS Chapter 96A).

Any city may independently, or jointly with other local governments, establish a mass transportation program to secure financing to operate and preserve mass transportation facilities. It must be first submitted to the approval of the voters (KRS 96A.310 to 96A.370).

A city must provide insurance or provide for self-insurance for coverage of its mass transit systems and their employees (KRS 96A.180).

Any city may acquire or establish a streetcar system and may operate the system within the city and within 10 miles beyond. A city may acquire or establish a bus or taxicab system. General obligation bonds may be issued for the financing of a mass transit system, if approved by a two-thirds majority of the voters (KRS 96.189). Any city may apply to the state Department of Vehicle Regulation for authorization of a city bus line that the city will operate (KRS 281.635).

Local transit authorities receive funds from the Kentucky Public Transportation Development Fund, the repository of all mass transit funds that the state receives. The fund is used to provide grants to local transit authorities to promote mass transit (KRS 96A.096).

### **Neighborhood Redevelopment Zones**

Any city, by ordinance enacted by the legislative body, may establish one or more neighborhood redevelopment zones. To be eligible for designation as a neighborhood redevelopment zone, an area must consist chiefly of residential buildings at least 25 years old and be characterized by

- deteriorating housing stock,
- abandoned residential buildings or vacant lots,
- other conditions causing the area to be in a deteriorating economic or physical condition, or
- detrimental conditions such that the effect is to discourage mortgagees from establishing loans in the area.

A zone may be established either on the initiative of the legislative body or on a petition of the owners or lessees of property in an area. A zone must be certified by the executive director of the Kentucky Housing Corporation.

The purpose of neighborhood redevelopment zones is to encourage the rehabilitation of older urban residential neighborhoods. The heart of the program is a mortgage guaranty fund administered by the Kentucky Housing Corporation to enable mortgage insurance companies to insure mortgages in excess of 90 percent of the appraised value of the property covered by the mortgage, up to 125 percent. Properties are eligible for the program only if located within a neighborhood redevelopment zone. A city establishing a neighborhood redevelopment zone must offer certain other incentives to redevelopment and must adopt a housing code within the zone (KRS Chapter 99A).

### **Overlay Districts**

Any city or consolidated local government that uses zoning regulations may by ordinance create an overlay district. The purpose of an overlay district is to supplement existing zoning regulations in a city by regulating repairs and renovations to buildings in a specified area. Cities that create districts may delegate oversight responsibility of the district to city agencies, departments, or nonprofit city corporations (KRS 82.650 to 82.670).

## **Parking Authorities**

Any city may independently, or jointly with the county, create motor vehicle parking authorities. Those authorities have the power to acquire, create, and operate public street and off-street parking facilities. The governing board of the authority is composed of five or six members appointed by the mayor with the approval of the legislative body (KRS 94.810 to 94.840).

## **Parks And Recreation**

Most of the statutes in KRS Chapter 97 are permissive. Following is a summary of the chapter.

The acquisition, development, and maintenance of parks, playgrounds, and recreation centers, including parks and museums, is a proper municipal purpose. The city may acquire land for those purposes. Local governments may jointly establish and maintain a park system (KRS 97.010).

The legislative body of a city may establish a park, playground, and recreation system. Control of the system may be delegated to a park board, the board of education, a playground and recreation board, or some other existing board (KRS 97.020).

A city may establish a parks and recreation board by ordinance or resolution. The board is composed of five people appointed by the mayor (KRS 97.030).

Two or more local governments may jointly operate and maintain a parks and recreation system, zoo, or museum. The system is controlled by a joint board of not fewer than five members (KRS 97.035).

Any authority operating parks or recreation centers may accept gifts of real or personal property (KRS 97.040).

The city legislative body may appropriate general fund revenues to an established park system (KRS 97.050).

Parks and recreation boards may issue revenue bonds for appropriate purposes (KRS 97.055).

The city legislative body may by ordinance impose user fees for park facilities (KRS 97.090).

KRS 97.100 to 97.240 authorize any city to establish and maintain municipal recreational projects that are not “in connection with the maintenance of public parks established by a city under the general law.” Those projects are operated by a city recreational commission composed of three to seven members in cities with populations of at least 20,000 and three members in smaller cities. The mayor appoints the members with the approval of the legislative body. The city may issue revenue bonds to finance the project.

In cities of the first class, there is a department of public parks and recreation under the supervision of a director (KRS 97.250).

Title to all real and personal property acquired for parks, airport, or aviation field purposes is held by the city in trust for public purposes. In cities of the first class, employees of the parks and recreation department are under civil service, with enumerated exceptions (KRS 97.252).

Police may make arrests on park property in cities of the first class (KRS 97.255).

Cities of the first class may condemn property for park purposes (KRS 97.257).

Cities having control of parks, boulevards, parkways, and public squares may

- acquire property for those areas by purchase or condemnation,
- layout and design improvements,
- protect property from injury and decay,
- adopt rules for use,
- prevent disorderly and improper conduct,
- control planting of shade trees along public ways, and
- exercise police powers (KRS 97.441).

Each city electing to operate under KRS 97.425 to 97.485 must establish an advisory board of park commissioners composed of five to seven members appointed by the mayor with the approval of the legislative body (KRS 97.455 and 97.465). These cities may, by ordinance, establish special park police (KRS 97.475).

The legislative body of a city may acquire, establish, and maintain cemeteries, parks, squares, avenues, promenades, and fountains within or outside the city limits (KRS 97.530). A city may condemn property within or outside the city for park and cemetery purposes (KRS 97.540).

Any city may acquire property for parks or playgrounds within the city. A park board may be established, composed of not more than five persons (KRS 97.550). Board members execute an oath (KRS 97.560). The board controls all parks and playgrounds in the city (KRS 97.580). Any city may levy a special tax for the purpose of public parks, not to exceed 5 cents per \$100 of taxable property (KRS 97.590).

Any city, except one of the first class, may levy a special tax for the maintenance of a band or orchestra. The tax may be levied only if a citizen petition is received and the levy is approved by referendum. The tax cannot exceed 10 mills (KRS 97.610). The tax may be repealed by referendum (KRS 97.620).

Any city that has constructed a war memorial establishes a war memorial commission. In cities of the first class, the commission has seven members; in other cities, it has 15 members. The remaining members elect successors for those whose terms expire (KRS 97.630). The legislative body in cities of the first class annually appropriates funds to the commission. Cities of the home rule class may levy a special tax, not to exceed 5 cents per \$100 of taxable property, for the purposes of the commission (KRS 97.700). KRS 97.640 to 97.780 provide rules for the operation of the commission.

The commissioner of the Department for Local Government administers a local government parks and recreational facilities fund. The commissioner may make matching grants to local governments from this fund for the acquisition and establishment of local parks and recreational facilities. The grant cannot exceed \$100,000 or 50 percent of the costs of the project, whichever is less, and the local government must provide matching funds (KRS 147A.028). Money for this fund is available only if the state budget provides funds.

## Public Utilities

A public utility is an entity that supplies a service “of such nature that it is said to be clothed with the public interest.”<sup>80</sup> Public utilities typically include suppliers of gas, electricity, water, sewers, waste disposal, railroads, telephones, and cable television.

A city authorizes a utility to operate within the city through the granting of a franchise. A franchise is “a right or privilege, essential to the performance of the primary purpose of the grantee, which can only be granted by the government.”<sup>81</sup> A franchise for a utility may be granted to either a private individual or a company, or the city may operate the utility as a department of the city or through a quasi-municipal corporation.

**Sale Of Franchises Generally.** Section 163 of the Kentucky constitution prohibits utilities from constructing works along public ways of a city without receiving the consent of the city legislative body. The list of public utilities subject to franchise contained in Section 163 is not exclusive. The Kentucky Supreme Court has stated that:

This court has ruled decisively that services other than those enumerated in section 163 of the Kentucky Constitution are subject to franchise. ... “It will be noted that section 163 deals with certain specific subjects, to-wit, street railway, gas, water, steam heating, telephone or electric light companies within a city or town. We do not believe the right granted cities by this section is today limited to these specific utilities. The purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants. Therefore, the right granted is not and properly should not be restricted to those utilities enumerated, but applies to all utilities and services which might today be proper subjects for control, when the original intent and purpose of the act is considered.”<sup>82</sup>

Section 164 limits the duration of franchises to 20 years and requires that they be awarded to the highest and best bidder after due advertisement. Unless the service is discontinued because there is no public necessity for it, a city advertises for bids for the sale of a new franchise at least 18 months before the expiration of each franchise granted by the city. The new franchise is granted to the highest and best bidder (KRS 96.010). Each bidder, except the holder of the old franchise, makes a deposit equal to 5 percent of the costs of the plant necessary to provide the service (KRS 96.020).

A city of the first class or consolidated local government may purchase the property of any public utility franchise and operate the utility as an agency of the city. Notice of the city’s intention to purchase must be given 2 years before the franchise expires (KRS 96.040).

No city where a utility is located may construct a facility providing the same service as the existing utility, but a city may acquire that utility by purchase or through eminent domain (KRS 96.045).

The legislative body in an authorized city may regulate the construction, location, and operation of various utilities, including railroads, bridges, telephone and telegraph companies, and gas and electrical companies (KRS 96.050).

The legislative body in any city with a population of 8,000 to 19,999 may grant rights-of-way over public ways and grounds, for terms not to exceed 20 years, to various utilities. The city retains the right to regulate the equipment located within the rights-of-way (KRS 96.060 and 96.070).

Any city legislative body may provide for the furnishing of water, light, power, heat, and telephone service to residents by contracting with a local provider, or by city works located within or beyond the city limits. The city may regulate any provider and may fix the prices of the provided services (KRS 96.170).

Any city legislative body may provide utility service to the residents through works or facilities owned by the city or by contract with a person or corporation providing those utility services. The works or facilities may be located within or beyond the city (KRS 96.190).

Cities of less than 1,000 may sell or transfer a municipal utility without an election if the situation is a declared emergency and two-thirds of the utility customers sign a petition approving the transfer (KRS 96.5405).

Preferential retail rates for utility services must not be given to any entity receiving state or local funds that account for 50 percent or more of its operational expenses (KRS 278.035). However, a fire department may receive free or reduced service from a utility, defined in KRS 278.010(3)(d), for training or firefighting, if proper arrangements are made (KRS 278.170).

**Energy.** Municipally controlled energy utilities are not subject to regulation by the Public Service Commission (KRS 278.010).

Any city of the first class may sell any stock it holds in a gas company doing business in the city. Proceeds from the sale are to be used for the construction of sewers (KRS 96.090).

Any city may provide for the furnishing of water, light, power, heat, or telephone services either by contract or by construction of works within or outside the city (KRS 96.170).

Any city may operate a combined electric and water system. It is to be controlled by a quasi-municipal corporation known as the “Electric and Water Plant Board of the City of \_\_\_\_\_, Kentucky.” The governing body of the board is composed of five members appointed by the mayor who are citizens, taxpayers, voters, and users of electric energy or water (KRS 96.172 to 96.188).

Any city may provide for the furnishing of water, gas, electric power, telecommunications, light, or heat, either by contract or through the establishment of works within or outside the city (KRS 96.190). Revenue bonds may be issued for the construction of power plants or waterworks (KRS 96.195).

Any city of the home rule class may purchase, establish, and operate electric light, heat, and power plants, within or outside the city. They may be operated in conjunction with any other power plant regulated by the energy commission. A city of the home rule class may sell power to any electric, combination electric, or gas utility, or its affiliate that is regulated by the Kentucky Public Service Commission, or to a city-owned utility established pursuant to KRS Chapter 96. The purchase of a utility plant by the city must be approved by referendum, after the filing with the city of a petition signed by 200 city residents (KRS 96.520). A power plant thus acquired is controlled by a city utility commission, composed of either three or five members (KRS 96.530).

Cities with populations of at least 8,000 may issue revenue bonds to purchase power plants or waterworks (KRS 96.535).

Any city operating a natural gas distribution system under the authority of KRS 96.170 may issue revenue bonds to finance improvements (KRS 96.537).

Any city may acquire and operate an artificial gas system (KRS 96.542). The acquisition is subject to petition and referendum approval (KRS 96.543). An artificial gas system may be operated as a department of the city or under an existing utility commission, or an artificial gas commission composed of seven members may be established (KRS 96.545).

The “Little TVA Act” provides an alternative method by which a city may establish electric plants within or outside its boundaries (KRS 96.550 to 96.900). To construct a plant or issue revenue bonds for one, the city must receive the approval of its residents through a referendum. The power plant is controlled by a four-member board appointed by the mayor, called the “Electric Plant Board of the City of \_\_\_\_\_.”

**Water And Sewers.** A city of the first class or consolidated local government may purchase a waterworks operating in the city. The waterworks is controlled by a board of waterworks, composed of the mayor and four members appointed by the mayor. The board may issue bonds (KRS 96.230 to 96.310).

Any city that owns a waterworks may operate it as a department of the city or under a board composed of three to six members appointed by the mayor with the approval of the legislative body, and called the commissioners of waterworks (KRS 96.320).

Any city of the home rule class may establish and operate a waterworks system within or outside the city. A sewerage system may be operated in conjunction with the waterworks (KRS 96.350 to 96.510).

If a city desires to purchase a waterworks, it must publish the purchase agreement 45 days before the date of sale. The purchase must be approved by referendum if a petition is received signed by a number of city residents equal to 25 percent of those voting in the last election (KRS 96.360). The city may issue bonds to finance the acquisition (KRS 96.370).

A home rule class city may establish a waterworks commission or a waterworks and sewerage commission if the city operates a waterworks or a combined waterworks and sewerage system, operates under the council form of government, and is in a county that has a population of more than 50,000 and that does not contain a city of the first class or an urban-county government. The commission is composed of the mayor and three or five members appointed by the mayor (KRS 96.351).

Any city of the home rule class may provide water for fire protection and the use and convenience of its inhabitants. Police protection may be provided for works outside the city (KRS 96.355).

A city of the first class and the county fiscal court may create a joint metropolitan sewer district “in the interest of the public health and for the purpose of providing adequate sewer and drainage facilities” (KRS 76.010). The district is governed by a board composed of seven members—four appointed by the mayor with the approval of the board and three appointed by the county judge/executive. A metropolitan sewer district must resolve specified citizens’ complaints and grievances through an independent hearing officer (KRS 76.180).

Any city of at least 20,000, jointly with the county, may establish a joint sewer agency, by the enactment of identical ordinances by the county fiscal court and the city legislative body. That agency has all powers granted a metropolitan sewer district by KRS 76.010 to 76.279 except that the establishing ordinance may restrict or qualify those powers. The agency is administered as a separate legal entity, or by a jointly appointed administrator or board, as determined by ordinance. Any smaller city may elect to be within the jurisdiction of the joint sewer agency. The city legislative body and the county fiscal court, by joint action, may dissolve the joint agency (KRS 76.231).

Any city that operates a water or sanitary sewer system may provide those services in contiguous territory, except that if the territory is served by an existing water or sewer system, the city may extend service to the territory only upon request from the district serving the territory. Cities must consider installing fire hydrants when extending water service to new territory (KRS 96.150).

Any city may classify sewer users on a reasonable basis for the purpose of establishing service rates by ordinance. A hearing must be held before the classifications go into effect (KRS 96.910 to 96.927).

Any city may enforce the payment of sewer charges by requiring that water service be discontinued until the delinquency is paid (KRS 96.930 to 96.943).

No city of the home rule class that owns a waterworks system can sell, convey, or lease it without receiving the assent of a majority of those voting in an election on the question (KRS 106.200).

The board of waterworks in a city of the first class may recover, by assessment, the costs of extending water lines to areas not previously served (KRS 96.265).

Any city included in the boundaries of a water district for 10 years is deemed to have given consent for the service. This validates a city's membership in a water district in the absence of an ordinance or resolution authorizing participation (KRS 74.120).

Joint sewer agencies may use an exemption to the requirement for uniform rates for a period up to 10 years from the creation of the joint sewer agency if warranted by local conditions (KRS 76.231).

**Kentucky Privatization Act.** The Act establishes a procedure to permit cities and counties to contract with private entities to construct or operate water or wastewater facilities. Such a contract is to be known as a privatization contract and may be entered into either to transfer the operation of an existing water or wastewater facility or for the construction of a new facility. A privatization contract must be approved by ordinance enacted by the legislative body. Notice must be published at least 30 days before the adoption of the ordinance, and the executive authority must conduct a hearing. Notwithstanding whether the city has adopted the Model Procurement Code, the privatization contract may be awarded by competitive bidding, competitive negotiation, or negotiation.

In conjunction with the privatization contract, the city may enter into a service contract with the private operator. The service contract provides that the city shall purchase the output of the facilities, specifies what rates shall be charged, and includes other matters as agreed on. The same procedure required before executing the privatization contract must be followed before executing the service contract. Privatization and service contracts are not subject to regulation by the Kentucky Public Service Commission. If the privatization contract provides for the transfer of an existing facility from the city to the private operator, it is subject to a recall pursuant to the public question provisions of KRS 83A.120 (KRS 107.700 to 107.770).

**Miscellaneous Provisions.** Other than the exceptions set out in KRS 96.550 to 96.900, any city may provide by ordinance for the use of profits generated by a municipal utility (KRS 96.200).

Any utility providing service in an area subsequently annexed by a city has the dominant right to continue providing the service (KRS 96.538).

Except as provided in KRS 96.171 to 96.188 and KRS 96.5405, no home rule city that owns a waterworks system or lighting system by gas or electricity can sell, convey, lease, or encumber it unless approved by referendum. The requirement does not apply to revenue bonds (KRS 96.540).

In lieu of the referendum required by KRS 96.540, a city with a population of less than 1,000, in a declared emergency, may sell, lease, or transfer its utility system after obtaining a two-thirds approval of the utility's customers by petition (KRS 96.5405).

Any city utility may use the power of eminent domain to acquire land or easements for constructing dams or pipelines (KRS 96.547).

Municipally owned electric utilities may not increase rates except after a public hearing. Rates must be the same for users inside and outside the city (KRS 96.534).

Any city operating a power plant or waterworks may contract to furnish water or light to any other city (KRS 96.120).

If any city (other than an urban-county government) proposes to furnish sewage treatment services to persons already serviced by a sewage treatment utility and the city intends to use the installations of that utility, it must make just compensation to the utility for the installations taken over. If the city and the utility cannot come to an agreement on the purchase, the city may acquire those facilities through condemnation pursuant to the Eminent Domain Act (KRS 65.112).

In cities with populations of at least 8,000 that provide civil service coverage for city employees, municipal electric utility commissions may provide civil service coverage for their employees (KRS 96.530).

### **Public Ways**

Streets, roads, and other rights-of-way are acquired by a city through dedication. *Dedication* is commonly defined as the setting apart of land for public use. Pursuant to KRS 82.400, a public way may become dedicated to public use if accepted by ordinance enacted by the legislative body of the city. Public ways or easements become eligible for dedication in four situations:

- The filing with the legislative body of a plat or map showing the proposed name, nature, and dimensions of the public way or easement
- The annexation of public ways or easements that have been previously dedicated to public use
- The acceptance of streets or public ways that are dedicated and constructed as provided in approved subdivision regulations authorized by KRS Chapter 100
- The opening of the public ways or easements to the unrestricted use of the general public for 5 consecutive years

To close a public way, the city enacts an ordinance closing the public way, then files an action in Circuit Court naming all abutting property owners as defendants. If no defendant objects within 20 days of service, the court renders a decree closing the street. If any defendant objects, the court may award damages in the manner prescribed by the Eminent Domain Act (KRS 82.405).

KRS 82.405 provides an alternative procedure for closing a public way in a city. If all property owners abutting all or any portion of a public way are identified, notified, and given notarized

consent to the closing, the city legislative body may enact an ordinance declaring all or part of the public way closed.

The Department of Highways may designate city streets as part of the state primary road system, in which case the state will maintain the streets (KRS 177.020). A city may elect to assist in maintaining a street that is part of the primary road system (KRS 177.055).

Cities, either individually or jointly with any federal, state, or local agency, may construct and maintain limited-access facilities (KRS 177.220 to 177.310).

A city may, by ordinance, establish speed limits within its jurisdiction, but

- if the road is a state highway, the secretary of transportation must approve the alteration, and
- a city may not set a speed limit of greater than 55 MPH on a state highway (KRS 189.390).

Cities may request up to two signs from the Transportation Cabinet to honor or commemorate a birthplace, event, or accomplishment if the city pays for the signs and their installation (KRS 177.037). A city may enter into an agreement with the county for the county to perform work on or provide materials or personnel for work on city streets. The city pays the costs of that assistance (KRS 178.010).

A city may use the provisions of KRS 184.350 to 184.395 to form a transportation improvement district to provide highways or parking facilities; freight rail tracks and appurtenant facilities; transportation projects including bridges, tunnels, overpasses, underpasses, interchanges, or approaches that are determined by the district to enhance the safe conduct of traffic between a project and highways; and buildings, property and facilities that are necessary for the operation of projects. The district is governed by a board of trustees. To finance projects, a district is empowered to issue notes, bonds, revenue anticipation instrument and other obligations (KRS 184.357, 184.365 and 184.367). It may accept loans and grants from federal, state, or local entities. It may accept money, property, labor, or other things of value from any source (KRS 184.355).

Cities may authorize nationally or internationally sanctioned motor vehicle racing events within their jurisdictions. Notice is required to the Transportation Cabinet (KRS 189.503).

### **Riverport Authorities**

Any city or consolidated local government may establish independently or jointly with other units of local government a riverport development authority to attract and promote river-oriented industry through the establishment of riverport facilities. The city may levy a tax for the benefit of the authority (KRS 65.510 to 65.650). The authority may issue revenue bonds pursuant to KRS Chapter 103. It may acquire and develop property or rights of property in the home county or an adjacent county (KRS 65.530).

## **Solid Waste Disposal**

In 1990 and 1991, the General Assembly produced sweeping reforms in solid waste management. A wide-ranging state policy was implemented that includes universal collection, solid waste reduction goals, solid waste reporting and records management, comprehensive solid waste management planning, increased oversight of solid waste disposal facilities, tax exemption incentives for recycling efforts, a waste tire program, technical assistance, and educational programs. KRS Chapter 224 lists details and requirements relating to solid waste.

## **West End Opportunity Partnership**

To attract commerce and to improve housing in Louisville's West End area, the West End Opportunity Partnership—KRS 65.500 to 65.506 and KRS 65.029—was created in 2021, ceasing operations in 2041 unless reauthorized, to

- manage and support the revitalization of and investment in the development area, with a focus on projects supported by residents and businesses within the development area;
- encourage private investment in businesses and residential projects that will have a significant impact within the development area;
- ensure that all projects include the employment of area residents, both in short-term construction jobs and long-term employment in businesses locating within the development area; and
- ensure that all housing projects include the creation of housing that is deemed affordable in accordance with federal guidelines for low-income families (KRS 65.502).

The partnership is governed by a 12-member board and receives input from a permanent subcommittee called the West End Louisville Advisory Council, which contains representatives from each of the nine neighborhoods in the area (KRS 65.503 and 65.506).

The partnership receives funding from tax increment earmarks from the commonwealth and from the consolidated local government in whose territory it lies (KRS 65.504). It is also eligible for a \$10 million appropriation from the commonwealth if the area was able to secure a minimum investment of \$20 million by June 30, 2022. The \$20 million is to be composed of money from private-sector investors and a minimum of \$5 million from the consolidated local government in whose territory the area lies (KRS 65.029). This money is to be used for revitalization purposes in the area.

Residential property owners living in the area are eligible for a tax credit equal to the amount by which property tax timely paid on the residential property in a taxable year exceeds the amount of such tax assessed on January 2021. In essence, residential property owners will not experience tax increases beyond the 2021 obligation, as long as they own the property in which they live. This credit expires whenever the property owner sells the property, or when the program ends in 2041, as it is presently designed to do (KRS 141.398).

## Health And Human Services

### AIDS Education

KRS 214.600 to 214.655 created a public education and protection program addressing acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection. KRS 15.334 requires law enforcement personnel to receive continuing education concerning AIDS and HIV.

### Air Pollution Control

The legislative body of the largest city in the county and the fiscal court of the county may establish an air pollution control district. The district is governed by a board composed of seven members—three appointed by the county judge/executive (subject to the approval of the fiscal court) and four appointed by the mayor (KRS Chapter 77).

Air pollution control boards may set emission standards, may establish procedures for adoption of regulations by control boards, may allow districts to assess additional permit fees, may establish an air quality trust fund, and may give the air pollution control board regulatory authority over the district and abolish the hearing board in a county with a city-county compact. Although vehicle and factory emissions may be most commonly associated with air pollution control initiatives, the chapter defines *air contaminant* to include “smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter,” suggesting a broad spectrum of possible controls within the purview of air pollution control boards (KRS 77.005).

In a county containing a consolidated local government, vehicle emissions programs must be eliminated if the county is in compliance with air quality standards. The consolidated local government may determine the methods for compliance should the county fall below allowable air quality standards (KRS Chapter 77).

### Ambulance Service

Any city, county, or combination of local governments may create an ambulance service district for providing emergency ambulance service. The district constitutes a special taxing district, with the power to impose an ad valorem tax not to exceed 10 cents on each \$100 of property. The city legislative body creates the district in accordance with KRS 65.182.

The district is controlled by a board of directors. If the district consists of one city, the board has three members, appointed by the legislative body; if more than one city, the largest city appoints two members and the other cities each appoint one member. In districts established by a county, each city with a population of at least 8,000 (or the city with the largest population, if there are no such cities) appoints a member to the board (KRS 108.080 to 108.180).

Any city may contract with private persons, partnerships, or corporations to provide ambulance service to residents of the city. Contracts may be for a length of not greater than 4 years (KRS 65.710).

Any member of an ambulance service, with permission from the head of the service, may equip a vehicle with red flashing lights and a siren to be used when responding to an emergency call (KRS 189.950).

Emergency medical technician first providers and paramedics may administer injections and treat allergic reactions. Ambulances must stock prescribed allergic reaction medications (KRS 311A.195).

Cities providing ambulance services—including, but not limited to, ambulance service districts—may be eligible for money to augment the fees they receive for runs. The Medicaid ambulance service provider assessment is levied against all ground ambulance providers as defined in KRS 142.301. Cities with ground ambulance providers will pay this assessment into a pool managed by the Kentucky Department of Revenue (KRS 142.318). They will then be able to receive a reimbursement for each ground ambulance provider that provided qualifying ground ambulance service transports during the relevant assessment period in an amount not to exceed the emergency medical services ambulance rates adopted by the cabinet (KRS 205.5601).

### **Board Of Health**

Counties with a city of the first class or consolidated local government have a joint city-county health agency known as the “[name of city of the first class] and [name of county] Board of Health” or “[name of the consolidated local government] County Board of Health.” The board is composed of eight resident members; the mayor appoints four, and the county judge/executive appoints four. The mayor and the county judge/executive serve as ex officio members. The board operates the city-county board of health pursuant to KRS 212.350 to 212.410.

In a consolidated local government, the board and its members are appointed and operate as provided in KRS 212.350.

In counties containing cities of at least 15,000, the legislative body of such a city and the fiscal court of the county may establish a city-county board of health. The board is composed of 11 members: the mayor or the city manager, as determined by the city legislative body; the county judge/executive; a dentist; a registered nurse; three physicians; a veterinarian; an engineer engaged in the practice of civil or sanitary engineering; an optometrist; and a lay person who is knowledgeable in consumer affairs, appointed by the secretary of the state Cabinet for Health and Family Services (KRS 212.640 to 212.710).

Except in counties containing cities of the first class, the fiscal court may submit to the county’s voters a proposal to establish a public health taxing district for purposes of the health department. A majority of those voting must approve the plan for its implementation (KRS 212.720 to 212.755).

Independent district boards of health and independent departments of health may be created in areas that are part of an interstate metropolitan statistical area where the Kentucky population exceeds 250,000. If a district is formed, it has jurisdiction in all counties and cities in the district. The mayor of each city of at least 15,000, or a designee, serves as an ex officio member of the new district board or department of health (KRS 212.780 to 212.794).

### **Combined Welfare Agency In Counties Containing A City Of The First Class**

The legislative body in a city of the first class and the fiscal court of the county may jointly establish a city-county agency for the administration and supervision of [a]ll forms of public assistance, general relief, and social services to adults and children in homes or eleemosynary and correctional institutions; city and county eleemosynary institutions; city and county penal institutions including the establishment of rules and regulations for the custody, government, and parole of inmates; other public welfare activities or services which are placed within the control of the city or fiscal court (KRS 98.180).

### **Hospital Or Home For The Aged In City Of The First Class**

The legislative body in a city of the first class may build, establish, or purchase a hospital or home for the aged and the infirm. It may establish a building commission to supervise the acquisition of the facility. The commission is composed of four members appointed by the mayor, with the approval of the board, the mayor serving as ex officio member (KRS 98.040 to 98.170).

### **911 Emergency Telephone Service**

Any city, either independently or jointly with other local governments pursuant to an interlocal cooperation agreement, may establish a 911 emergency telephone service. This service may be funded by a special tax, license, or fee, which can include a charge collected from telephone subscribers in the area who are served by the 911 service (KRS 65.750 to 65.760). In lieu of a landline subscriber fee, an annual service fee upon each occupied residential and commercial unit was upheld in the Supreme Court. The Kentucky Court of Appeals, with direction from the Kentucky Supreme Court, upheld a fee on water meters. See Chapter 6 for further explanation in the “Emergency Telephone Service” section.

### **Kentucky Recovery Ready Communities**

The Advisory Council for Recovery Ready Communities is attached to the Office of Drug Control Policy in the Justice and Public Safety Cabinet to establish a Kentucky Recovery Ready Community Certification Program for cities and counties. The program measures the city’s or county’s substance abuse disorder recovery programs to ensure that the local government is taking steps to provide high-quality recovery programs to help with workforce development concerns. Cities have representation on the advisory council through a representative appointed by the governor from a list of candidates provided by the Kentucky League of Cities (KRS 222.480).

## **Recovery Housing**

Recovery residences assist clients who are recovering from substance abuse issues. These residences are certified by various organizations and must be certified in order to operate. The Cabinet for Health and Family Services monitors the certification. Cities and other local governments, local law enforcement, and emergency personnel may be made aware of the location of these residences by the cabinet. Cities and other local governments may initiate legal action to stop the operation of residences operating in violation of law. Local governments' powers to regulate the use of property through KRS Chapter 100, rental property regulations, or other local government authority provided under law are not interrupted by the statutes governing recovery housing (KRS 222.500 to 222.510).

## **Regulatory Powers**

### **Adult Establishments**

Any city may regulate the location of adult establishments by requiring them to be dispersed throughout the city or by concentrating them in one area. Examples of adult establishments are adult bookstores and adult movie theaters (KRS 82.088).

The US Supreme Court has authorized the regulation of adult establishments selling sexually explicit materials.<sup>83</sup> Because the First Amendment guarantee of freedom of speech generally protects the selling of those explicit materials, it is difficult for local governments to prohibit the activities. However, the court stated that merely requiring those adult establishments to be located in certain areas does not violate the First Amendment but constitutes a "content-neutral" time, place, and manner of regulation. Regulation of that type is aimed not at the content of the materials sold but at the secondary effects of the establishments. "The ordinance by its terms is designed to prevent crime, protect the city's retail trade, maintain property values, and generally 'protect and preserve the quality of [the city's] neighborhoods, commercial districts, and the quality of urban life,' not to suppress the expression of unpopular views."<sup>84</sup> The court set out a test for whether a time, place, and manner of regulation is content neutral and therefore permissible: The regulation must be designed to serve a substantial governmental interest, and the regulation must not unreasonably limit alternative avenues of communication (that is, the adult establishment must be able to locate somewhere).

### **Airports**

Local governments may not regulate private airstrips (KRS Chapters 411 and 413).

### **Alcoholic Beverages**

In counties that permit distribution and sale of alcoholic beverages, any city may license and regulate premises selling alcoholic beverages by the package. In a county that prohibits the sale of alcoholic beverages, their sale in a city requires a special "local option" election; a majority of the residents of the city must vote in favor of ending prohibition (KRS 242.125). A city may hold

a local option election separately from a county, as it is not considered the “same territory.” No further election can be held in the same territory within 8 years (KRS 242.125 and 242.030). A city may possess both “wet” and “moist” status. A moist city that votes to become wet retains both statuses. If a city is wet and an election is held in the county to become moist, the city possesses both statuses—wet and moist. If a city has an election to become “dry” and at the time of the election possesses a dual status, the city becomes dry and no longer has a status of moist or wet (KRS 242.125). In any city of at least 20,000 that is completely or partially dry or moist, if the legislative body determines that an economic hardship exists, an election may be held in one or more voting precincts in the city for the purpose of designating those precincts as “limited sale precincts.” The issuance of new licenses for limited sale precincts is no longer possible after July 14, 2022, but licenses issued prior to that date may be maintained (KRS 242.1292). In any city of at least 3,000 that has voted wet, the legislative body must establish the office of alcoholic beverage control administrator or assign the duties to an existing office unless the city is located within a county containing a consolidated local government. Cities with populations of less than 3,000 can establish the position at their discretion (KRS 244.160).

When a city permits the sale of alcoholic beverages, the legislative body designates an official to issue city alcoholic beverage licenses and collect fees. The form of the license is prescribed by the city alcoholic beverage control administrator or, if there is no city beverage administrator, by the state Alcoholic Beverage Control Board. The city clerk notifies the state Alcoholic Beverage Control Board of the fees imposed by the city legislative body (KRS 243.610).

The mayor appoints the administrator, except in cities using the city manager plan, where the city manager appoints the administrator (KRS 241.170). The administrator has the same functions relative to city licenses and regulations applications, renewals, and penalization as the state Alcoholic Beverage Control Board has relative to state licenses (KRS 241.190).

If a city or consolidated local government permits the sale of alcoholic beverages, it may impose license fees on their manufacture and sale. Licenses must correspond, in their provisions and business authorized, to those issued by the state. Fees imposed may not exceed the amounts specified, and certain fees which are not being imposed at the maximum amount by a city cannot be raised more than 5 percent in any 5-year period (KRS 243.070). If an adequate police force is maintained, retail drink licenses may be issued only for premises within the city (KRS 243.230).

A licensee authorized to sell distilled spirits or wine at retail may sell and deliver them when polls are open on any primary, or regular, local option, or special election day unless located where the legislative body of a city adopts an ordinance after June 25, 2013, that prohibits or limits it (KRS 244.290). Cities have authorities to regulate and permit the sale of alcoholic beverages on Sundays (KRS 243.050, 244.290, and 244.480).

In a city of less than 20,000 that allows the sale of alcoholic beverages, the legislative body may levy a regulatory license fee on the gross receipts of every establishment selling them, including deliveries from direct shippers. Additionally, a city that levied such a fee before January 1, 2019, may continue to levy the fee if its population exceeds 20,000. The fee is in addition to any other authorized tax or fee and is levied at the beginning of the fiscal year. If the county also charges a fee, that fee is valid only outside the city limits (KRS 243.075).

Any area annexed by a city assumes the local option status of the annexing city, though any precinct in the annexed territory retains the right to determine its own status (KRS 242.190). A special temporary license may be issued to any regularly organized fair, exposition, racing association, farmers market, or other party when the Alcoholic Beverage Control Board deems that the necessity for a license exists. These licenses are for a specified and limited time not exceeding 30 days (nonprofits' licenses do not exceed 10 days), and all restrictions and prohibitions applying to regular retail drink licensees also apply to holders of special licenses. The territory wherein the event is held must be wet in order for the event to receive the license (KRS 243.260).

Temporary alcoholic beverage licenses are authorized for facilities conducting intertrack horse racing (KRS 243.262). A limited-sale precinct election is authorized in a precinct containing a horse track that is seeking a retail drink license for the track (KRS 243.1238).

Local option elections may be held in accordance with KRS 242.020 to 242.040, and 242.060 to 242.120, in a dry or moist city for the sale of alcoholic beverages by a microbrewery. Microbreweries where the sales are approved by the voters will be issued a nonquota type 4 retail malt beverage drink license and a nonquota retail malt beverage package license (KRS 242.1239).

### **Blue Laws**

Any city may permit or prohibit retail sales on Sunday within the city limits (with the exclusion of activities permitted by KRS 436.160). If the city has not permitted these retail sales, the question of permission is put to an election by the residents of the city after a petition requesting an election is received, signed by a number of registered voters equal to 25 percent of the number who voted in the last general election (KRS 436.165).

### **Buses, Taxicabs, Limousines, And Vehicles For Disabled Persons**

All cities have the right to authorize the operation of buses in the city. Upon the granting of the authorization, the authorized operator applies to the Kentucky Department for Vehicle Regulation for a certificate. In addition, any city of the first class or city with a population equal to or greater than 20,000 has the right to license and supervise the operation of taxicabs, limousines, and vehicles for disabled persons and supervise the conduct of the drivers of those vehicles in the city (KRS 281.635). Any city may impose an annual license on all certified taxicabs, limousines, and vehicles for disabled persons operating in the city. The license tax is not to exceed \$30 per vehicle (KRS 281.631). A city has no authority over a motor vehicle operated as a human service transportation delivery vehicle under a contract with the Transportation Cabinet in accordance with KRS 96A.095(4).

### **Cemeteries**

All cities are to protect any burial grounds within the city limits from being used for dumping grounds, building sites, playgrounds, places of entertainment and amusements, public parks, athletic fields, or parking lots (KRS 381.690). The city may require the owner of any burial grounds to care for them properly (KRS 381.697).

## **Gun Control**

Cities cannot enact any ordinance or promulgate any regulation relating to the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, or components of firearms or combination thereof (KRS 65.870). Likewise, cities, their law enforcement agencies, and their personnel are prohibited from assisting or cooperating in the enforcement of a federal ban on firearms, ammunition, or firearm accessories (KRS 237.105). However, KRS 237.115 allows local governments to stipulate, through the passage of an ordinance, administrative regulation, or statute, whether concealed weapons are to be allowed in buildings, or portions of buildings, that the local government leases, owns, or controls. Certain exceptions apply, such as public housing, rest areas, firing ranges, and private dwellings that the local government leases, owns, or controls. If a local government chooses to exercise control over concealed weapons, it must post signs at the entrance of the restricted areas. An employee of the local government may be subject to disciplinary action from the local government for bringing a concealed weapon into a restricted area, but others are subject only to ejection or denial of entry. The local government may assign no other penalty. The local government is not in violation of KRS 65.870 if it is in compliance with KRS 237.115.

## **Hazardous Waste Disposal**

In any city in which a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed, the legislative body must hold a public hearing and approve or disapprove that facility (KRS 224.40-310). KRS Chapter 224 lists other provisions for the regulation of hazardous waste disposal.

## **Land Use Control**

KRS Chapter 100 establishes a comprehensive scheme for land use control by local governments. The regulation of land use pursuant to KRS Chapter 100 is permissive, but in counties of at least 300,000, establishment of a countywide planning unit is mandatory (KRS 100.137). The chapter establishes a process that must be completed as a prerequisite for land use regulation by cities and counties. “The long-range purpose of these sections is to force the cities and counties to rely on planning in the implementation of land use controls.”<sup>85</sup>

**Planning Units.** If a local government elects to control land use within its jurisdiction, it must first establish the planning unit—the area subject to land use control. Three types of planning units are permitted: independent, joint city-county, and groups of counties (KRS 100.113). A city or a county may establish an independent planning unit only if a joint city-county unit cannot be established. Procedure requires that all local governments in the county be interrogated to see whether a joint unit can be established (KRS 100.117). The purpose of this requirement “is to encourage the formation of functional units, so that planning will not be prescribed by artificial political boundaries, but will extend to a geographical area with common problems capable of physical solution.”<sup>86</sup>

If independent units are established, no other interrogation is permitted for 4 years. If another interrogation results in the creation of a joint unit, all independent units will be abolished.

A joint planning unit may be established by a county and any or all cities therein. No city that declines inclusion in the joint unit may establish an independent unit (KRS 100.121). Two or more adjacent joint planning units may establish a regional planning unit (KRS 100.123). Agreements establishing joint or regional units must be in writing, must set out the boundaries of the unit, and must set out the details for establishment and administration of the unit. All participating local governments adopt the agreement by ordinance. A copy of the agreement is filed with the county clerk in each county involved (KRS 100.127). In counties of at least 300,000, establishment of a joint planning unit is mandatory (KRS 100.137).

Regional planning councils must be formed in specified area development districts to act in an advisory capacity regarding planning matters in the district (KRS 147A.125).

**Planning Commission.** If a planning unit is established, a planning commission must be established. In counties of fewer than 300,000, the commission contains 5 to 20 members (KRS 100.133). In counties of at least 300,000, the planning commission consists of 10 members: the mayor of the largest city, or a designee; the county judge/executive, or a designee; 3 members appointed by the mayor of the largest city; 3 members appointed by the county judge/executive; the city director of public works; and the county road engineer (KRS 100.137). In a consolidated local government, the mayor makes appointments to the board (KRS 100.137 and 100.141). Appointments are made by the mayor or county judge/executive, as appropriate, subject to approval by the city legislative body or fiscal court (KRS 100.141). Commissioners' terms are 4 years, except that the terms of elected officials shall be coextensive with their elected terms (KRS 100.143). Vacancies must be filled in 60 days by the appropriate appointing authority or, if not in that time, by the planning commission (KRS 100.147). The appointing authority may remove commissioners for "inefficiency, neglect of duty, malfeasance, or conflict of interest" (KRS 100.157). Commissioners take an oath (KRS 100.151). Members may be reimbursed for expenses incurred, and citizen members may receive compensation (KRS 100.153).

The planning commission elects a chairman and other necessary officers (KRS 100.161). At least six regular meetings are to be held per year. The chairman may call special meetings (KRS 100.163). The commission adopts bylaws and keeps records of its proceedings and may employ staff (KRS 100.167 and 100.173).

A quorum of the planning commission equals a simple majority of the membership, except that a commission established pursuant to KRS 100.137 may specify in its planning agreement that a quorum consists of five members. A majority vote of those present decides all matters, except that a majority of the total membership is necessary for adoption or amendment of the bylaws, or for elements of the comprehensive plan, or regulations (KRS 100.171).

The legislative bodies of the member local governments may appropriate funds for the operation of the commission. The commission must conduct an annual audit. A member local government may assign urban renewal, community development, or public housing powers or functions to the commission. Independently funded planning units must publish annual financial statements (KRS 100.177).

**Comprehensive Plan.** The planning commission must prepare a comprehensive plan, “which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships” (KRS 100.183). A comprehensive plan must be adopted before local government may exercise land use control. The plan must contain at least four elements:

- A statement of goals and objectives, which serves as a development guide
- A land use plan
- A transportation plan
- A community facilities plan

In addition, the comprehensive plan may contain such elements as community renewal, regional impact, historic preservation, housing, flood control, pollution, conservation, and natural resources (KRS 100.187).

The preparation of the plan must be based on research and analysis of population; economic conditions; community needs, including the identification and mapping of agricultural lands of statewide importance; and other significant factors (KRS 100.191).

The comprehensive plan may be adopted as a whole, or the elements may be adopted singly, but the statement of objectives and principles is adopted first, to serve as a guide for preparing the other elements (KRS 100.197). Each member of a planning unit may develop goals and objectives for its jurisdiction that the planning commission considers when preparing or amending the comprehensive plan. The plan or its elements may be adopted only after a public hearing. Prior notice of enactment or amendment of the plan and copies of the enactment must be sent to specified public officials in adjacent cities and counties (KRS 100.193 and 100.197). The statement is presented to the member local governments for their adoption (KRS 100.193). The elements of the plan are reviewed at least every 5 years (KRS 100.197).

**Zoning Ordinances.** When the planning commission and the legislative bodies of the local governments have adopted the statement of goals and objectives, and the planning commission has adopted at least the land use element, the various legislative bodies may enact temporary zoning or other growth management regulations. After all elements of the comprehensive plan have been properly adopted, member legislative bodies may enact permanent land use regulations that divide the jurisdiction into zones to promote public health, safety, morals, and general welfare of the planning unit; to facilitate orderly and harmonious development and preserve the visual or historical character of the unit; and to regulate the density of population and intensity of land use to provide for adequate light and air. Zoning, under provisions of KRS 100.201, may also be used

- to provide for vehicle parking and loading space;
- to facilitate fire and police protection;
- to prevent blight, danger, and the overcrowding of land;
- to prevent congestion in the circulation of people and commodities;
- to prevent loss of life, health, or property from fire, flood, or other dangers;
- to protect airports, highways, and other transportation facilities;
- to protect public facilities, including schools and public grounds, historical districts, central business districts, and urban residential zones, which are defined in the cited statute;

- to protect natural resources;
- to regulate sludge disposal; and
- to protect specific areas of the planning unit that need special protection.

If a cellular phone utility seeks to build a cellular phone tower in a city that has adopted the provisions of KRS Chapter 100, it must seek approval of the appropriate planning unit (KRS 100.987). When proposing to construct an antenna tower outside the jurisdiction of a planning unit, the utility must seek approval from the Public Service Commission (KRS 278.650).

Zoning regulations, consisting of both a text and a map, are prepared by the planning commission. The text lists the types of zones that may be used and the regulations that may be imposed in each zone. Regulations must be uniform throughout a zone. The text must make provisions for granting variances and conditional use permits, for nonconforming use of land and structures, and for any other provisions necessary to implement these regulations. KRS 100.203 lists additional textual requirements. The map is to show the boundaries of the area to be zoned and the boundaries of each zone. After proper notification is given, the commission holds at least one public hearing (KRS 100.203 and 100.207).

The planning commission submits a copy of the regulations and a recommendation to member legislative bodies for adoption. A majority of an entire legislative body is required for passage of the ordinance adopting these regulations (KRS 100.207). The fiscal court controls land use in cities of fewer than 3,000 in counties containing a city of the first class (KRS 100.137). In a consolidated local government, the metro council controls land use.

Amendments to the zoning map may be proposed by the commission, any legislative body or fiscal court in the unit, or the owner of the property in question. Any such proposal is referred to the commission, and at least one public hearing must be held after proper public notification is made. The commission gives the legislative bodies involved a recommendation and findings of fact, including a summary of the evidence presented for and against the proposal. The commission's recommendation becomes final and effective unless a majority of an entire legislative body votes to override it. When no recommendation is made because of a tie vote of the commission, the same majority of a legislative body is required for adoption (KRS 100.211). KRS 100.2111 authorizes an alternative method of amending zoning maps that cities may adopt.

Amendments to zoning maps may be approved only if in conformity with the comprehensive plan or if it is found that

- the existing zoning classification was inappropriate and the proposed classification is appropriate; or
- there have been unanticipated major changes in the nature of the area that have substantially altered its basic character.

The commission must conduct a hearing on the amendment, and it or the local government may prohibit reconsideration of a denied amendment for 2 years (KRS 100.213). Amendments to the text of any zoning regulation are also referred to the planning commission. Notice is made and at least one public hearing held before the commission gives its recommendation and the reasons

for such. A majority vote of any legislative body involved is necessary for adoption (KRS 100.211).

KRS 100.211, 100.212, and 100.214 give notification requirements for zoning map or text amendments. Zoning map amendments must be considered by the planning unit within certain limits—60, 90, or 120 days, depending on the size of the planning unit and certain local statutes (KRS 100.211). Local governments may enact zoning ordinances that establish compatibility standards for the placement of manufactured housing in residential areas (KRS 100.348).

**Boards Of Adjustment.** One last step must occur before zoning regulations may take effect: The legislative body must establish one or more boards of adjustment. The boards are composed of three, five, or seven members appointed by the mayor with the approval of the legislative body (KRS 100.217). Board meetings are at the call of the chair (KRS 100.221). KRS 100.223 to 100.261 set out additional requirements and procedures.

The purpose of a board of adjustment is to grant relief from the literal enforcement of the zoning ordinance. Two forms of relief are permitted. The board may grant a conditional use permit, subjecting it to reasonable requirements, or it may grant a variance, permitting a property owner to depart from dimensional requirements (KRS 100.237 and 100.241). Conditional use permits may be subject to repeated review and revocation under certain conditions involving the state application and permitting process and amendments to plans necessary for state approval of the usage (KRS 100.237).

The board also may permit the enlargement or extension of a nonconforming use that had existed when the zoning ordinance was enacted. Except in counties containing cities of the first class, cities of at least 20,000, consolidated local governments, or urban-county governments, any use that has been a nonconforming use for 10 years is deemed approved as a valid nonconforming use (KRS 100.253). The board may also review the decisions of administrative officials (KRS 100.257).

A certificate of land use restriction must be filed for any land use restriction authorized by any planning commission board of adjustment or legislative body authorizing the restriction. The county clerk maintains those records (KRS 100.3681 to 100.3684).

The local government, in addition to establishing a board of adjustment, designates an official to administer the zoning regulations. This official may also be designated the administrator of housing or building regulations (KRS 100.271).

**Appeals.** The board of adjustment serves an appellate function. Appeals to the board may be made by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of any zoning enforcement officer. The claim must be filed within 30 days of the officer's action (KRS 100.261). Appeals from decisions of the board of zoning adjustment proceed to the Circuit Court. Anyone who makes a claim of injury or otherwise claims to be aggrieved by any final action of the board of adjustment files an appeal to the Circuit Court of the county containing the property that is the subject of the action of the board of adjustment. This claim must be filed within 30 days of

the final action of the board (KRS 100.347). If a person or entity decides to appeal a final decision of the Circuit Court in the Kentucky Court of Appeals, before that case advances to the Court of Appeals, the Circuit Court will make a determination of a bond that may be required of that person, and then will make a determination of whether that appeal is presumptively frivolous. The amount of the bond depends on whether the court decides that the appeal is presumptively frivolous. Local governments, their agencies, and their officers acting on the local governments' behalf are not required to file a bond (KRS 100.3471).

**Subdivision Regulations.** If a planning commission has adopted the objectives, land use plan, transportation plan, and community facilities plan elements of the comprehensive plan, it may adopt regulations for subdivision of land in the planning unit; in urban-county governments, however, the commission makes recommendations to the legislative body as to the regulations, and a majority vote of the whole body may override those recommendations (KRS 100.273). Any independent city planning unit or joint unit that does not include the county may also regulate the subdivision of land outside the city, but within the county, for 5 miles from the city boundaries with the approval of the fiscal court. The planning commission may enforce other regulations extraterritorially with the approval of the fiscal court (KRS 100.131). If the planning commission adopts subdivision regulations, no person may subdivide land without having the planning commission approve the plat. A legislative body must automatically accept streets or public grounds that have been dedicated and built in accordance with subdivision regulations or ordinances (KRS 100.277).

*Subdivision* is defined as the division of a parcel of land into three or more lots or parcels except in a county containing a city of at least 8,000, in a consolidated local government, or in an urban-county government. In those instances, *subdivision* means the division of a parcel of land into two or more lots or parcels for immediate or future sale, lease, or building development; if a new street is involved, *subdivision* includes any division of a parcel of land. A division of land for agricultural use and not involving a new street is not deemed a subdivision. The term includes resubdivision and, when appropriate to the context, relates to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than 1 acre occurring within 12 months after a division of the same land falls within the definition of a subdivision (KRS 100.111).

**Official Map.** When all elements of the comprehensive plan have been adopted, the planning commission and the local governments in the unit may adopt an official map of all public ways, parks, recreational facilities, and other public facilities (KRS 100.293). Such a map permits the city to reserve land for future streets and public facilities. No structure may be erected within the lines of a designated street or public facility without a building permit (KRS 100.303).

A court shall not invalidate in its entirety any comprehensive plan, zoning ordinance, subdivision regulation, public improvements program, or official map regulation for failure to strictly comply with any procedural provision or publication requirement, unless the court finds that the failure “results in material prejudice to the substantive rights of an adversely affected person and such rights cannot be adequately secured by any remedy other than” invalidation (KRS 100.182).

If a county has not formed a planning unit pursuant to KRS Chapter 100, it may enact subdivision regulations. KRS 100.273 cites certain KRS sections to govern those subdivision regulations.

**Transferable Development Rights.** To encourage the orderly growth of developing urban and rural areas, local governments may establish by ordinance a transferable development rights program that would protect “green space” or farmland while permitting growth for development purposes (KRS 100.208).

**Residential Care Facilities For Persons With A Disability.** Any private or governmental agency may operate a residential care facility in any residential district, zone, or subdivision subject only to compliance to limitations required of other residences in the same area (KRS 100.982 and 100.984).

### **Nuisance Abatement**

Municipal property owners may not allow structures to become unfit or unsafe. Cities may establish, by ordinance, procedures for the abatement of nuisances. Those procedures may include reasonable standards and procedures for enforcement. Nuisance abatement costs are the personal liability of the property owner. A city may bring civil action against the owner to recover the costs (KRS 65.8840).

Cities and merged governments may enact a nuisance code and impose penalties for violations and may use local code enforcement boards to hear alleged violations of the code (KRS 65.8801 to 65.8839).

### **Code Enforcement Boards**

Ordinances of the city, including nuisance ordinances, may be enforced by code enforcement boards establishing civil penalties for violations (KRS 65.8801 to 65.8839). Code enforcement boards may conduct hearings en banc, or a hearing officer may conduct a hearing. The boards and hearing officers are allowed to issue subpoenas. Boards may make findings and issue orders to remedy violations of local government ordinances under their jurisdiction; hearing officers make findings of fact, make conclusions of law, and recommend orders for consideration by the board (KRS 65.8821 and 65.8829). KRS 65.8825 sets enforcement proceedings. Citations issued by the code enforcement officer contain at least

- the date and time of issuance;
- the name and address of the person to whom the citation is issued;
- the date and time the offense was committed;
- the facts constituting the offense;
- the section of the code or the number of the ordinance violated;
- the name of the code enforcement officer;
- the civil fine to be imposed for the violation if the person does not contest the citation (if the local government has elected to use the alternative authorized under KRS 65.8808(2)(b));
- the maximum civil fine imposable if the person elects to contest the citation;
- the procedure by which the person pays the civil fine or contests the citation; and

- 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 will be deemed to have waived the right to a hearing before the code enforcement board or hearing officer to contest the citation,
  - the determination that a violation was committed will be final, and
  - the alleged violator will be deemed to have waived the right to appeal the final order to District Court (KRS 65.8825).

Any person aggrieved by a final order of the code enforcement board may appeal that order to the District Court of the county in which the local government is located (KRS 65.8831).

### **Parking Citation Enforcement**

Cities, consolidated local governments, and urban-county governments may elect by ordinance to enforce parking regulations as civil violations instead of as criminal violations. A city electing to enforce parking violations by civil law must establish a hearing board so that persons cited for violations may contest the citation. Appeals from a determination by the hearing board are heard in District Court.

Those cities and governments may also impound illegally parked motor vehicles. A person whose vehicle is impounded may request a hearing contesting the impoundment. If an impounded vehicle is deemed abandoned, it escheats to the city. Escheated vehicles may be used by the city, scrapped, or sold at public auction. Vehicles are determined to be abandoned when, after 45 days and notice by certified mail, the registered owner of the vehicle has failed to request a hearing or pay related fines (KRS 82.600 to 82.640).

### **Private Investigators**

Local governments cannot regulate private investigators (KRS 329A.085). Private investigators are regulated by KRS Chapter 329A and licensed by the Kentucky Board of Licensure for Private Investigators.

### **Rent Regulation**

Cities may not control rents on private property (KRS 65.875). Cities may not adopt ordinances that prohibit property owners from refusing to lease or rent property to a person whose source of income to pay rent includes funding from a federal housing assistance program (KRS 65.874).

### **On-Site Sewage Disposal Regulation**

The Cabinet for Health and Family Services regulates the construction of on-site sewage disposal systems, and no system of that type may be installed except by certified persons (KRS 211.350).

Any local board of health may request to act as the agent of the cabinet for the purpose of issuing on-site sewage disposal system permits. The board may issue regulations relating to these systems and may impose reasonable fees. In counties containing a city of the first class,

consolidated local governments, and urban-county governments, the board of health may adopt regulations more stringent than the state regulations (KRS 211.370).

### **Subpoena Power Restrictions**

Cities and other local governments and their agencies can confer the power of subpoena upon persons, agencies, or authorities only when specifically authorized by statute (KRS 12.135).

### **Trucks**

Any city may, by ordinance, impose license fees on motor trucks, truck tractors, trailers, and semitrailers, and may require registration plates to be attached to them in a conspicuous place (KRS 186.270). For any truck licensed by a city, the provisions of KRS 189.221 relating to height, width, length, and weight limits do not apply within the city or within 15 miles of the city, except on state-maintained roads designated by the state commissioner of highways (KRS 189.280).

### **Underground Petroleum Storage Tanks**

Any city that maintains underground petroleum storage tanks must meet the federal and state standards of assurance in case of tank leakage (KRS 224.60-110 to 224.60-160).

### **Uniform State Building Code**

The state Department of Housing, Buildings and Construction promulgates and administers the state building code using input from the Housing, Buildings and Construction Advisory Committee. The code establishes standards for the construction of all new buildings and is codified in two publications:

- *Kentucky Building Code*, which covers buildings as defined in KRS 198B.010 and excludes one- and two-family dwellings and townhouses
- *Kentucky Residential Code*, which covers one- and two-family dwellings and townhouses

The principal exclusions from coverage are farm buildings and manufactured homes (KRS 198B.010).

Local enforcement of the Kentucky Building Code is the responsibility of local governments. Each local government employs a building inspector to enforce the code within its jurisdiction. The local government may not enact any ordinance that conflicts with the code. Local governments may petition the commissioner to request that additional plan review functions be done by the locality. The local government may also request responsibility for local plumbing permits and installations (KRS 198B.060). These additional responsibilities are called “expanded jurisdiction.” Absent expanded jurisdiction, local governments are responsible for examination and approval of plans of buildings fewer than three stories in height; containing less than 20,000 square feet of floor space; and not intended for educational, assembly, industrial, or high-hazard occupancy, or for business or industrial occupancy in excess of 100 persons. They are also responsible for churches that meet certain specifications and for buildings designed

for use as frozen-food storage locker plants. The department is responsible for other buildings (KRS 198B.060). Both the Kentucky Building Code and the Kentucky Residential Code are set out in 815 KAR Chapter 7. Those codes are adopted by reference with amendments noted.

### **Police And Fire Departments**

KRS Chapter 95 provides a comprehensive scheme of legislation for the establishment and operation of municipal police and fire departments. Cities that were previously classified in the second and third classes are recorded on a registry maintained by the Department for Local Government pursuant to KRS 95.450. Cities on this registry, and urban-county governments, must establish police and fire departments (KRS 95.440).<sup>87</sup> City officials have questioned this interpretation, however. The provisions of the omnibus reclassification bill of 2014 requiring the creation of the registry in this case are unlikely to disturb the OAG interpretations.

The establishment of police and fire departments in cities not on the registry is permissive, in light of the OAG interpretations, although any establishment and operation of departments must be pursuant to KRS Chapter 95.

KRS 95.019 grants police countywide jurisdiction in all cities.

### **Appointment**

In cities operating under the mayor-council plan, police officers and firefighters are appointed and removed solely at the pleasure of the mayor, except as otherwise provided by statute, ordinance, or contract (KRS 81A.130). In cities operating under the other forms of government, the city legislative body appoints and removes police officers and firefighters.

The principal statutory limitations on the appointment of firefighters and police officers are civil service systems, discussed in Chapter 7 of this publication.

### **Discipline And Removal**

**Cities Of The First Class.** All positions in the fire department and police department are under the jurisdiction of the classified service, except for the chiefs, the assistant chiefs, and the chief of detectives (KRS 90.150).

The grounds for dismissal of a police officer or firefighter are to be established by regulation promulgated by the civil service board (KRS 90.160). Any employee whom the appointing authority dismisses, demotes, or suspends in excess of 10 days may appeal the disciplinary action to the civil service board. The employee receives a public hearing before the board, may be represented by counsel, and may introduce evidence. The employee may appeal the decision of the board to the Circuit Court within 30 days of the board's order (KRS 90.190).

**Home Rule Cities.** Cities of the home rule class may establish a civil service system covering the police and fire departments pursuant to KRS 90.300 to 90.410.

**A. Noncivil Service.** Police officers and firefighters in cities of the home rule class that were cities of the second and third classes on January 1, 2014, and have not established a civil service system may be disciplined only for inefficiency, misconduct, insubordination, or violation of law or rules adopted by the legislative body of the city. Discipline includes reprimands, dismissals, suspensions, and reductions in pay. Unlike the procedure in cities of the first class, the disciplinary action cannot be taken until after the employee has had a public hearing before the city legislative body. The following procedure for disciplining a firefighter, or a police officer in a circumstance where he or she is not subject to KRS 15.520 (see “Police Officers’ Bill of Rights” below), must be followed (KRS 95.450).

- **Step 1:** Charges are filed against the employee with the city clerk. Charges must be in writing and must be set out clearly.
- **Step 2:** Two days before the hearing, the employee is served with a copy of the charges and the scheduled date of the hearing.
- **Step 3:** Within 3 days of the filing of charges, the legislative body conducts a public hearing.

An employee may be suspended pending the hearing. Witnesses may be subpoenaed for the hearing. In fixing punishment, the legislative body is limited to the following:

- A reprimand
- A suspension not in excess of 6 months
- A reduction in grade
- A dismissal

The officer may appeal the punishment to the Circuit Court (KRS 95.460).

**B. Civil Service.** No member of a police or fire department in the classified service can be dismissed, suspended, or reduced in grade or pay unless, after the procedure set out in KRS 90.360 is followed, he or she is found guilty of inefficiency, misconduct, insubordination, or violation of law involving moral turpitude. The procedure is as follows:

- **Step 1:** Written charges are filed with the mayor, who communicates them to the civil service commission.
- **Step 2:** The mayor determines whether probable cause exists for the charges.
- **Step 3:** If probable cause exists, the mayor prefers charges against the employee and notifies the civil service commission.
- **Step 4:** The civil service commission serves a copy of the charges on the employee.
- **Step 5:** A hearing is held on charges before the civil service commission not sooner than 3 days after a copy of the charges has been filed on the employee. The employee may waive service of charges and demand a hearing within 3 days after the charges are filed with the commission.

An employee may be suspended from duty or pay, or both, pending the hearing. If the commission determines that the charges are true, it may impose a reprimand, a suspension not to exceed 6 months, a reduction in grade, or dismissal. An employee may appeal to the Circuit Court, where the action is tried as an original action.

**Cities Of 1,000 To 7,999.** A city of 1,000 to 7,999 may establish a police force or fire department. Such a city may establish a civil service system either under KRS 95.761 and related statutes or under KRS 90.300 to 90.410. If the city does not establish a civil service

system, police officers and firefighters are treated the same as other city employees.<sup>a</sup> Police officers and firefighters in cities of that size covered by civil service pursuant to KRS 95.761 may be dismissed or reduced in grade only for inefficiency, misconduct, insubordination, or violation of law or rules adopted by the department. Disciplinary action may be instituted only after a public hearing before the city legislative body has been conducted. KRS 95.765 details the necessary procedure.

- **Step 1:** A charge is filed against the employee in writing, clearly and distinctly setting out every charge. The charge is filed with the mayor, who immediately notifies the legislative body.
- **Step 2:** Five days before the hearing, the employee is served with a copy of the charges.
- **Step 3:** Within 10 days of the filing of the charges, the legislative body must conduct a public hearing on the charges.

Notably, this procedure applies in all cases involving firefighters, but only applies to police officers in circumstances where KRS 15.520 does not apply. The employee may be suspended from pay or duty, or both, pending the hearing. Witnesses may be subpoenaed. The legislative body may impose reprimand, suspension not in excess of 6 months, reduction in grade, or dismissal. The employee may appeal the decision of the board to the Circuit Court (KRS 95.766).

**Urban-County Government.** KRS 95.450, discussed above relative to cities previously classified in the second and third classes, also applies to urban-county governments.

**Consolidated Local Government.** A consolidated local government must establish a police merit board, which regulates the employment of police officers by the creation and operation of a merit system and establishment of a disciplinary system (KRS 67C.303).

**Police Officers' Bill Of Rights.** The 1980 General Assembly enacted KRS 15.520, the Police Officers' Bill of Rights. The bill gives due process protection to all police officers employed by police departments that participate in the Kentucky Law Enforcement Foundation Program Fund. That program, established by KRS 15.410 to 15.510, pays police officers, in participating jurisdictions, an annual compensation bonus if they have completed a minimum level of training and continue to attend additional training.

KRS 15.520 was intended to “establish a minimum system of professional conduct” for police officers. Its provisions generally supersede the disciplinary procedures discussed above (KRS 94.450 and 95.765).

The statute provides a method for receiving and investigating complaints against police officers. In 2014, the Kentucky Supreme Court heard arguments construing when the administrative processes of KRS 15.520 would be initiated. Recent decisions from inferior courts had indicated that the provisions would be initiated only upon complaints from citizens and not upon complaints from supervisory personnel in the department. The Supreme Court

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<sup>a</sup> The disciplinary procedures for police and firefighters set out in KRS 95.765 may be confusing, and it appears that the procedure applies to all police and firefighters regardless of whether civil service is adopted. However, that statute must be read with KRS 95.761, which permits the cities to adopt civil service. See *City of Pikeville v. May*, Ky., 374 S.W.2d 843 (1964). Also see Kentucky OAG 82-501 and 83-231.

decided that the provisions for administrative due process set out in KRS 15.520 would be followed upon any complaint against a police officer, no matter the source of the complaint, whether it be a citizen or a supervisor of the department.<sup>88</sup>

The 2015 General Assembly amended the statute to exempt police officers from the due process administrative rights afforded by KRS 15.520 in matters connected to “general employment policies,” as defined in the statute, which largely relate to matters that are “not unique to law enforcement activities or the exercise of peace officer authority” when initiated by the employing agency of the peace officer. However, when a citizen files any complaint about a police officer—even one involving general employment policies—the due process administrative processes in KRS 15.520 are followed.

Pursuant to KRS 15.520:

- Complaints that constitute a violation of law enforcement procedures must be investigated if the employing agency determines an investigation is warranted.
- No threats, promises, or coercions are to be used against an officer while a suspect in a criminal case.
- Officers are to be notified within 24 hours of a suspension regarding a complaint that is the reason for the suspension.
- Absent an agreement in writing by the officer, no officer can be interrogated for alleged conduct contrary to law enforcement procedures until 48 hours have passed from the time of written notification of the request for interrogation.
- If an officer is under arrest, is likely to be arrested, or is a suspect in any criminal investigation, the officer has the same constitutional due process rights as any other person.

In conducting hearings pursuant to KRS 15.520:

- The hearing must be conducted no earlier than 12 days after written notice is given to the accused officer.
- Copies of sworn statements or affidavits must be provided to the accused officer before the hearing.
- Accusing citizens must be notified before the hearing.
- Charges made by a citizen shall be dismissed with prejudice when citizens do not appear at the hearing, unless the citizen’s absence is due to circumstances beyond the citizen’s control.
- Accused officers may have counsel.
- Subpoenas may be issued relative to the hearing.
- Accused officers may present witnesses and evidence and may question witnesses called by the charging party.
- Accused officers who have been suspended and who have not been given a hearing within 75 days of the filing date of a charge shall have the charge dismissed with prejudice and are reinstated with full back pay and benefits.
- Accused officers who have been suspended and found not guilty shall likewise be reinstated with full back pay and benefits.
- Accused officers found guilty under a hearing authority may bring action in the Circuit Court of jurisdiction, and decisions of the Circuit Court are subject to appeal.

Officers employed by a consolidated local government use the provisions of KRS 67C.326 rather than the process set out in KRS 15.520.

KRS 15.520 provides only procedural rights to police officers, in that it is applicable to disciplinary actions only if the officer has a right to a hearing under some other statute. This interpretation was made by the Kentucky Court of Appeals in *McCloud v. Whitt*.<sup>89</sup> The cause of action arose out of the mayor of Worthington's dismissal of the police chief, HH Whitt Jr. The mayor, Bernard McCloud, dismissed Whitt not for disciplinary reasons, but for no stated reason, under his authority to remove an officer at will. No hearing was afforded Whitt.

Whitt brought the action against the mayor, alleging that the dismissal was wrongful because the procedure set out in KRS 15.520 had not been followed. He acknowledged that the mayor had statutory authority to remove officers at will, but he pointed out that KRS 83A.130 contained the exception "except as tenure and terms of employment are protected by statute, ordinance or contract." Whitt argued that KRS 15.520 was such a protecting statute, limiting the mayor's right to remove. In support, he cited an unpublished Opinion of the Attorney General that read:

It is apparent under the terms of this statute that a police officer cannot be removed without the right to have a hearing under the procedure set forth in the statute which means that the mayor's general power to remove minor city officers without cause or without the officer having the right to be heard would be nullified by this statutory exception.<sup>90</sup>

The Circuit Court agreed with Whitt, and the mayor appealed. The Court of Appeals reversed, stating that "KRS 15.520 has no application to the removal of Police Chief Whitt," because the chief's "removal was not predicated upon any complaint of professional misconduct ... or upon any charge involving violation of any local unit of government's rule or regulation ... but resulted from action by the mayor under the discretionary power given him."<sup>91</sup> The court went on to say that "[i]t would be absurd to require a hearing where, as here, there has been a removal under authority to remove at will rather than a removal for some cause, since there would be nothing to inquire into."<sup>92</sup> In other words, KRS 15.520 provides procedural rights, not substantive rights.

**Conditional Offers Of Employment For Peace Officers.** A law enforcement agency seeking to employ a peace officer may make a conditional offer of employment to a candidate in order to send an inquiry to the Kentucky Law Enforcement Council regarding the certification status of the candidate. The council is required to provide information regarding any reports received from a law enforcement agency regarding the candidate's conduct that would constitute an automatic revocation of certification under KRS 15.391, as well as information on whether the council has initiated a hearing (or commenced an investigation to consider initiating a hearing) concerning the possible revocation of the candidate's certification under KRS 15.391.

Similarly, an agency can send an inquiry to a candidate's former employing agency during the conditional offer of employment stage. The candidate's former employing agency is required to provide the candidate's personnel file and any documentation related to the candidate's arrest or prosecution, completed internal administrative investigation, or incomplete internal

administrative investigation that may have been stopped due to the candidate's resignation or retirement while the investigation was pending (KRS 15.405).

### **Miscellaneous Statutes Relating To Police And Fire Departments**

**All Cities.** All police officers and auxiliary police officers originally appointed after July 14, 1992, must be at least 21 years old and must have graduated from high school or have received a GED or a high school diploma through an external diploma program (KRS 95.951) A person who is at least 20 years of age may be employed by a law enforcement agency to attend peace officer professional standards training if that person will be 21 upon graduation (KRS 15.408, 67C.329, and 95.965).

The legislative body of any city may authorize the employment of a property clerk and deputy property clerks who are to be appointed by the city's executive authority (KRS 95.845).

**Cities Of The First Class.** The chief of police and members of the police department possess all powers of constables except for the service of civil process (KRS 95.019). Each police officer takes a written oath to faithfully discharge the duties of office (KRS 95.200). Police officers and firefighters are exempt from arrest on civil process and service with subpoenas from civil courts while on duty (KRS 95.210 and 95.270). The fire department of the city is organized on a three-platoon system, with each platoon being on duty for 24 hours and off duty for 48 hours (KRS 95.275).

**Home Rule Cities And Urban-Counties.** In cities of the home rule class and urban-county governments, although the executive authority appoints police officers and firefighters, the legislative body must require that all applicants for the departments be "examined as to their qualifications for office, including their knowledge of the English language and the law and rules governing the duties of the position applied for"; members of the departments hold their positions for "good behavior" (KRS 95.440).

**Police.** In all cities, the chief of police or other city police officer

- attends all sessions of the legislative body, executes its orders, and preserves order at the sessions;
- receives the same fees as sheriffs for similar services (KRS 83A.070 requires all fees to be paid into the city treasury); and
- executes process (KRS 95.480).

Each police officer in a city of the home rule class must take a written oath to faithfully discharge the duties of the office and give bond in an amount to be fixed by ordinance (KRS 95.490). Police in cities noted in a registry maintained by the Department for Local Government, along with their urban-county counterparts, may work 10-hour, 4-day shifts under certain conditions (KRS 95.495).

Police officers employed by any city may make arrests anywhere in their county (KRS 95.019).

**Firefighters.** The chief of the fire department in all cities and urban-county governments

- either sends an officer acting under his or her authority or is personally present at all fires and examines their causes;
- directs and controls the operations of the members of the fire department;
- has the right to examine fireplugs, cisterns, etc.;
- has control over all buildings and equipment furnished the department; and
- performs other duties as prescribed by ordinance (KRS 95.500).

The fire departments in cities on the registry established in KRS 95.500 and urban-county governments are organized on a three-platoon basis, wherein each platoon is on duty for 24 hours, then off duty for 48 hours. All employees of the fire department are to receive not less than 2 weeks' leave of absence annually with full pay (KRS 95.500).

**Cities Of 1,000 To 7,999.** Any city of 1,000 to 7,999 that has established a regular police or fire department may establish a civil service system for its departments (KRS 95.761).

### **Arrest Powers**

Peace officers may make arrests with a warrant. They may also make arrests without a warrant

- when a felony is committed in the officer's presence;
- when there is probable cause to believe that a felony has been committed;
- in response to certain traffic regulation violations;
- in a hospital if there is probable cause to believe that an assault in the 4<sup>th</sup> degree occurred;
- when there is probable cause to believe that a violation of a restraining order has occurred or is about to occur;
- when there is probable cause to believe that a sexual offender is not complying with the offender registry; or
- when the officer has probable cause to believe that a person has violated a condition of release or restraining order, in which case the officer has an affirmative duty to make the arrest (KRS 431.005).

### **Assistance To Other Jurisdictions**

Any local government police officer, except for constables, special local peace officers, and special deputy sheriffs, may assist another law enforcement agency in Kentucky if the peace officer is certified pursuant to KRS 15.380 to 15.404. When assistance is requested, the officer has the same arrest powers as in the officer's home jurisdiction. These provisions apply only to police departments that meet the requirements of KRS 15.440. Assistance may not be authorized in labor disputes or strikes (KRS 431.007). Any local law enforcement agency may request and receive the assistance of the Cabinet for Health and Family Services for aid in noncustodial child abuse investigations (KRS 620.040).

### **Auxiliary Police**

Any city or urban-county government (except for a city of fewer than 3,000 in a county containing a consolidated local government) may by ordinance establish an auxiliary police force. The ordinance must set out the number of officers, their manner of appointment, and rules

and regulations governing their powers and duties (KRS 95.445). Auxiliary police officers possess the same powers as regular police officers unless ordinance or statute expressly limits their powers.<sup>93</sup> Auxiliary police are defined as “special law enforcement officers.” Their duties include

- the protection of specific public property;
- control of the operation, speed, and parking of motor vehicles; and
- answering intrusion alarms on specific public property (KRS 61.900 to 61.930).

### **Citation And Safety Officers**

The legislative body of any city may authorize the employment of citation and safety officers. Citation officers may issue citations for nonmoving motor vehicle offenses and violations of ordinances that do not constitute a violation of the Kentucky Penal Code. The powers allowed safety officers are broader, including

- issuing citations for nonmoving motor vehicle offenses provided for in KRS Chapters 186 and 189,
- issuing citations for the violation of any motor vehicle or traffic safety ordinance enacted by the city,
- controlling and directing traffic on public thoroughfares,
- removing vehicles in violation of state or local laws,
- issuing citations for misdemeanors committed in an officer’s presence, and
- issuing citations for violations of KRS 186.430, 186.450, 186.510, and 186.540.

Safety officers must complete 120 hours of appropriate training before being appointed. Neither citation nor safety officers have the powers of peace officers to make arrests or carry deadly weapons (KRS 83A.087 and 83A.088).

### **Collective Bargaining And Other Considerations For Firefighters**

In cities of the first class or a consolidated local government, firefighters have the right to collectively bargain with the city. Any other city may petition the commissioner of the Department of Workplace Standards under the direction of the secretary of the Labor Cabinet to permit the city to enter into collective bargaining agreements with its firefighters (KRS 345.010 and 345.030).

**Equipment.** The Fire Standards Safety Commission, under the State Fire Marshal’s Office, administers and regulates a thermal vision grant program for fire departments (KRS 95A.400 to 95A.440).

**Insurance Benefits.** A monthly payment of \$300 each for health and life insurance premiums is available for firefighters who are permanently disabled in the line of duty (KRS 95A.070).

### **Kentucky Law Enforcement Foundation Program Fund**

Any city that employs a paid police force may participate in the Kentucky Law Enforcement Foundation Program Fund. The city must conform to the minimum requirements of KRS 15.440.

If the city qualifies, the fund will annually pay supplemental compensation of \$4,000 to each police officer who attends the minimum number of training courses (KRS 15.460).

### **Law Enforcement Telecommunicators**

Kentucky law describes two types of law enforcement telecommunicators: CJIS and non-CJIS telecommunicators. CJIS telecommunicators are part of an agency that uses the Criminal Justice Information System (KRS 15.530). Telecommunicators hired after 2006 must meet qualifications such as a certain level of educational attainment, a psychological assessment, and a drug screen (KRS 15.540).

Law enforcement telecommunicators must have completed either a non-CJIS training program or, if hired after 2006, a law enforcement telecommunicators basic training program. Beginning in 2024, all telecommunicators who have not been previously certified must complete the public safety telecommunicator academy, a 160-hour program approved by the Kentucky Law Enforcement Council. All telecommunicators must complete annual training (KRS 15.560). All telecommunicators with access to CJIS must complete 8 hours of in-service training related to the program every year (KRS 15.565). See KRS 15.530 to 15.590 for details regarding definitions, employment, training equivalency, and statutory requirements relating to telecommunicators.

### **Merger Of Fire Departments**

A procedure exists for the merger of volunteer fire departments and the method for the awarding of state grant money to merged departments (KRS 95A.500 to 95A.560).

### **Police Pursuit Policies**

Law enforcement agencies, including municipal police departments, must have a vehicular pursuit policy in place. The policy is to create “guidelines for determining when the interests of public safety and effective law enforcement justify the initiation or termination of a vehicular pursuit” (KRS 61.298). Each policy must address

- the definition of *pursuit* that the policy will govern;
- decision-making criteria or principles designed to assist peace officers in determining whether to initiate a pursuit;
- responsibilities of the pursuing peace officer, including pursuit tactics and when those tactics are appropriate;
- procedures for designating the primary pursuit vehicle and for determining the number of vehicles that may simultaneously participate in a pursuit;
- coordination of communications during pursuit;
- a requirement that there be supervisory control of the pursuit, including the responsibilities of command staff or other supervisors during the pursuit, if a supervisor is available;
- the circumstances and conditions where the use of pursuit intervention tactics may be employed;
- decision-making criteria or principles designed to assist peace officers in making an ongoing determination, during the course of a pursuit, of whether to continue it or terminate it;

- procedures for coordinating the pursuit with other law enforcement agencies, including procedures for interjurisdictional pursuits; and
- a process for reporting and evaluating each pursuit by the law enforcement agency.

Copies of the policy, along with any amendments, are to be filed with the Justice and Public Safety Cabinet. Training on emergency vehicle operation is required if a police officer is to receive the salary supplement under KRS 15.410 to 15.510, and law enforcement agencies must track officers completing this training (KRS 15.440 and 15.512).

### **Police Vehicles**

Any city, by ordinance, may authorize its police department to equip its vehicles with a combination of red and blue lights (KRS 189.920).

All marked police vehicles used to transport prisoners must be equipped with a screen or other protective device between the front and rear seats, and the area in which the prisoners are enclosed must be equipped so that the doors and windows cannot be opened from the inside (KRS 61.387).

### **Professional Firefighters Foundation Program Fund**

Similar to the Kentucky Law Enforcement Foundation Program Fund, the Professional Firefighters Foundation Program Fund is available to any city that employs a paid fire department and meets the minimum requirements of KRS 95A.230. The fund is administered by the Kentucky Fire Commission and pays an annual \$4,000 supplement to each firefighter in a qualifying city who attends the requisite number of training programs (KRS 95A.250).

There is also a revolving low-interest-loan fund to finance equipment and facilities for these departments. Funds equal to the employer's contribution to each qualified member are put into either the deferred benefit pension plan or a plan qualified under section 401(a) or section 457 of the Internal Revenue Code of 1954.

### **Public Intoxication**

Any local law enforcement officer who seeks to enforce KRS 222.202 (relating to alcohol intoxication and drinking alcoholic beverages in a public place) may arrest an individual or issue a citation and have the violator taken to an ordinance-designated facility for care (KRS 222.203).

### **Rescue Squads**

The mayor of any city, county, or urban-county government may authorize establishment of rescue squads to operate in conjunction with the fire department or as separate units. A rescue squad must have at least 12 members and at least one vehicle (KRS 39F.010 to 39F.990).

## **Rights Of Police And Firefighters**

Members of police and fire departments must abide by all laws enacted by the General Assembly and all rules promulgated by the legislative body, except that the regulations may not restrain the officers, while off duty, from exercising the rights and privileges enjoyed by other citizens of the city (KRS 95.015). KRS 95.017 elaborates on those rights and privileges and permits “uniformed employees” to perform various political acts while off duty and out of uniform.

## **Training Requirements**

KRS 95.955 helps ensure that peace officers receive the necessary training to successfully carry out their work. All police officers or auxiliary police officers originally appointed after July 14, 1992, must complete 400 hours of basic training within 1 year of appointment or employment. All police officers or auxiliary police officers, regardless of the time of their appointment or employment, must also complete 40 hours of annual in-service training. The Department of Criminal Justice Training must administer or approve all training programs. Failure to complete the required training within the specified period rescinds an officer’s authority to carry deadly weapons and make arrests and subjects an officer to possible dismissal. A 180-day extension may be granted to an officer when specified extenuating circumstances prevent completion of the required training; this extension would begin after the officer returns to duty.

Cities or urban-county governments with regular police departments that have 10 or fewer officers may be reimbursed for the base salary of each full-time police officer while that officer is fulfilling the annual in-service training. Consult the Department of Criminal Justice Training for details relating to this provision (KRS Chapter 15).

## **Alan “Chip” Terry Professional Development And Wellness Program**

The Alan “Chip” Terry Professional Development and Wellness Program addresses firefighters’ emotional health and wellness. The program is administered by the Kentucky Fire Commission for the benefit of local firefighting personnel (KRS 95A.292).

## **Stress Injury Payments For Treatment For Firefighters**

Firefighters who have been diagnosed with stress injuries, as defined in KRS 95A.220, from events occurring in the course of their duties and who seek treatment may submit the receipts for payment by the Fire Commission after exhausting in-network health insurance.

## **Law Enforcement Professional Development And Wellness Program (Kentucky Post-Critical Incident Seminar)**

The Law Enforcement Professional Development and Wellness Program uses a seminar-based approach to assist law enforcement officers and their families in dealing with posttraumatic

stress. The Department for Criminal Justice Training must host such a seminar at least twice a year (KRS 15.518).

### **Local Law Enforcement Wellness Programs**

Local law enforcement agencies may create their own wellness programs to support the mental health and well-being of their employees. They can include early intervention systems, access to mental health counseling, crisis counseling, support systems, training, equipment, and technology. Local law enforcement agencies creating these programs must establish written policies and procedures for the administration of the program. Proceedings, records, opinions, conclusions, and recommendations arising from any aspect of a wellness program are confidential and privileged from disclosure, with certain exceptions (KRS 15.409).

### **Critical Incident Leave**

Any peace officer or firefighter directly involved in a critical incident—defined as an event that has a stressful impact sufficient to overwhelm a peace officer’s usual coping strategies—is entitled to 48 hours of leave following the incident. The leave may be paid or unpaid, depending on the employment contract of the first responder (KRS 15.158 and 95A.292). Employers are forbidden from terminating police officers or firefighters because they have used critical incident leave (KRS 337.100).



## **Chapter 9**

### **Urban-County, Charter County, And Consolidated Local Government**

#### **Urban-County Government**

The voters in any county, except a county containing a city of the first class, may merge all existing units of city and county government into a single urban-county form of government pursuant to KRS 67A.010.

#### **Adoption Of Plan**

KRS 67A.020 establishes the procedures that must be followed to initiate merger proceedings and to place the question of merger before the voters. The process of merging city and county governments begins when at least two separate petitions requesting a referendum on the question of adopting an urban-county form of government have been filed with the county clerk. The county must submit one petition, and every incorporated city in the county must also submit a petition to the county clerk.

The petition filed by the county must be signed by a number of registered voters equal to 5 percent of the voters of the county who voted in the last general election. A petition filed by a city must be signed by a number of registered voters equal to 5 percent of the number of voters in that city who voted in the last general election. The requirement for separate petitions implies that only voters who live outside an incorporated area are eligible to sign the county petition and only voters who reside within the city limits may sign a petition filed by a city.

Once the petitions have been filed with the county clerk, then the county fiscal court and the city council of the largest city within the county must appoint a representative commission composed of not fewer than 20 citizens. The representative commission must include but is not limited to the following provisions:

- A description of the form and structure of the new urban-county government
- The officers, their functions, powers, and duties under the new government
- The procedures by which the original plan may be amended

The comprehensive plan must be advertised at least 90 days before the general election in November when the question of adopting the urban-county form of government is scheduled to be voted on. The question is to be filed not later than the second Tuesday in August preceding the day of the next general election. If a majority of the votes cast at the election are in favor of adopting the plan, the county board of election commissioners must organize the new urban-county government.

#### **Transition To Urban-County Plan**

KRS 67A.030 provides that if the voters elect to adopt the urban-county plan, the new form of government does not go into effect until the next regular election at which county officers are

elected. (See also Section 99 of the Kentucky constitution.) Immediately upon the effective date of the new form of urban-county government, all existing municipal offices are abolished. The constitutional county officers and other elected officials as are provided in the comprehensive plan are elected, and the urban-county plan immediately becomes the effective government.

### **Nature Of Plan**

KRS Chapter 67A is a home rule charter plan. There is no general plan of an urban-county government, since the citizens may create the structure best suited to their community's needs. However, because KRS Chapter 67A cannot supersede constitutional provisions, any plan adopted must retain the county officers required by Section 99 of the Kentucky constitution. The officers required in each county are county judge/executive, county clerk, county attorney, sheriff, jailer, coroner, surveyor, assessor, and in each justice's district a justice of the peace and a constable. The office of assessor may be abolished.<sup>94</sup> The comprehensive plan must establish and prescribe all other officers and their duties, powers, and relationships.

Even though the comprehensive plan may call for the dissolution of incorporated municipalities and special districts within the county, KRS 67A.050 states that for "purposes of all state and federal licensing and regulatory laws, statutory entitlement, gifts, grants-in-aid, governmental loan, or other governmental assistance under state or federal laws or regulations," the urban-county is deemed a county and is deemed to contain the municipalities (retaining number and class) as they existed before adoption of the plan.

### **Powers Of Government Under Plan**

KRS 67A.060 provides that urban-county governments "may exercise the constitutional and statutory rights, powers, privileges, immunities and responsibilities of counties and cities of the highest class within the county." These powers are further defined as those that

- are in effect on the date the urban-county became effective,
- are subsequently adopted for counties and cities of that class, and
- are authorized or imposed on urban-counties.

The powers pursuant to the first two items above continue to be possessed even if the statutes on which they are based are repealed or amended unless expressly repealed or amended with reference to urban-county governments (KRS 67A.060).

**Enactment Of Ordinances.** To exercise powers granted them, KRS 67A.070 states that Urban-county governments may enact and enforce within their territorial limits such tax, licensing, police, sanitary and other ordinances not in conflict with the Constitution and general statutes of this state now or hereafter enacted, as they shall deem requisite for the health, education, safety, welfare and convenience of the inhabitants of the county and for the effective administration of the urban-county government.

No ordinance enacted by the urban-county government is deemed to conflict with the general law, unless

- the ordinance authorizes something that general statute expressly prohibits or
- the general law contains a comprehensive scheme of legislation on the same subject.

No ordinance or resolution may be considered until it has been read at two separate meetings of the urban-county legislative body. The members of the legislative body may waive the second reading by a two-thirds vote. The full text of the legislation need not be read; it is sufficient if the title and a certified synopsis prepared by an attorney is read. An ordinance is effective upon passage by the body unless timely vetoed by the chief executive officer. The comprehensive plan must set out the specific procedure for veto and legislative override. All ordinances and resolutions are published in the daily newspaper that has the largest bona fide publication in the county and is published in the county. Ordinances or resolutions that impose fines, forfeitures, imprisonment, taxes, or fees (other than bond ordinances) are published in full; all other ordinances and resolutions may be published in summary. The summary must include the title of the measure and a certified synopsis of the contents prepared by an attorney.

As with cities, urban-counties in their ordinances may adopt by reference the provisions of any local, statewide, or nationally recognized standard or code (KRS 67A.070).

**Taxing Powers.** KRS 67A.850 grants urban-county governments the right to impose ad valorem taxes. The section in its entirety reads as follows:

Urban-county government may exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, Section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers must be exercised by the urban-county government consistent with the Kentucky Constitution, Section 172A, and KRS 132.010, 132.023, and 132.027. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases. Within the privileges and limitations of this section, an urban-county government may impose an additional ad valorem tax, not to exceed five cents (\$0.05) per one hundred dollars (\$100), for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.

For taxation purposes, the urban-county may be divided into service districts pursuant to KRS 67A.150. Each service district is considered a separate taxing district in which an ad valorem tax rate differential is authorized dependent on the kind, type, level, and character of services provided the residents of the various districts. The Kentucky Supreme Court has ruled that these variable tax rates are permissible only with respect to real property.<sup>95</sup>

KRS 67A.860 requires that property owners be notified by certified mail if the urban-county intends to extend services in their service district that may result in a tax increase. A public hearing must be held on the question of extension of services.

### **Miscellaneous Provisions**

**Alcoholic Beverages.** If an urban-county government is formed, the local option status of the county and each city within the county remains unaffected unless changed by election. The territorial boundaries of all cities in the newly formed urban-county survive for the purpose of local option elections (KRS 242.126).

**Chief Administrative Officer.** KRS 67A.025 authorizes urban-county governments to create the office of chief administrative officer. If the office is established, the chief administrative officer serves on the staff of the chief executive officer “to provide professional assistance in the administration of urban-county governments.” The chief executive officer appoints the chief administrative officer subject to approval by a three-fifths vote of the legislative body.

Removal procedures governing chief administrative officers vary depending on when the urban-county government was created. The chief administrative officer of any urban-county government created before December 31, 1987, may be removed with or without cause either by an executive order of the chief executive officer or by a three-fifths vote of the entire legislative body. The chief administrative officer of any urban-county government created after December 31, 1987, may be removed by three-fifths vote of the entire legislative body. A chief administrative officer is not entitled to notice of intention of removal or severance pay upon removal.

A chief administrative officer may be a nonresident but must become a resident of the urban-county within 6 months of appointment and maintain residence with the urban-county during tenure in office. A chief administrative officer must “possess demonstrable educational and/or professional experience in the art and science of governmental management” (KRS 67A.025).

**Citation Officers.** KRS 67A.076 authorizes urban-county governments to appoint citation officers who do not have the powers of peace officers to arrest or carry weapons but who may issue citations, as authorized by ordinance, upon the observation of nonmoving motor vehicle offenses, violations of ordinances that are not moving motor vehicle offenses, and offenses that constitute violations of the Kentucky Penal Code.

**Civil Service.** KRS 67A.200 to 67A.350 govern civil service (or merit) systems for the employees of the urban-county government if the comprehensive plan has required such a system.

KRS 67A.230 authorizes the mayor, or other appointing authority as determined by the comprehensive plan, to appoint five persons to serve on the civil service commission. Appointments are subject to approval by the legislative body. Members of a civil service commission serve a 4-year term until their successors are appointed and qualified.

KRS 67A.240 establishes procedures that a civil service commission must follow in the examination, rating, and certification of an eligible list of applicants for employment. KRS 67A.250 directs the civil service commission to examine all eligible applicants as to “their physical and mental qualification for the particular classification wherein they seek employment” and to certify candidates to the appointing authority.

KRS 67A.270 governs civil service appointments, promotions, and reinstatement. Pursuant to KRS 67A.280, no employee in a civil service position, after a 6-month probationary period, shall be dismissed or demoted except for inefficiency, misconduct, insubordination, or violation of the law involving moral turpitude. An employee may request a hearing before the commission on any disciplinary action taken against the employee.

KRS 67A.310 prohibits employees from being appointed to a position because of political favors and protects employees from being fired because of personal political opinions. This statute also addresses other types of prohibited political activities.

**Civil Service Pension Fund.** If a municipal employee pension fund was in effect in any city that was merged into the urban-county, KRS 67A.320 requires the urban-county government to continue to maintain the fund and to contribute monthly the sum necessary to maintain it in accordance with principles established by an actuarial study. In addition, employee contributions may be assessed, not to exceed 9 percent of the monthly salary of each employee, unless a higher rate was charged before the merger of governments, in which case the higher rate may be charged.

The fund is controlled and managed by a board of trustees composed of the mayor, four members of the legislative body, the secretary of the Finance and Administration Cabinet, the director of the Division of Personnel, and three civil service employees elected by those covered by the pension fund.

KRS 67A.315 prohibits urban-county governments created after July 1988 from operating pension programs under KRS 67A.320 to 67A.340 and 67A.360 to 67A.390. Any urban-county government created after July 1988 must maintain any pension system that was in effect in the county or city before the merger of governments. However, such a system may be closed to new members in favor of participation in the County Employees Retirement System. Employees in service on the date of the urban-county government's participation in the system must be given the option of joining the system.

**Code Enforcement Boards.** Municipalities may adopt a code enforcement board by ordinance, according to the Local Government Code Enforcement Board Act (KRS 65.8801 to 65.8839). This board is designed to issue remedial orders and impose civil fines as a method of enforcing the violation of an ordinance when the ordinance is classified as a civil offense. A code enforcement board is composed of no fewer than three members if a representing a single government. Joint boards' membership is set out in the interlocal agreement creating them. The initial appointments are staggered, and all subsequent appointments are for 3 years. The executive authority of the local government appoints members with approval by the local legislative body; they may succeed themselves. KRS 65.8821 enumerates specific powers of the board. Violators of an ordinance are cited by a code enforcement officer and are allowed a hearing (KRS 65.8825 and 65.8828). Appeals to the outcome of a hearing of the code enforcement board may be made in the District Court of the county (KRS 65.8831).

**Corrections.** The offices of sheriffs and jailers in urban-county governments and consolidated local governments are consolidated, and a correctional services division may be established (KRS 67A.028 and 71.110). A gainfully employed prisoner must pay the cost of board in jail (KRS 439.179). The urban-county government sets these fees, within certain limitations.

**Management Districts.** A city of the first class or an urban-county government may create a management district to finance economic improvements in designated areas of the city. Management districts are created by ordinance, and improvements are to be financed by

assessments levied on and collected from all property owners in the district. A board of directors performs oversight of the district and other statutory requirements (KRS 91.750 to 91.762).

**Mass Transit.** Mass transit authorities in urban-counties may include highway projects in their transit programs (KRS 96A.320). Sales taxes imposed for mass transit programs are limited to the period of time specified by the mass transit proposal, unless extended by referendum (KRS 96A.330).

**Motor Vehicle Parking Authorities.** KRS 67A.910 to 67A.928 govern the creation and operation of a motor vehicle parking authority in an urban-county. Pursuant to KRS 67A.914, an urban-county government may establish a parking authority for the purpose of enhancing economic development of the urban-county, especially downtown areas, by providing solutions to urban parking problems. KRS 67A.916 requires the authority to be governed by a five-member board of commissioners appointed by the mayor with approval of the legislative body.

The authority may erect, purchase, and maintain parking structures and issue bonds for their financing. The board may also request the urban-county legislative body to establish a parking district and levy an ad valorem tax on the property therein pursuant to KRS 67A.924, or an occupational license tax on businesses within the district pursuant to KRS 67A.926, for the amortization of bonds.

No budget, budget amendment, fee, or rate of the authority is effective before the parking authority submits that budget, budget amendment, fee, or rate to the governing body of the urban-county government (KRS 67A.921).

**Police And Firefighters' Retirement And Benefit Fund.** KRS 67A.360 to 67A.690 govern a police and firefighters' retirement fund in urban-county governments.

KRS 67A.655 permits an urban-county government to put its new police and firefighters in the County Employees Retirement System under hazardous-duty coverage and requires the transfer of existing service credit in the local plan. Currently employed police officers or firefighters may transfer or stay in the local plan.

For police and firefighters in urban-counties, KRS 67A.410 controls retirement age and the age at which cost-of-living increases begin.

KRS 67A.370 requires a retirement and benefit fund to be established in each urban-county government for the members of the police and fire departments and their dependents and beneficiaries. KRS 67A.510 requires the fund to be supported by active members' contributions in a sum equal to 10.5 percent to 11 percent of each active member's current salary with certain stated exceptions.

KRS 67A.520 requires the urban-county government to make annual contributions to the fund based on the figures derived from yearly actuarial valuations of the retirement fund required to be conducted pursuant to KRS 67A.560. The annual contributions made to the fund by the urban-county government must meet the requirements set out in KRS 67A.520. A member of

the fund or any annuitant may seek a mandamus or an injunction requiring the urban-county government to comply with the provisions of KRS 67A.520 in the event that the government has not done so.

KRS 67A.530 governs how the fund is to be operated and managed. A 12-member board of trustees is composed of the mayor, the commissioner of public safety, the commissioner of finance, the director of human resources, 2 retired members of the fund, the chiefs of the police and fire department, and 2 active members of each of those departments, who are elected by ballot by the active members of the respective departments and serve for alternating terms of 2 years under rules adopted by the board.

KRS 67A.360 to 67A.690 contain specific and detailed rules and requirements for the operation of the fund.

**Public Improvements.** Urban-county governments may undertake any public improvement pursuant to KRS 67A.710 to 67A.825. Proceedings to authorize, construct, and finance an improvement are initiated by the enactment of the first ordinance, which gives notice to all affected residents of the project and describes the nature and scope of the project. The first ordinance calls for a public hearing to be held on the project pursuant to KRS 67A.730.

KRS 67A.735 provides that at a subsequent meeting after the public hearing, the legislative body is to enact a second ordinance, unless it finds that there are objections from more than 50 percent of the residents to be benefited by the project. This restriction does not apply if the project is that of constructing sanitary sewers to eliminate a health hazard. KRS 67A.745 requires notification of all affected property owners. KRS 67A.750 guarantees a 30-day statute of limitations for the filing of any suit against the project.

KRS 67A.760 governs enactment of a third ordinance that authorizes the sale of bonds to finance the public improvement. The bonds are repaid by the levy of a special assessment tax against the benefited property owners pursuant to KRS 67A.755 and 67A.780. The money collected is paid into a sinking fund.

**Rent Regulation.** KRS 65.875 prohibits urban-county governments from controlling rents on private property. Urban-county governments may not adopt ordinances that prohibit property owners from refusing to lease or rent property to a person whose source of income to pay rent includes funding from a federal housing assistance program (KRS 65.874)

**Safety Officers.** Pursuant to KRS 67A.075, the legislative body of urban-county governments may appoint and prescribe the duties of safety officers as needed. The officers may

- issue citations for nonmoving motor vehicle offenses,
- issue citations for violation of any motor vehicle or traffic safety ordinance,
- control and direct traffic on public ways, and
- remove vehicles in violation of state or local laws.

When completing accident reports, safety officers in urban-county governments may issue citations relating to out-of-state drivers, unlicensed drivers, and drivers not in possession

of a license (KRS 67A.075). Safety officers may not make arrests or carry deadly weapons and issue citations only for misdemeanors committed in their presence. The only statutory qualification for safety officers is that they complete 120 hours of appropriate training certified by the Kentucky Law Enforcement Council.

**Sanitary Improvements.** An alternative procedure is provided in KRS 67A.871 to 67A.894 for construction of sanitary improvement projects. Any urban-county government, upon the finding “that the public health, safety, and general welfare requires construction of a wastewater collection project,” may construct and finance such a project.

KRS 67A.875 provides for the procedure to be initiated by the enactment of an ordinance of initiation, which announces the project and makes findings of fact. A public hearing must be held pursuant to KRS 67A.876 and 67A.878, and notice of the hearing must be given to all property owners affected by the project. After the hearing, KRS 67A.879 requires the legislative body to enact an ordinance of determination, which provides for the undertaking and financing of the project, the abandonment of the project, or the alteration of the nature and scope of the project. If the project is altered in nature or scope, the ordinance of initiation and public hearings must be repeated. There is a statute of limitations providing 30 days from the date of the passage of the ordinance for any property owner to file suit against the project pursuant to KRS 67A.880.

The legislative body may adopt an ordinance of bond authorization under KRS 67A.883 that authorizes the issuance of bonds, may levy a special assessment tax against the benefited property owners, and may specify all other financial arrangements. For financing assistance, an urban-county government may apply for financial assistance from the Kentucky Infrastructure Authority. All money received for the payments of bonds must be paid into a sinking fund.

Pursuant to KRS 67A.893, an urban-county government may require property owners to connect with the sewers.

**Solid Waste Management.** An urban-county government may license solid waste landfills and establish fees for the use of them (KRS 68.178).

### **Legal Liability Of Urban-County Government**

Pursuant to KRS 67A.060, an urban-county government has the powers and characteristics of both cities and counties. A question arises over whether, when sued for a tort act, an urban-county is a city, and hence liable for its action, or a county, and immune from liability because of the doctrine of sovereign immunity. The Court of Appeals has ruled that an urban-county is not a city, but “is, like a county government, an arm of the state entitled to the protective cloak of sovereign immunity.”<sup>96</sup>

### **Constitutionality Of KRS Chapter 67A**

Soon after KRS Chapter 67A was enacted, a suit was instituted to determine the constitutionality of the Act, and in 1972 the Kentucky Court of Appeals, in *Pinchback v. Stephens*, ruled that the Act was not unconstitutional.<sup>97</sup>

The plaintiffs in *Pinchback* advanced two arguments against the constitutionality of the Act. The court summarily dismissed the plaintiffs' first contention: that the Act was special legislation in violation of Section 59 of the Kentucky constitution, since it excluded cities of the first class. The more serious objection in the eyes of the court was the plaintiffs' contention that the Act was an unconstitutional delegation of legislative authority; specifically, the argument was that a charter drafted under the Act would necessarily run afoul of Section 156 of the constitution, which then mandated that cities of each class "possess the same powers and be subject to the same restrictions" (Section 156 would be later be repealed, in 1994). The court refused to meet the question head on but merely stated that "we are not persuaded, however, that no plan produced under the statute here in issue could possibly avoid violating Section 156."<sup>98</sup> In essence, the court was refusing to rule until it had an actual charter before it. In summary, the court stated:

Absent any all-inclusive, straight-out prohibition in our Constitution against the grant to local voters of any power of self-government in regard to the structure of local government, this Court is not disposed to bar the door to any and all possibility of action in this area.<sup>99</sup>

During that time, Lexington had begun the process of adopting an urban-county charter and consolidating city and county governments. Petitions to initiate the process began circulating in the summer of 1970. By 1971, the petition drive was successful, and the Lexington-Fayette County Merger Commission was created to draft the comprehensive plan. The plan was placed on the ballot at the regular election in November 1972 and was adopted by 68 percent of those casting their votes. Although the plan was adopted in 1972, it was not to go into effect until January 1, 1974. A "friendly" class action was instituted in Fayette Circuit Court to determine the constitutionality of the charter. The case went to the Kentucky Court of Appeals, and on December 28, 1973, the court handed down a far-reaching decision in *Holsclaw v. Stephens*, which upheld KRS Chapter 67A and the urban-county charter, and resolved many of the questions left unanswered in *Pinchback*.<sup>100</sup>

The court first concluded that nothing in the constitution limits units of local government to cities and counties or precludes the General Assembly's creating a new unit combining the powers of counties and cities. The court said the new urban-county form was "neither a city government nor a county government as those forms of government presently exist but it is an entirely new creature in which are combined all of the powers of a county government and all of the powers possessed by that class of cities to which the largest city in the county belongs."<sup>101</sup>

When the urban-county plan is adopted, "all city government and all county government, except units and functions of county government established by the Constitution," are extinguished.<sup>102</sup>

The court turned aside the argument that the charter-making provision of the Act was an unconstitutional delegation of legislative authority by saying that the legislature did not delegate its powers to make laws—which would be unconstitutional—but merely delegated the power to determine the structure of the new government. "The structure of urban county government is nothing more than the machinery by which those powers and responsibilities may be executed and, therefore, the authority to provide the structure can be delegated."<sup>103</sup>

The court can perhaps be said to have performed a feat of magic in this opinion, since by characterizing the urban-county form as a “new creature,” it, in one sentence, very neatly removed most of the constitutional stumbling blocks to merged government, in that the new creature, being neither a county nor a city, is thus exempt from all limitations placed on cities and counties. Therefore, the residents of the new creature may structure the organization of the urban-county government as they determine, except that constitutional county offices cannot be abolished. Although the urban-county government is given broad home rule powers with respect to structure, the substantive powers to be exercised by the city are limited to those powers possessed by counties and the class of cities to which the largest city in the county belongs.

Since 1972, when the voters of the city of Lexington and of Fayette County adopted the urban-county form of government, other communities have expressed an interest in merging their local units of government (though not necessarily under the auspices of an urban-county government form):

- Franklin County and city of Frankfort
- Scott County and cities of Georgetown, Sadieville, and Stamping Ground
- Warren County and cities of Bowling Green, Smiths Grove, and Woodburn
- Daviess County and cities of Owensboro and Whitesville
- Boyd County and city of Ashland
- Jefferson County and city of Louisville
- Simpson County and city of Franklin
- Taylor County and city of Campbellsville

The question of adopting an urban-county form of government was placed on the ballot in 1988 in both Franklin and Scott Counties, with the voters in both counties overwhelmingly defeating the referendums. In 1990, proposals were also defeated in Owensboro/Daviess County and Bowling Green/Warren County. In 2000, the citizens of Jefferson County voted to merge Louisville and Jefferson County. The new government is a consolidated local government, which is discussed later.

### **Charter County Government**

After the Franklin County and Scott County experiences in 1988, concern began to arise as to whether KRS Chapter 67A had been so tailored over the years for Lexington/Fayette County that other communities could never fully embrace or use it. In response to this supposition, the 1990 General Assembly amended KRS Chapter 67 to authorize the formation of “charter county governments” in any county except those containing a city of the first class or having an urban-county government. The 1994 General Assembly expanded the provisions of KRS 67.825 and 67.830 to permit the consolidation of services or functions of the affected cities and county and more specifically outline the formation of the study commission under these statutes.

KRS 67.825 to 67.875 outline the requirements and procedures for establishing a charter county government. These statutes also provide direction for the redistricting of charter county legislative districts; the election of local officials; the dissolution of incorporated cities and special districts in the area; the rights, powers, and immunities of charter counties; ordinance

powers; variable tax rate service districts; employee civil service systems; employee political activity; and employee retirement systems.

### **Consolidated Local Government**

A third type of merged government now exists. In addition to urban-county and charter county governments, the 2000 General Assembly enacted KRS Chapter 67C, which outlined a procedure for the consolidation of counties containing cities of the first class. The statutes required that a question regarding a possible city-county consolidation be placed on the November 2000 ballot in all counties containing a city of the first class. Having the only city of the first class, the voters of Jefferson County went to the polls and adopted the concept of a consolidated local government, which resulted in the merger of Jefferson County and Louisville. The new consolidated local government became active January 3, 2003. It is known as the Louisville/Jefferson County Metro Government.

KRS Chapter 67C not only requires a vote by the public on the question of local government consolidation; it also lays out the basic structure and organization of a new government if it is adopted. The statutes prescribe in detail the organizational structure and functions of a new governmental entity and the roles of its officers. This new entity is unlike urban-county and charter county governments, which allow a charter (study) commission to determine the structure, organization, and function of a proposed merged government before the merger question goes on the ballot as a proposal for public consideration. Legislators seemed to want to avoid some of the intense local haggling that seemed to be ongoing in Louisville and Jefferson County regarding this subject.

According to KRS Chapter 67C, the adoption of a consolidated local government requires a city of the first class and its county to merge. The new entity is empowered with all authority of the previously existing local governments (KRS 67C.101). A consolidated local government has a mayor elected at large, who serves as the executive authority, and a legislative council composed of 26 members, who are nominated and elected by district and who serve as the legislative authority (KRS 67C.105). The legislative council must also annually select a presiding officer by majority vote (KRS 67C.103). The positions of county judge/executive and magistrates take a subordinate role to the mayor and council members of the consolidated local government, but the positions are created by the state constitution and cannot be eliminated short of amending the constitution.

A consolidated local government must initially employ all employees of the previously existing city and county. These employees are to be vested with the same rights, privileges, and protections that they previously held, but the government may reorganize its personnel and staffing arrangements as authorized by statute and local ordinance (KRS 67C.107).

Unlike the Lexington/Fayette County merger, which merged the entire county under one government, a consolidated local government requires only the city of the first class and the county to merge. It allows all other incorporated cities in the county to continue to operate unless dissolved according to statute (KRS 67C.111). The original merger statutes prohibited

the incorporation of any new cities after the merger and required the approval of the legislative council of the consolidated local government before any city in the county could annex additional territory, but the legislature significantly altered this framework during the 2022 Regular Session, with subsequent alterations during the 2024 Regular Session. Pursuant to these changes, after July 15, 2024, new cities may be incorporated within a county containing a consolidated local government. The proposed new city cannot be within the urban services boundary of the consolidated local government, cannot contain territory incorporated by an existing city, and must have a population of 6,000 or more. The proposal is subject to the approval of the legislative council, but the council must approve the proposal if it is presented with a petition signed by a number of registered and qualified voters within the area to be incorporated that is 75 percent or more of the number of votes cast in the area in the preceding presidential election. If the number of signatories is less than 75 percent of the number of votes cast in the area in the preceding presidential election, the legislative council has the discretion to approve or deny the petition. Additionally, after July 15, 2024, the legislative council is required to approve requests by cities within the consolidated local government to annex territory where a petition to approve the annexation is signed by a number of registered and qualified voters within the area to be annexed that is 75 percent or more of the number of votes cast in the area in the preceding presidential election, or, with the consent of the owner, where the area to be annexed is vacant or otherwise unimproved land without residents. Neither an incorporation or annexation proposal is subject to veto by the mayor of the consolidated local government. Finally, any city in existence after the merger can merge with other cities or the consolidated local government or dissolve (KRS 67C.111).

In addition to the continued existence of other cities in the county, all taxing districts, fire protection districts, sanitation districts, water districts, and other special taxing or service districts must continue in operation unless dissolved according to statute (KRS 67C.113). All city and county ordinances also continue in effect for a maximum of 5 years or until amended or reenacted by the new consolidated local government as provided by KRS 67C.115.

KRS Chapter 67C also outlines a required governmental policy of equal opportunity as well as an affirmative action plan for all citizens in the consolidated local government. This policy was included to ensure the protection of the minority community in all aspects of the consolidated local government, including employment, appointments to boards and commissions, contracting, and purchasing. KRS Chapter 67C requires that the percentage of minority representation to boards or commissions or the ranks of consolidated local government employment must be no less than the percentage of minority citizens in the community or the percentage of minority representatives on the consolidated local government legislative body, whichever is greater (KRS 67C.117). The mayor must prepare and implement an affirmative action plan (KRS 67C.119). This statute additionally prescribes the expiration of existing cooperative compacts in counties subject to KRS Chapter 67C, the salaries of elected officials, the hiring of their staff, the taxing authority and tax structure for the consolidated local government, the designation of authority to make appointments, the ability of the consolidated local government to form service districts, the annual audit of the consolidated local government's funds by the state auditor, and a removal process for elected consolidated local government officers.

Consolidated local governments must have a police force merit system (KRS 67C.301 to 67C.327).

Prior to consolidation, the City of Louisville and Jefferson County participated in a cooperative compact. It provided a framework for cooperative activity between the two governments, and it provided at a minimum that, during the time the compact was in effect,

- annexation by a city of the first class was to be pursuant to KRS 81A.005,
- occupational license fees collected by the city and the county were distributed in accordance with the formula provided in KRS 79.325 instead of in accordance with the location of the taxpayer, and
- control and responsibility for various joint agencies was reassigned pursuant to the Act (KRS 79.310 to 79.335).

Although the compact itself became moot upon consolidation, it may yet today have an influence, either in tradition or in statutory execution, on activities conducted by the consolidated local government.

Like the changes made through the years to KRS Chapter 67A for the Lexington-Fayette Urban County Government, KRS Chapter 67C appears to be taking on characteristics tailored to the Louisville/Jefferson County Metro Government.

### **Unified Local Government**

Building on the concept of a charter county government, the General Assembly authorized a fourth type of merged government—a unified local government—under KRS 67.900 to 67.940. The core of the unified local government is similar to that of a charter county government, in that the unification review committee determines the governmental details under which the unified local government will operate, but the committee itself is composed differently. Rather than the county judge/executive heading the committee as is done in the charter county form, the committee itself chooses a chair (KRS 67.906). In addition, the county and cities proposing the new form of government have an equal amount of representation, whereas in the charter county form of government, the county holds 55 percent of the membership of the committee (KRS 67.906 and 67.830). To date, as is the case with charter county governments, no unified local government has been created.

See KRS 67.900 to 67.940 for complete details regarding the formation of a unified local government, and its operation, which include details such as the rights and powers of the government in transition, disposition of contracts in effect at the time of unification, powers and duties of constitutional officers, and operation of special districts in the government.



## Appendix A

### Population Estimates By City, County, And Form Of Government 2024

| City               | Population | County     | Form |
|--------------------|------------|------------|------|
| Adairville         | 871        | Logan      | MC   |
| Albany             | 1,735      | Clinton    | MC   |
| Alexandria         | 10,673     | Campbell   | MC   |
| Allen              | 181        | Floyd      | COM  |
| Anchorage          | 2,475      | Jefferson  | MC   |
| Arlington          | 253        | Carlisle   | COM  |
| Ashland            | 21,154     | Boyd       | CM   |
| Auburn             | 1,637      | Logan      | MC   |
| Audubon Park       | 1,410      | Jefferson  | MC   |
| Augusta            | 1,090      | Bracken    | MC   |
| Bancroft           | 498        | Jefferson  | COM  |
| Barbourmeade       | 1,204      | Jefferson  | COM  |
| Barbourville       | 3,145      | Knox       | MC   |
| Bardstown          | 13,832     | Nelson     | MC   |
| Bardwell           | 690        | Carlisle   | MC   |
| Barlow             | 638        | Ballard    | COM  |
| Beattyville        | 2,148      | Lee        | MC   |
| Beaver Dam         | 3,498      | Ohio       | COM  |
| Bedford            | 527        | Trimble    | COM  |
| Beechwood Village  | 1,259      | Jefferson  | MC   |
| Bellefonte         | 886        | Greenup    | COM  |
| Bellemeade         | 893        | Jefferson  | COM  |
| Bellevue           | 5,671      | Campbell   | MC   |
| Bellewood          | 335        | Jefferson  | COM  |
| Benham             | 471        | Harlan     | MC   |
| Benton             | 4,765      | Marshall   | MC   |
| Berea              | 15,998     | Madison    | MC   |
| Berry              | 256        | Harrison   | COM  |
| Blaine             | 68         | Lawrence   | COM  |
| Blandville         | 71         | Ballard    | *    |
| Bloomfield         | 977        | Nelson     | MC   |
| Blue Ridge Manor   | 784        | Jefferson  | COM  |
| Bonnieville        | 271        | Hart       | MC   |
| Booneville         | 163        | Owsley     | COM  |
| Bowling Green      | 76,212     | Warren     | CM   |
| Bradfordsville     | 273        | Marion     | COM  |
| Brandenburg        | 2,944      | Meade      | MC   |
| Bremen             | 172        | Muhlenberg | MC   |
| Briarwood          | 440        | Jefferson  | COM  |
| Brodhead           | 1,124      | Rockcastle | COM  |
| Broeck Pointe      | 244        | Jefferson  | COM  |
| Bromley            | 717        | Kenton     | MC   |
| Brooksville        | 652        | Bracken    | MC   |
| Brownsboro Farm    | 635        | Jefferson  | COM  |
| Brownsboro Village | 303        | Jefferson  | COM  |
| Brownsville        | 888        | Edmonson   | MC   |

| <b>City</b>      | <b>Population</b> | <b>County</b>       | <b>Form</b> |
|------------------|-------------------|---------------------|-------------|
| Buckhorn         | 83                | Perry               | COM         |
| Burgin           | 1,000             | Mercer              | MC          |
| Burkesville      | 1,388             | Cumberland          | MC          |
| Burnside         | 707               | Pulaski             | MC          |
| Butler           | 642               | Pendleton           | MC          |
| Cadiz            | 2,713             | Trigg               | MC          |
| Calhoun          | 714               | McLean              | MC          |
| California       | 81                | Campbell            | COM         |
| Calvert City     | 2,517             | Marshall            | MC          |
| Camargo          | 1,036             | Montgomery          | COM         |
| Cambridge        | 160               | Jefferson           | COM         |
| Campbellsburg    | 848               | Henry               | MC          |
| Campbellsville   | 11,653            | Taylor              | MC          |
| Campton          | 303               | Wolfe               | COM         |
| Caneyville       | 530               | Grayson             | COM         |
| Carlisle         | 2,112             | Nicholas            | MC          |
| Carrollton       | 3,914             | Carroll             | MC          |
| Carrsville       | 46                | Livingston          | COM         |
| Catlettsburg     | 1,738             | Boyd                | MC          |
| Cave City        | 2,360             | Barren              | MC          |
| Centertown       | 414               | Ohio                | COM         |
| Central City     | 5,800             | Muhlenberg          | MC          |
| Clarkson         | 953               | Grayson             | COM         |
| Clay             | 994               | Webster             | MC          |
| Clay City        | 1,178             | Powell              | MC          |
| Clinton          | 1,202             | Hickman             | MC          |
| Cloverport       | 1,140             | Breckinridge        | MC          |
| Coal Run Village | 1,600             | Pike                | COM         |
| Cold Spring      | 6,414             | Campbell            | MC          |
| Coldstream       | 1,283             | Jefferson           | MC          |
| Columbia         | 4,880             | Adair               | MC          |
| Columbus         | 137               | Hickman             | MC          |
| Concord          | 19                | Lewis               | COM         |
| Corbin           | 7,841             | Knox/Laurel/Whitley | CM          |
| Corinth          | 230               | Grant/Scott         | COM         |
| Corydon          | 726               | Henderson           | MC          |
| Covington        | 40,972            | Kenton              | CM          |
| Crab Orchard     | 757               | Lincoln             | COM         |
| Creekside        | 302               | Jefferson           | COM         |
| Crescent Springs | 4,550             | Kenton              | MC          |
| Crestview        | 461               | Campbell            | COM         |
| Crestview Hills  | 3,227             | Kenton              | MC          |
| Crestwood        | 6,424             | Oldham              | COM         |
| Crittenden       | 4,106             | Grant/Kenton        | MC          |
| Crofton          | 642               | Christian           | MC          |
| Crossgate        | 218               | Jefferson           | COM         |
| Cumberland       | 1,821             | Harlan              | MC          |
| Cynthiana        | 6,534             | Harrison            | COM         |
| Danville         | 17,383            | Boyle               | CM          |
| Dawson Springs   | 2,211             | Caldwell/Hopkins    | MC          |
| Dayton           | 5,790             | Campbell            | MC          |
| Dixon            | 908               | Webster             | COM         |

## Kentucky Municipal Statutory Law

| <b>City</b>    | <b>Population</b> | <b>County</b>   | <b>Form</b> |
|----------------|-------------------|-----------------|-------------|
| Douglass Hills | 5,403             | Jefferson       | MC          |
| Dover          | 221               | Mason           | COM         |
| Drakesboro     | 472               | Muhlenberg      | MC          |
| Druid Hills    | 293               | Jefferson       | COM         |
| Dry Ridge      | 2,199             | Grant           | MC          |
| Earlington     | 1,249             | Hopkins         | MC          |
| Eddyville      | 2,444             | Lyon            | MC          |
| Edgewood       | 8,398             | Kenton          | MC          |
| Edmonton       | 1,706             | Metcalfe        | MC          |
| Ekron          | 170               | Meade           | COM         |
| Elizabethtown  | 32,978            | Hardin          | MC          |
| Elkhorn City   | 981               | Pike            | MC          |
| Elkton         | 2,230             | Todd            | MC          |
| Elsmere        | 9,147             | Kenton          | MC          |
| Eminence       | 2,744             | Henry           | MC          |
| Erlanger       | 19,777            | Boone/Kenton    | MC          |
| Eubank         | 325               | Lincoln/Pulaski | COM         |
| Evarts         | 827               | Harlan          | MC          |
| Ewing          | 228               | Fleming         | COM         |
| Fairfield      | 130               | Nelson          | COM         |
| Fairview       | 144               | Kenton          | COM         |
| Falmouth       | 2,211             | Pendleton       | MC          |
| Ferguson       | 864               | Pulaski         | MC          |
| Fincastle      | 837               | Jefferson       | COM         |
| Flatwoods      | 7,227             | Greenup         | MC          |
| Fleming-Neon   | 521               | Letcher         | MC          |
| Flemingsburg   | 2,988             | Fleming         | MC          |
| Florence       | 32,917            | Boone           | MC          |
| Fordsville     | 443               | Ohio            | COM         |
| Forest Hills   | 434               | Jefferson       | COM         |
| Fort Mitchell  | 8,639             | Kenton          | MC          |
| Fort Thomas    | 16,973            | Campbell        | MC          |
| Fort Wright    | 6,061             | Kenton          | MC          |
| Fountain Run   | 221               | Monroe          | COM         |
| Fox Chase      | 450               | Bullitt         | MC          |
| Frankfort      | 28,285            | Franklin        | CM          |
| Franklin       | 10,468            | Simpson         | CM          |
| Fredonia       | 373               | Caldwell        | MC          |
| Frenchburg     | 614               | Menifee         | COM         |
| Fulton         | 2,289             | Fulton          | CM          |
| Gamaliel       | 480               | Monroe          | COM         |
| Georgetown     | 39,462            | Scott           | MC          |
| Germantown     | 139               | Bracken/Mason   | COM         |
| Ghent          | 363               | Carroll         | COM         |
| Glasgow        | 15,313            | Barren          | MC          |
| Glencoe        | 351               | Gallatin        | MC          |
| Glenview       | 585               | Jefferson       | COM         |
| Glenview Hills | 371               | Jefferson       | COM         |
| Glenview Manor | 205               | Jefferson       | COM         |
| Goose Creek    | 295               | Jefferson       | COM         |
| Goshen         | 923               | Oldham          | COM         |
| Grand Rivers   | 349               | Livingston      | MC          |

| <b>City</b>        | <b>Population</b> | <b>County</b>     | <b>Form</b> |
|--------------------|-------------------|-------------------|-------------|
| Gratz              | 63                | Owen              | COM         |
| Graymoor-Devondale | 2,816             | Jefferson         | MC          |
| Grayson            | 3,807             | Carter            | MC          |
| Greensburg         | 2,233             | Green             | COM         |
| Green Spring       | 706               | Jefferson         | MC          |
| Greenup            | 1,056             | Greenup           | MC          |
| Greenville         | 4,374             | Muhlenberg        | MC          |
| Guthrie            | 1,335             | Todd              | MC          |
| Hanson             | 748               | Hopkins           | COM         |
| Hardin             | 584               | Marshall          | MC          |
| Hardinsburg        | 2,448             | Breckinridge      | MC          |
| Harlan             | 1,854             | Harlan            | MC          |
| Harrodsburg        | 9,219             | Mercer            | COM         |
| Hartford           | 2,647             | Ohio              | MC          |
| Hawesville         | 994               | Hancock           | MC          |
| Hazard             | 4,964             | Perry             | CM          |
| Hazel              | 398               | Calloway          | MC          |
| Hebron Estates     | 1,040             | Bullitt           | COM         |
| Henderson          | 27,734            | Henderson         | CM          |
| Heritage Creek**   | 1,203             | Jefferson         | MC          |
| Hickman            | 2,303             | Fulton            | CM          |
| Hickory Hill       | 119               | Jefferson         | COM         |
| Highland Heights   | 6,612             | Campbell          | MC          |
| Hills and Dales    | 142               | Jefferson         | COM         |
| Hillview           | 8,874             | Bullitt           | MC          |
| Hindman            | 655               | Knott             | MC          |
| Hodgenville        | 3,309             | Larue             | MC          |
| Hollow Creek       | 790               | Jefferson         | COM         |
| Hollyvilla         | 511               | Jefferson         | COM         |
| Hopkinsville       | 30,813            | Christian         | MC          |
| Horse Cave         | 2,258             | Hart              | MC          |
| Houston Acres      | 491               | Jefferson         | COM         |
| Hunters Hollow     | 331               | Bullitt           | COM         |
| Hurstbourne        | 4,645             | Jefferson         | COM         |
| Hurstbourne Acres  | 1,943             | Jefferson         | COM         |
| Hustonville        | 399               | Lincoln           | MC          |
| Hyden              | 286               | Leslie            | COM         |
| Independence       | 29,503            | Kenton            | MC          |
| Indian Hills       | 2,854             | Jefferson         | MC          |
| Inez               | 515               | Martin            | COM         |
| Irvine             | 2,284             | Estill            | MC          |
| Irvington          | 1,382             | Breckinridge      | MC          |
| Island             | 437               | McLean            | COM         |
| Jackson            | 2128              | Breathitt         | MC          |
| Jamestown          | 1,876             | Russell           | MC          |
| Jeffersontown      | 28,716            | Jefferson         | MC          |
| Jeffersonville     | 1,744             | Montgomery        | COM         |
| Jenkins            | 1,791             | Letcher           | MC          |
| Junction City      | 2,289             | Boyle/Lincoln     | MC          |
| Keene              | 104               | Jessamine         | **          |
| Kenton Vale        | 103               | Kenton            | COM         |
| Kevil              | 575               | Ballard/McCracken | MC          |

## Kentucky Municipal Statutory Law

| <b>City</b>        | <b>Population</b> | <b>County</b>    | <b>Form</b> |
|--------------------|-------------------|------------------|-------------|
| Kingsley           | 389               | Jefferson        | COM         |
| Kuttawa            | 667               | Lyon             | MC          |
| La Center          | 862               | Ballard          | COM         |
| LaFayette          | 176               | Christian        | MC          |
| La Grange          | 10,417            | Oldham           | COM         |
| Lakeside Park      | 2,815             | Kenton           | MC          |
| Lakeview Heights   | 272               | Rowan            | COM         |
| Lancaster          | 4,050             | Garrard          | MC          |
| Langdon Place      | 864               | Jefferson        | COM         |
| Lawrenceburg       | 12,112            | Anderson         | MC          |
| Lebanon            | 6,517             | Marion           | MC          |
| Lebanon Junction   | 1,795             | Bullitt          | MC          |
| Leitchfield        | 6,463             | Grayson          | MC          |
| Lewisburg          | 775               | Logan            | MC          |
| Lewisport          | 1,732             | Hancock          | MC          |
| Lexington          | 320,154           | Fayette          | UCG         |
| Liberty            | 2,003             | Casey            | MC          |
| Lincolnshire       | 139               | Jefferson        | COM         |
| Livermore          | 1,198             | McLean           | MC          |
| Livingston         | 165               | Rockcastle       | COM         |
| London             | 7,596             | Laurel           | MC          |
| Loretto            | 714               | Marion           | COM         |
| Louisa             | 2,591             | Lawrence         | MC          |
| Louisville***      | 622,981           | Jefferson        | CLG         |
| Loyall             | 599               | Harlan           | CLG         |
| Ludlow             | 4,332             | Kenton           | MC          |
| Lynch              | 609               | Harlan           | MC          |
| Lyndon             | 10,909            | Jefferson        | MC          |
| Lynnview           | 933               | Jefferson        | MC          |
| Mackville          | 207               | Washington       | MC          |
| Madisonville       | 19,355            | Hopkins          | MC          |
| Manchester         | 1,428             | Clay             | COM         |
| Manor Creek        | 237               | Jefferson        | MC          |
| Marion             | 2,894             | Crittenden       | MC          |
| Martin             | 486               | Floyd            | COM         |
| Maryhill Estates   | 181               | Jefferson        | MC          |
| Mayfield           | 9,713             | Graves           | CM          |
| Maysville          | 8,687             | Mason            | COM         |
| McHenry            | 375               | Ohio             | MC          |
| McKee              | 804               | Jackson          | COM         |
| Meadowbrook Farm   | 116               | Jefferson        | MC          |
| Meadow Vale        | 718               | Jefferson        | COM         |
| Meadowview Estates | 429               | Jefferson        | COM         |
| Melbourne          | 470               | Campbell         | COM         |
| Mentor             | 223               | Campbell         | COM         |
| Middlesboro        | 9,012             | Bell             | COM         |
| Middletown         | 9,630             | Jefferson        | MC          |
| Midway             | 1,755             | Woodford         | COM         |
| Millersburg        | 741               | Bourbon/Nicholas | MC          |
| Milton             | 592               | Trimble          | MC          |
| Mockingbird Valley | 178               | Jefferson        | COM         |
| Monticello         | 5,715             | Wayne            | MC          |

| <b>City</b>          | <b>Population</b> | <b>County</b>    | <b>Form</b> |
|----------------------|-------------------|------------------|-------------|
| Moorland             | 428               | Jefferson        | MC          |
| Morehead             | 6,740             | Rowan            | COM         |
| Morganfield          | 3,143             | Union            | MC          |
| Morgantown           | 2,474             | Butler           | MC          |
| Mortons Gap          | 723               | Hopkins          | MC          |
| Mount Olivet         | 361               | Robertson        | MC          |
| Mount Sterling       | 7,571             | Montgomery       | MC          |
| Mount Vernon         | 2,456             | Rockcastle       | MC          |
| Mount Washington     | 18,637            | Bullitt          | MC          |
| Muldraugh            | 1,014             | Hardin/Meade     | MC          |
| Munfordville         | 1,711             | Hart             | MC          |
| Murray               | 18,086            | Calloway         | MC          |
| Murray Hill          | 562               | Jefferson        | MC          |
| Nebo                 | 205               | Hopkins          | COM         |
| New Castle           | 891               | Henry            | COM         |
| New Haven            | 813               | Nelson           | COM         |
| Newport              | 13,812            | Campbell         | COM         |
| Nicholasville        | 32,425            | Jessamine        | CM          |
| Norbourne Estates    | 431               | Jefferson        | COM         |
| Northfield           | 986               | Jefferson        | COM         |
| North Middletown     | 605               | Bourbon          | COM         |
| Nortonville          | 977               | Hopkins          | MC          |
| Norwood              | 375               | Jefferson        | MC          |
| Oak Grove            | 7,973             | Christian        | COM         |
| Oakland              | 193               | Warren           | MC          |
| Old Brownsboro Place | 370               | Jefferson        | COM         |
| Olive Hill           | 1,546             | Carter           | COM         |
| Orchard Grass Hills  | 1,592             | Oldham           | MC          |
| Owensboro            | 60,140            | Daviess          | MC          |
| Owenton              | 1,669             | Owen             | CM          |
| Owingsville          | 1,595             | Bath             | MC          |
| Paducah              | 26,749            | McCracken        | MC          |
| Paintsville          | 4,160             | Johnson          | CM          |
| Paris                | 10,089            | Bourbon          | MC          |
| Park City            | 613               | Barren           | CM          |
| Park Hills           | 3,149             | Kenton           | COM         |
| Parkway Village      | 611               | Jefferson        | MC          |
| Pembroke             | 874               | Christian        | COM         |
| Perryville           | 792               | Boyle            | COM         |
| Pewee Valley         | 1,634             | Oldham           | MC          |
| Pikeville            | 7,437             | Pike             | MC          |
| Pineville            | 1,604             | Bell             | CM          |
| Pioneer Village      | 2,738             | Bullitt          | MC          |
| Pippa Passes         | 584               | Knott            | MC          |
| Plantation           | 817               | Jefferson        | MC          |
| Pleasureville        | 797               | Henry/Shelby     | MC          |
| Plum Springs         | 528               | Warren           | COM         |
| Powderly             | 782               | Muhlenberg       | COM         |
| Prestonsburg         | 3,721             | Floyd            | COM         |
| Prestonville         | 177               | Carroll          | MC          |
| Princeton            | 6,194             | Caldwell         | COM         |
| Prospect             | 4,564             | Jefferson/Oldham | MC          |

## Kentucky Municipal Statutory Law

| <b>City</b>      | <b>Population</b> | <b>County</b>   | <b>Form</b> |
|------------------|-------------------|-----------------|-------------|
| Providence       | 2,822             | Webster         | MC          |
| Raceland         | 2,301             | Greenup         | MC          |
| Radcliff         | 22,749            | Hardin          | MC          |
| Ravenna          | 554               | Estill          | MC          |
| Raywick          | 155               | Marion          | MC          |
| Richlawn         | 410               | Jefferson       | COM         |
| Richmond         | 37,206            | Madison         | COM         |
| River Bluff      | 452               | Oldham          | CM          |
| Riverwood        | 483               | Jefferson       | COM         |
| Robards          | 445               | Henderson       | COM         |
| Rochester        | 114               | Butler          | COM         |
| Rockport         | 259               | Ohio            | MC          |
| Rolling Fields   | 709               | Jefferson       | COM         |
| Rolling Hills    | 923               | Jefferson       | COM         |
| Russell          | 3,644             | Greenup         | COM         |
| Russell Springs  | 2,794             | Russell         | MC          |
| Russellville     | 7,398             | Logan           | MC          |
| Ryland Heights   | 936               | Kenton          | MC          |
| Sacramento       | 422               | McLean          | COM         |
| Sadieville       | 334               | Scott           | COM         |
| Salem            | 713               | Livingston      | COM         |
| Salt Lick        | 255               | Bath            | MC          |
| Salyersville     | 1,525             | Magoffin        | COM         |
| Sanders          | 197               | Carroll         | COM         |
| Sandy Hook       | 625               | Elliott         | MC          |
| Sardis           | 62                | Mason/Robertson | MC          |
| Science Hill     | 652               | Pulaski         | COM         |
| Scottsville      | 4,533             | Allen           | COM         |
| Sebree           | 1,529             | Webster         | MC          |
| Seneca Gardens   | 659               | Jefferson       | MC          |
| Sharpsburg       | 368               | Bath            | MC          |
| Shelbyville      | 17,804            | Shelby          | MC          |
| Shepherdsville   | 14,691            | Bullitt         | COM         |
| Shively          | 15,455            | Jefferson       | COM         |
| Silver Grove     | 1,204             | Campbell        | COM         |
| Simpsonville     | 3,068             | Shelby          | COM         |
| Slaughters       | 186               | Webster         | COM         |
| Smithfield       | 126               | Henry           | MC          |
| Smithland        | 238               | Livingston      | COM         |
| Smiths Grove     | 795               | Warren          | MC          |
| Somerset         | 12,267            | Pulaski         | COM         |
| Sonora           | 565               | Hardin          | COM         |
| South Carrollton | 139               | Muhlenberg      | MC          |
| Southgate        | 3,756             | Campbell        | COM         |
| South Shore      | 1,064             | Greenup         | COM         |
| Sparta           | 239               | Gallatin/Owen   | MC          |
| Springfield      | 2,941             | Washington      | COM         |
| Spring Mill      | 288               | Jefferson       | MC          |
| Spring Valley    | 667               | Jefferson       | MC          |
| Stamping Ground  | 823               | Scott           | COM         |
| Stanford         | 3,698             | Lincoln         | MC          |
| Stanton          | 3,183             | Powell          | MC          |

| <b>City</b>        | <b>Population</b> | <b>County</b>   | <b>Form</b> |
|--------------------|-------------------|-----------------|-------------|
| St. Charles        | 280               | Hopkins         | COM         |
| St. Mary           | 143               | Marion          | COM         |
| St. Matthews       | 17,356            | Jefferson       | COM         |
| Strathmoor Manor   | 342               | Jefferson       | COM         |
| Strathmoor Village | 673               | Jefferson       | COM         |
| St. Regis Park     | 1,420             | Jefferson       | MC          |
| Sturgis            | 1,674             | Union           | MC          |
| Sycamore           | 165               | Jefferson       | COM         |
| Taylor Mill        | 6,937             | Kenton          | COM         |
| Taylorsville       | 1,310             | Spencer         | COM         |
| Ten Broeck         | 92                | Jefferson       | COM         |
| Thornhill          | 182               | Jefferson       | COM         |
| Tompkinsville      | 2,286             | Monroe          | COM         |
| Trenton            | 328               | Todd            | COM         |
| Union              | 7,671             | Boone           | COM         |
| Uniontown          | 901               | Union           | MC          |
| Upton              | 709               | Hardin/LaRue    | COM         |
| Vanceburg          | 1,398             | Lewis           | MC          |
| Versailles         | 10,491            | Woodford        | MC          |
| Villa Hills        | 7,537             | Kenton          | MC          |
| Vine Grove         | 6,907             | Hardin          | MC          |
| Walton             | 5,629             | Boone/Kenton    | MC          |
| Warfield           | 241               | Martin          | COM         |
| Warsaw             | 1,759             | Gallatin        | MC          |
| Watterson Park     | 996               | Jefferson       | MC          |
| Waverly            | 304               | Union           | COM         |
| Wayland            | 377               | Floyd           | COM         |
| Wellington         | 555               | Jefferson       | COM         |
| West Buechel       | 1,357             | Jefferson       | MC          |
| West Liberty       | 3,450             | Morgan          | MC          |
| West Point         | 929               | Hardin          | MC          |
| Westwood           | 567               | Jefferson       | COM         |
| Wheatcroft         | 102               | Webster         | COM         |
| Wheelwright        | 472               | Floyd           | COM         |
| White Plains       | 836               | Hopkins         | COM         |
| Whitesburg         | 1,658             | Letcher         | MC          |
| Whitesville        | 579               | Daviess         | COM         |
| Wickliffe          | 652               | Ballard         | MC          |
| Wilder             | 3,100             | Campbell        | MC          |
| Wildwood           | 276               | Jefferson       | COM         |
| Williamsburg       | 5,169             | Whitley         | MC          |
| Williamstown       | 3,964             | Grant/Pendleton | MC          |
| Willisburg         | 301               | Washington      | MC          |
| Wilmore            | 6,104             | Jessamine       | MC          |
| Winchester         | 19,254            | Clark           | CM          |
| Windy Hills        | 2,403             | Jefferson       | MC          |
| Wingo              | 578               | Graves          | COM         |
| Woodburn           | 317               | Warren          | COM         |
| Woodbury           | 72                | Butler          | COM         |
| Woodland Hills     | 721               | Jefferson       | COM         |
| Woodlawn           | 218               | Campbell        | COM         |
| Woodlawn Park      | 932               | Jefferson       | MC          |

## Kentucky Municipal Statutory Law

| <b>City</b>       | <b>Population</b> | <b>County</b> | <b>Form</b> |
|-------------------|-------------------|---------------|-------------|
| Worthington       | 1,456             | Greenup       | MC          |
| Worthington Hills | 1,553             | Jefferson     | COM         |
| Worthville        | 176               | Carroll       | COM         |
| Wurtland          | 969               | Greenup       | COM         |

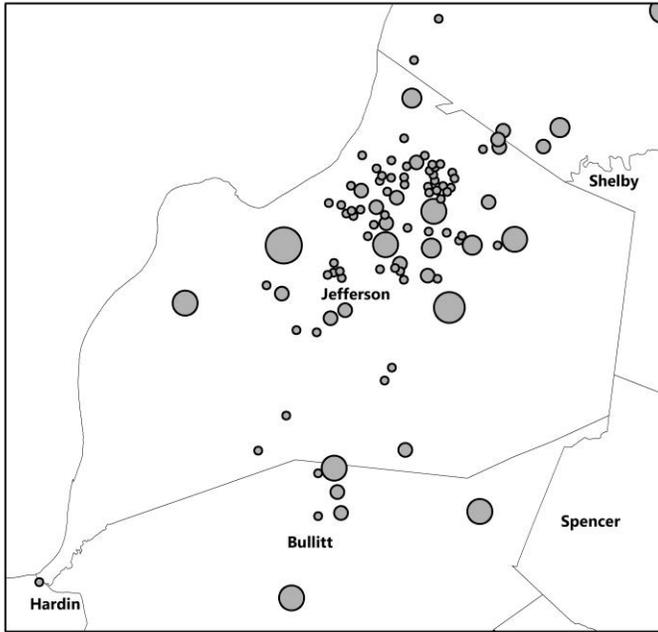
Note: COM: commission; CLG: consolidated local government; CM: city manager; MC: mayor/council; UCG: urban-county government.

\* Information not available.

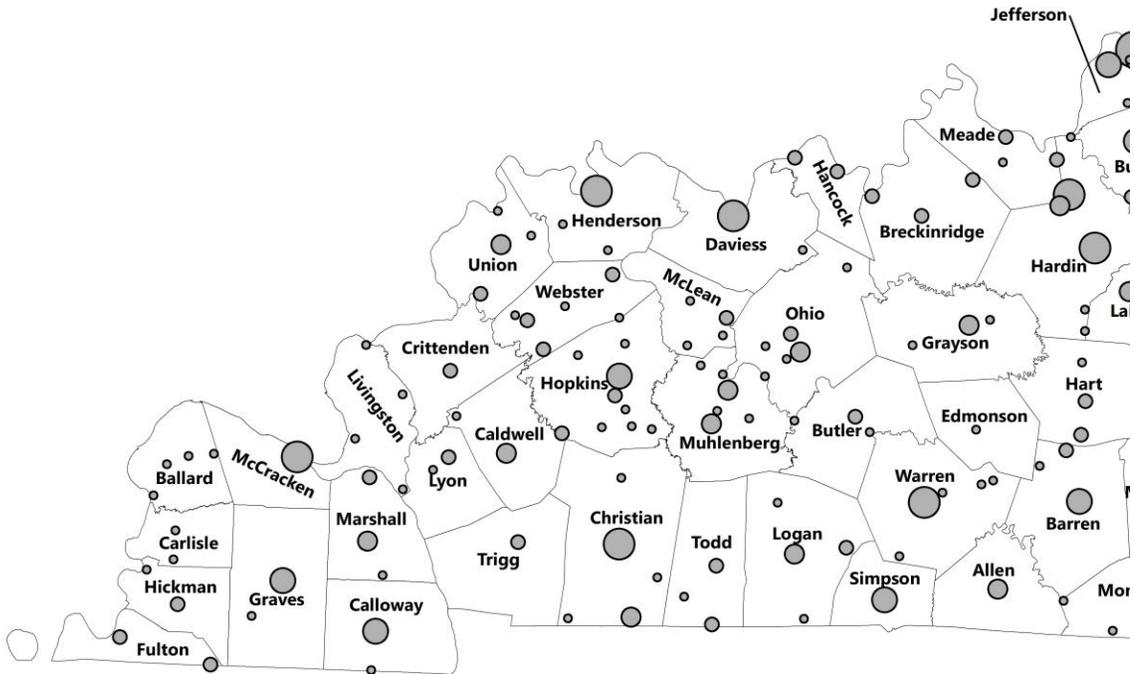
\*\* Formerly Minor Lane Heights.

\*\*\* Population of former City of Louisville and unincorporated areas of Jefferson County.

Sources: For population data: Kentucky State Data Center released May 17, 2024, using US Census Data for July 1, 2023; for city government form: Kentucky League of Cities; for cities cited in more than one county: Kentucky Secretary of State. "Cities In Two Or More Counties."



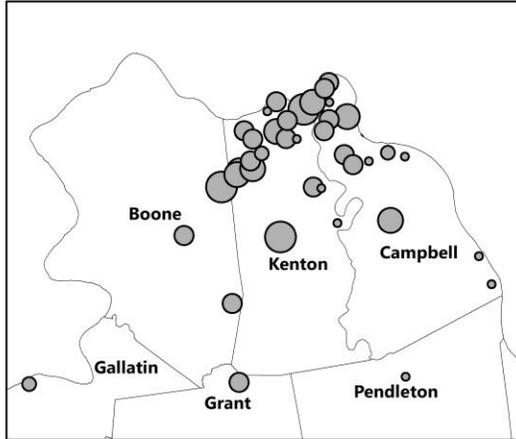
JEFFERSON COUNTY DETAIL



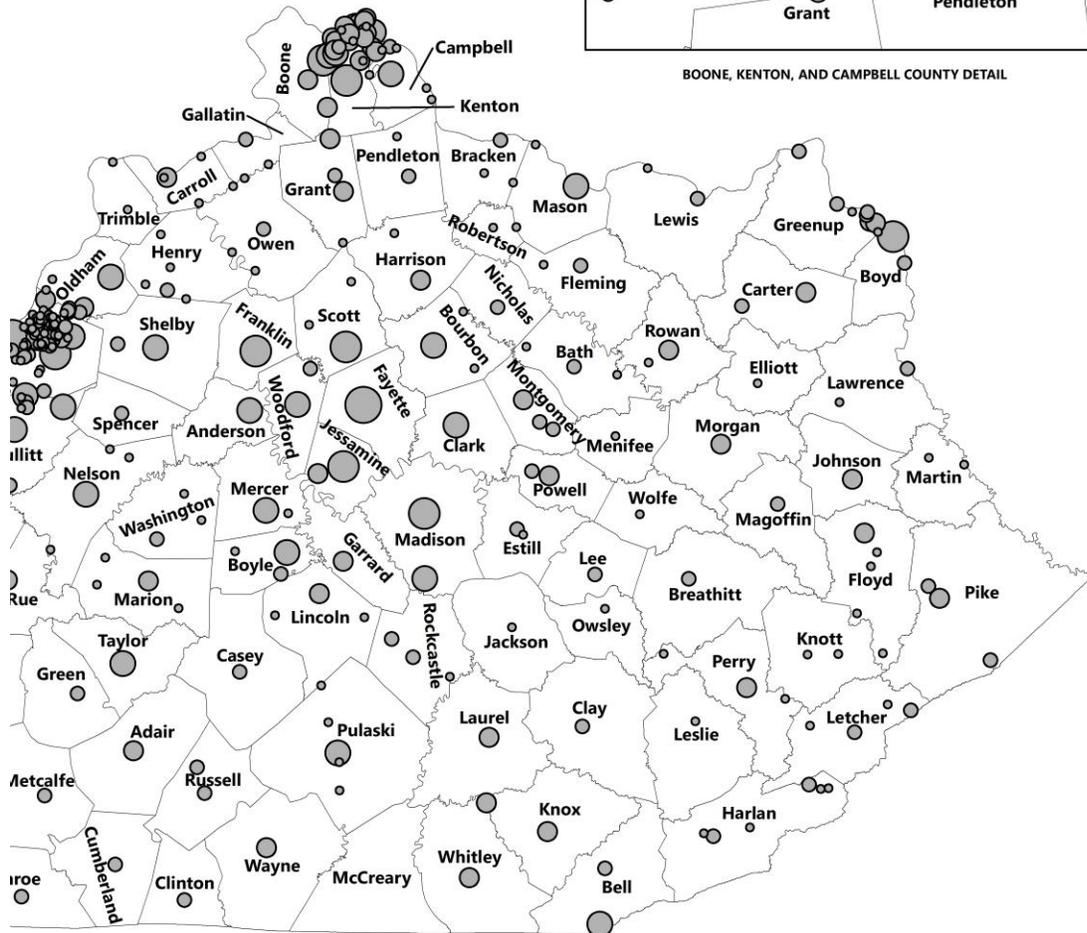
Sources: Kentucky Division of Geographic Information (city and county boundaries); US Census Bureau (population).

### Kentucky Cities and Population 2020 Population

- 0 - 999
- 1,000 - 2,999
- 3,000 - 7,999
- 8,000 - 19,999
- 20,000 - 99,999
- 100,000 and up



BOONE, KENTON, AND CAMPBELL COUNTY DETAIL





## **Appendix B**

### **Statutory Tax Exemptions**

#### **Property Exempt From Local Taxation (KRS 132.200)**

##### **Agricultural Exemptions**

- Unmanufactured agricultural products, except that cities and counties may each impose ad valorem tax not exceeding 1.5 cents on each \$100 of the fair cash value of all unmanufactured tobacco and not exceeding 4.5 cents on each \$100 of the fair cash value of all other unmanufactured agricultural products that are not on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed for the purpose of sale

##### **Retail Sale Exemptions**

- All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, including motor vehicle auction dealers, that are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company
- New farm machinery and other equipment held in a retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined in KRS 365.800
- New boats and marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220
- Recreational vehicles held for sale in a retailer's inventory
- Prefabricated homes held for sale in a manufacturer's or retailer's inventory.

##### **Business And Industrial Exemptions**

- Machinery engaged in manufacturing, products in the course of manufacture, and raw material on hand for the purpose of manufacture. The printing, publication, and distribution of newspapers and the operating of a job printing plant are deemed to be manufacturing.
- Commercial radio and television equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals that are broadcast to an antenna, and equipment directly used in or associated with this equipment
- Equipment used to gather or transmit weather information
- All privately owned leasehold interests in industrial buildings as defined in KRS 103.200 owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 (does not apply to the proportion of the value of the leasehold interest created through private financing)
- Property certified as a pollution control facility as defined in KRS 224.1-300
- Equipment owned by a business, industry, or organization to process waste if the equipment is primarily used for recycling as defined in KRS 139.010

### **Miscellaneous Exemptions**

- Vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043 (exemption does not apply to motor vehicle usage tax)
- Capital stock of savings and loan associations
- Any nonferrous metal that conforms to specifications set by the New York Mercantile Exchange's special contract rules for metals, and that is located or stored in a commodity warehouse and held on warrant
- Qualifying voluntary environmental remediation property for a period of 3 years after issuance of a covenant not to sue by the Energy and Environment Cabinet
- Biotechnology products held in a warehouse for distribution by the manufacturer or the affiliate of a manufacturer

### **Exemptions Permitted Upon Approval Of Local Jurisdiction**

- Aircraft not in the business of transporting persons or property for compensation or hire or for other commercial purposes
- Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes
- Privately owned leasehold interest in residential property under KRS 132.195 if the exemption is approved by the county, city, school, or other taxing district in which the property is located

### **Exemptions From Local Ad Valorem Tax (KRS 132.096)**

- Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his or her farm operations
- Livestock, ratite birds, and domestic fowl
- Tangible personal located in a foreign trade zone established pursuant to 19 USC secs. 81a to 81u, provided that the zone is activated in accordance with the regulations of the US Customs Service and the Foreign Trade Zones Board
- Property certified as an alcohol production facility as defined in KRS 247.910
- Property certified as a fluidized bed energy production facility as defined in KRS 211.390
- Computer software, except prewritten computer software as defined in KRS 139.010
- Trucks, tractors, and buses used on routes or in systems that are partly within and partly outside this state, and that are subject to the fee imposed by KRS 136.188
- Semitrailers and trailers, as defined in KRS 189.010, if they are used on a route or in a system that is partly within and partly outside this state; semitrailers or trailers required to be registered under KRS 186.655 that are used only in this state shall be subject to the ad valorem tax imposed by KRS 132.487
- All intangible personal property, except intangible personal property assessed under KRS 132.030 or KRS Chapter 136; local taxation is allowed on franchises of
  - Corporations
  - Financial institutions as provided in KRS 136.575
  - Domestic life insurance companies

- All real and personal property owned by another state or a political subdivision of another state that is used exclusively for public purposes, if a comparable exemption is provided in that state or political subdivision for property owned by the commonwealth of Kentucky or its political subdivisions
- Every fraternal benefit society organized or licensed under Subtitle 29 of KRS Chapter 304 that is a charitable and benevolent institution; its funds shall be exempt from all state, county, district, city, and school taxes, other than taxes on real property and office equipment
- Any bridge built by an adjoining state, by the government of the United States, or by any commission created by an Act of Congress, over a boundary line stream between this state and an adjoining state, which is
  - not operated for profit and, if it connects with a primary highway of this state, is declared to be public property used for public purposes; and
  - exempt from taxation unless the adjoining state, or other public body constructing the bridge, taxes similar bridges built by this commonwealth in like manner

### **Exemptions Outside KRS 132.200 And 132.096**

#### **Property Tax**

- Kentucky constitution, Section 171—Bonds of the state and of counties, municipalities, and taxing and school districts are not subject to taxation<sup>a</sup>
- KRS 41.200—Warrants issued by the state
- KRS 65.948—Property leased by governmental agencies and used solely for public purposes, to the same extent bonds or notes issued by the commonwealth or any governmental agency are exempt
- KRS 103.285—All properties, real and personal, that a city may acquire to be rented or leased to an industrial concern according to KRS 103.200 to 103.280 are exempt from taxation to the same extent as other public property for public purposes as long as the city owns the property
- KRS 132.028—Inventories of licensed motor vehicle dealers, including licensed motor vehicle auction dealers, and motor vehicles in the possession of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, for sale, although ownership has not been transferred to the dealer
- KRS 132.030—Deposits in financial institutions, except as provided in KRS 136.575
- KRS 132.099—Personal property held in a warehouse or distribution center for shipment out of state
- KRS 132.190—25 fowl to each family
- KRS 136.300—Capital stock, surplus, undivided profits, notes, mortgages, or other credits of savings and loans, savings banks, and similar institutions
- KRS 136.310—Foreign savings and loans, savings banks, and similar institutions
- KRS 136.320—Capital of domestic life insurance companies
- KRS 137.190—License, pari-mutuel, and admissions taxes on race meetings

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<sup>a</sup> Many statutes creating taxing districts or authorizing the issuance of bonds by public entities also exempt the bonds from taxation.



## **Appendix C**

### **Local Property Tax Rate-Setting Process**

#### **Definitions (KRS 132.010)**

##### **Compensating Rate**

The compensating rate is the rate per \$100 of assessed value and applied to the current-year assessment, excluding new property and personal property that produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, the compensating rate shall not be set at a level that, when applied to the current year assessment of all property, produces an amount of revenue that was less than was produced in the preceding year from all classes of taxable property. Property subject to taxation means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption, and the difference between the fair cash value and the agricultural or horticultural value of agricultural or horticultural land.

##### **New Property**

New property means the net difference in taxable value between real property additions and deletions to the property tax rolls for the current year.

#### **Assessment Base And Process For Levy**

The assessment made for state purposes, when supervised as required by law, is the basis for the levy of the ad valorem tax for county, school district, and all special taxing district purposes, with the exception of some special taxing districts and school districts that were grandfathered (KRS 132.280).

Cities may, by ordinance, use the annual county assessment for property within the city. Cities using the annual county assessment must compensate the property valuation administrator and may establish assessment dates and adopt procedures that will permit the use of the county assessment (KRS 132.285).

If the proposed rate is at or below the compensating rate, no special process is required. If the proposed rate exceeds the compensating rate, the taxing district must hold a public hearing to hear comments from the public regarding the proposed rate (KRS 132.027).

Any portion of a rate that will produce revenue from real property (exclusive of revenue from new property) greater than 4 percent of the revenue produced by the compensating rate is subject to a recall vote or reconsideration by the taxing district (KRS 132.027). KRS 132.017 sets forth the process for recall.

Any taxing jurisdiction not seeking to set a rate subject to recall must establish a final tax rate within 45 days of the Department of Revenue's certification of the county tax roll. Any district that fails to meet the deadline must use the compensating tax rate. Any city that does not elect to have city ad valorem taxes collected by the sheriff is exempt from this deadline (KRS 132.0225).

## Appendix D

### Special Ad Valorem And License Tax Levies

Levies listed in this table are special ad valorem levies that may be imposed directly by a city rather than by or through a separately created special taxing district. These levies are generally made in addition to any general ad valorem levy imposed by the city. The table does not include all relevant information or requirements for each levy.

| <b>Statutory Citation—<br/>Levying Authority</b>   | <b>Type<br/>Of Tax</b>                                     | <b>Voter<br/>Approval<br/>Required</b> | <b>Comments<br/>And Description</b>  |
|--|--|--|--|
| Special levy (KRS 65.125)—<br>all cities   | Ad<br>valorem  | Yes                                    | City may obtain funding for special project, program, or service via special ad valorem tax. It must be enacted by ordinance and placed before voters. It must be imposed against assessed value of all taxable property in jurisdictional boundaries of local government. It is in addition to general rate levied. Not subject to recall.  |
| Riverport authority (KRS 65.580)—<br>all cities  | Ad<br>valorem  | No                                     | City may levy annual tax to support operation of riverport authority. Authority may be created on approval of Transportation Cabinet. Riverport authorities may impose fees for usage.   |
| Special levies, urban-<br>county governments (KRS 67A.710 to 67A.825, 67A.840 to 67A.849, 67A.871 to 67A.894, 67A.924 to 67A.928)—<br>urban-counties | Ad<br>valorem,<br>license<br>fee,<br>transient<br>room tax | See<br>comments                        | <ul style="list-style-type: none"> <li>• Special public improvement assessment (KRS 67A.710 to 67A.825): Urban-counties may assess property owners who will benefit from public improvement for cost thereof. Assessment cannot be imposed if more than 50% (in number of lots and in aggregate assessed value of property to benefit) object unless project is for sanitary sewers, in which case project can be approved if it will eliminate public health hazard.</li> <li>• Purchase of development rights (PDR) (KRS 67A.840 to 67A.849): Urban-county may place before public via referendum the question of whether to fund PDR program. Program can be funded with existing taxes permitted by law as well as one or more of following special levies: ad valorem assessment up to 5 cents per \$100 of assessed value of all taxable property in urban-county, subject to aggregate limits of constitution but not subject to recall; license fee not to exceed 0.125% on franchises, trades, occupations, and professions collected from residents of urban-county; transient room tax not to exceed 1% of rents.</li> <li>• Sanitary sewers/wastewater collection projects (KRS 67A.871 to 67A.894): Urban-county may impose special assessment against property to carry out wastewater collection projects as alternative and addition to other authority granted to urban-county governments.</li> <li>• Parking authority ad valorem levy (KRS 67A.924 to 67A.928): Urban-county may establish parking authority, which may issue bonds. If bonds are issued, authority may ask urban-county legislative body to levy ad valorem tax on</li> </ul> |

| <b>Statutory Citation—<br/>Levying Authority</b>  | <b>Type<br/>Of Tax</b>                  | <b>Voter<br/>Approval<br/>Required</b> | <b>Comments<br/>And Description</b>   |
|---|---|--|---|
| Public service programs (KRS 68.510 to 68.550)—urban-counties   | Ad valorem, license                     | Yes                                    | all property in parking district assessed for local taxation or an occupational license tax on all businesses, commercial establishments, or professional offices in parking district at rate not exceeding amount necessary to amortize bonds issued or proposed to finance projects or provide operating funds for authority.<br>Intent of sections is to allow counties and urban-counties to generate revenues for public service programs via voted levies of ad valorem and license taxes. Public service program is any new or expanded service program performed by county for benefit of citizens. Voters must approve program, which does not include acquisition of capital facilities. Ad valorem maximum rate for programs not to exceed constitutional limits. Maximum rate for license tax for each program is 0.5% of all compensation earned in county, or of net profits of businesses in county. |
| Supplemental tax (KRS 82.095)—any city of 3,000–19,999 in counties containing city of 1 <sup>st</sup> class                 | Ad valorem based upon costs             | Subject to recall under KRS 160.485    | Any applicable city that provides police, fire, or garbage services may levy supplemental tax in addition to ad valorem property taxes. Not to exceed reasonable cost of providing services. Rate established by ordinance. Levies may be recalled as provided in KRS 160.485 (school occupational tax).  |
| General and special levies (KRS 91.280)—cities of 1 <sup>st</sup> class   | Varies                                  | Varies                                 | Board of aldermen receives broad authority to “make such separate levies as are required by law or as the board deems necessary or desirable, and a general levy in such amount as in its judgment is necessary and advisable.”   |
| Management districts (KRS 91.750 to 91.762)—cities of 1 <sup>st</sup> class, consolidated local governments, urban-counties | Ad valorem, maximum                     | Voter-initiated levy                   | Local legislative body sets management district to benefit from economic improvements and to be subject to special assessments for cost thereof. District created on receipt of petition signed by 33% of real property owners who own 51% of assessed value of property in proposed district who seek formation of district. District established by ordinance stating assessment method, means of collection.   |
| Special assessments for improvement (KRS 91A.200 to 91A.290)—cities   | Ad valorem, based on benefits received  | No                                     | Cities may finance special improvements through special assessments only as listed in these sections or other statutory authority. Improvement is any facility for public use or any services or additions thereto. Cost of improvement may be financed through special assessment apportioned on benefits-received basis. City must prepare report and hold public hearing on improvement; affected property owners may contest project. Assessments may coincide with payment of ad valorem taxes.  |
| Management districts (KRS 91A.550 to 91A.580)—home rule class cities  | Ad valorem, maximum levy is for 5 years | Voter-initiated levy                   | Local legislative body sets management district that will benefit from economic improvements and will be subject to special assessments for cost thereof. District created on receipt of petition signed by owners of 51% of properties in proposed district who own real property equal to at least 51% of assessed value of property in proposed district who seek formation of district. District established by ordinance stating assessment method and means of collection.  |

| <b>Statutory Citation—<br/>Levying Authority</b>  | <b>Type<br/>Of Tax</b>        | <b>Voter<br/>Approval<br/>Required</b>                           | <b>Comments<br/>And Description</b>  |
|---|-------------------------------|--|--|
| Public parks (KRS 97.590; see KRS 67A.160 for similar language relating to urban-county governments)—all cities   | Ad valorem                    | Yes  | Tax up to 5 cents per \$100 of taxable property in taxing jurisdiction allowed for purchase and maintenance of public parks. Levy subject to constitutional aggregate limits on property taxes but not subject to recall provisions of KRS 132.017. Referendum required to levy tax (KRS 83A.120, city, county, charter county; KRS 67A.160, urban-county). Taxes in effect on June 15, 1998, do not require public referendum. Funds from levy to be kept in separate fund; expenditures from fund overseen by park board established pursuant to KRS 97.550 to 97.600, if any. If no park board is established, legislative body disburses funds.  |
| Tax for band or orchestra (KRS 97.610)—home rule class cities   | Ad valorem                    | Yes  | Annual tax up to 1 cent per \$100 allowed on assessed valuation of city for fund for band or orchestra. Tax may be imposed on receipt of petition requesting it and issue being approved by majority of voters. Tax may be repealed by petition 3 years after passage.   |
| Tax to support war memorial (KRS 97.700)—home rule class cities   | Ad valorem                    | No   | Annual tax up to 5 cents per \$100 allowed on assessed valuation of city for maintaining war memorial and supporting war memorial commission. Levy imposed only if other resources to support commission are insufficient.   |
| Urban renewal agency (KRS 99.400)—all cities  | Not clear                     | No   | City located in whole or in part in area of operation of urban renewal agency may levy taxes to support agency. Enabling legislation does not identify specific taxes to be levied or establish maximum rate.  |
| Alternative method to finance municipal improvement (KRS 107.010 to 107.220)—all cities   | Ad valorem, based on benefits | —  | Alternative methods allowed for cities to fund improvements relating to public rights-of-way, sewage treatment plants, or fire hydrants (for cities of less than 20,000). Assessment initiated by adoption of three ordinances by city administrative body.  |
| Library taxes (KRS 173.020 to 173.107)—cities of 1 <sup>st</sup> class  | Ad valorem                    | —  | If city has agreement with governing authority of city library with 50,000+ volumes to make library free and open to public, city to levy tax of up to 2 cents per \$100 of property assessed for city tax purposes. Amount to be credited to library fund of the city.  |
| Library taxes (KRS 173.300 to 173.410)—counties and cities except cities of 1 <sup>st</sup> class and counties containing city of 1 <sup>st</sup> class | Ad valorem                    | Not required; one method of creation involves vote of the people | Governing body may provide library services under any of four methods: <ul style="list-style-type: none"> <li>• May on its own initiative establish independent library.</li> <li>• On receipt of petition signed by taxpayers equal to 5% of votes cast for officers in last general election of governmental unit, may ask voters to approve establishment of library.</li> <li>• Two or more counties may form regional library on their own initiative or on petition and vote in each county, or on initiative in one county and voter approval in another, provided aggregate assessed valuation of property assessable for local taxation is at least \$10 million.</li> <li>• Governing body may contract with nearby library.</li> </ul> Maximum and minimum rates: <ul style="list-style-type: none"> <li>• Counties containing city of 1<sup>st</sup> class: no more than 15 cents per \$100 worth of property assessed for local taxation</li> </ul> |

| Statutory Citation—<br>Levying Authority  | Type<br>Of Tax                                     | Voter<br>Approval<br>Required  | Comments<br>And Description  |
|---|--|--|--|
| Local air board<br>(KRS 183.132<br>to 183.165)—<br>counties, cities,<br>or any<br>combination | Ad<br>valorem                                      | No for<br>general<br>levies,<br>yes for<br>assessments<br>to support<br>issuance of<br>construction<br>bonds | <ul style="list-style-type: none"> <li>• Library regions: 3 or 10 cents per \$100 worth of property assessed for local taxation</li> <li>• All others: 5 or 15 cents per \$100 worth of property assessed for local taxation</li> <li>• Statutes refer to minimum/maximum appropriations but do not authorize tax between minimum and maximum levels.</li> </ul> Governmental unit participating in local air board may make annual levy for airport development. Authority may issue bonds to acquire, construct, maintain, expand, finance, or improve airport. If funds are insufficient to support bond, issuance submitted to vote of the people. If approved, assessments levied to meet expenses. |
| Public road district<br>(KRS 184.010<br>to 184.300)—<br>board of directors<br>of district     | Ad<br>valorem,<br>based on<br>benefits<br>received | Voters must<br>initiate<br>creation<br>of district   | District may be established in cities with certain populations under procedures for creating nontaxing district (KRS 65.810). Assessment against owners of property abutting improved road in proportion based on benefit of that property from project. Assessment is for 10 years.   |

Source: Kentucky Revised Statutes.

## Appendix E

### Central Assessment Of Property

#### Property Centrally Assessed And Collected

**Omitted Personal Property** (KRS 132.310 to 132.340)

**Railroad Car Lines** (KRS 136.120 to 136.180)

**Commercial Watercraft** (KRS 136.1801 to 136.1806)

**Interstate Trucks, Tractors, And Buses** (KRS 136.188): The Department of Revenue determines the amount due to the state and local governments, but the Transportation Cabinet collects it at the time of registration.

#### Property Centrally Assessed And Locally Collected

**Distilled Spirits** (KRS 132.130 to 132.180): Distilled spirits are centrally assessed by the Department of Revenue and certified to county clerks (KRS 132.140 and 132.150). Distilled spirits are subject to the same rates as other tangible personal property except in cities of the first class. The combined rate of taxation for city and school purposes shall not exceed \$1.25 for each \$100 of assessed value. The state and local taxes for distilled spirits in bonded warehouses are being reduced 4 percentage points yearly beginning in 2026 through 2042 (KRS 132.140). A replacement tax arrived at via a formula is allowed for fire protection districts or subdistricts under KRS Chapter 75 and emergency services boards under KRS Chapter 75A (KRS 138.208).

**Personal Property** (KRS 132.486): Generally, tangible personal property is assessed centrally, but the sheriff bills and collects the tax locally; however, the local property valuation administrator may override the central assessment system for personal property.

**Telecommunications Company Property** (KRS 132.486, KRS 136.602 to 136.660): This property is centrally assessed by the Department of Revenue and certified to county clerks. Telecommunication companies are subject to the same rates as other tangible personal property.

**Motor Vehicles** (KRS 132.487): Motor vehicles are assessed using a centralized assessment system provided by the Department of Revenue, but the assessment is made locally.

**Unmined Coal, Oil, And Gas Reserves Held Separately From Surface Real Property** (KRS 132.820)

**Public Service Company Property** (KRS 136.120 to 136.180)

**Interstate Trucks, Tractors, Trailers, Semitrailers, And Buses** (KRS 136.1873 to 136.1877)



## Endnotes

- <sup>1</sup> www.census.gov/programs-surveys/cog.html.
- <sup>2</sup> Daniel R. Mandelker and Dawn Clark Netsch. *State And Local Government In A Federal System*. The Bobbs-Merrill Co., 1977, p. 45.
- <sup>3</sup> *Fiscal Ct. of Jefferson Cty. v. City of Louisville*, 559 S.W.2d 478, 480 (Ky. 1977).
- <sup>4</sup> J. David Morris. “Municipal Code.” 70 Ky. L.J. 289 (1982).
- <sup>5</sup> Kentucky. Legislative Research Commission. *Text Of Kentucky Constitutions Of 1772, 1799, And 1850*. LRC Informational Bulletin No. 41, 1965.
- <sup>6</sup> Kentucky. Legislative Research Commission. *Citizens’ Guide To The Kentucky Constitution*. Research Report No. 137, 2013, p. 85.
- <sup>7</sup> *Official Report Of The Proceedings And Debates Of The Convention Assembled At Frankfort, On The Eighth Day Of September, 1890, To Adopt, Amend Or Change The Constitution Of The State Of Kentucky*. E. Polk Johnson, 1890, p. 2,129.
- <sup>8</sup> John W. Manning. *Government In Kentucky Cities*. Local Government Study No. 3, Kentucky Municipal League, 1937, p. 22.
- <sup>9</sup> Kentucky. Constitution of Kentucky, sec. 156.
- <sup>10</sup> Kentucky. Constitution of Kentucky, secs. 157 and 158.
- <sup>11</sup> *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1962).
- <sup>12</sup> *Bd. of Educ. of Graves Cty. v. Deweese*, 343 S.W.2d 598 (Ky. 1960).
- <sup>13</sup> Kentucky. Opinions of the Attorney General OAG 80-171; see also discussion of sec. 246 of the Constitution of Kentucky, page 11 of this bulletin.
- <sup>14</sup> Kentucky. Department for Local Government. Statute Required Reports: Notice Of Noncompliant Cities Pursuant To KRS 81.062. Web.
- <sup>15</sup> *Merritt v. Campbellsville*, 678 S.W.2d 788 (Ky. App. 1984).
- <sup>16</sup> *City of Jeffersontown v. City of Hurstbourne*, 684 S.W.2d 23 (Ky. App. 1984).
- <sup>17</sup> 725 KAR Chapter 1.
- <sup>18</sup> 725 KAR 1:020.
- <sup>19</sup> 62 C.J.S. sec. 309, 2021.
- <sup>20</sup> Kentucky. Opinions of the Attorney General OAG 83-404.
- <sup>21</sup> Kentucky. Opinions of the Attorney General OAG 84-208.
- <sup>22</sup> *City of Bowling Green v. T. & E. Elec. Contractors*, 602 S.W.2d 434, 435 (Ky. 1980).
- <sup>23</sup> *Thomas v. Elizabethtown*, 403 S.W.2d 269, 271 (Ky. 1965).
- <sup>24</sup> *Indus. Dev. Auth. v. E. Ky. Reg. Plan. Comm.*, 332 S.W.2d 274 (Ky. 1960).
- <sup>25</sup> *City of Owensboro v. McCormick*, 581 S.W.2d 3 (Ky. 1979).
- <sup>26</sup> *Smith v. City of Kuttawa*, 1 S.W.2d 979, 982 (Ky. 1928), quoting *In Re Mayor of New York*, 2 N.E. 642.
- <sup>27</sup> *Nourse v. City of Russellville*, 78 S.W.2d 761, 764 (Ky. 1935).
- <sup>28</sup> *Boyle v. Campbell*, 450 S.W.2d 265, 268 (Ky. 1970), quoting 37 Am. Jur., Municipal Corporations, sec. 165(787).
- <sup>29</sup> *Louisville & Nash. R.R. v. Commonwealth*, 488 S.W.2d 329, 330 (Ky. 1972).
- <sup>30</sup> *City of Harlan v. Scott*, 162 S.W.2d 8, 9 (Ky. 1942).
- <sup>31</sup> *Boyle v. Campbell*, 450 S.W.2d 265, 267 (Ky. 1970), quoting 62 C.J.S. sec. 143(3).
- <sup>32</sup> *Boyle*.
- <sup>33</sup> *Ibid*.
- <sup>34</sup> *In Re Hubbard*, 396 P.2d 809 (Cal. 1964).
- <sup>35</sup> Calif. const., Art XI, sec. 11. This language has since been modified and has been moved to sec. 7.
- <sup>36</sup> *Hubbard* at 812.
- <sup>37</sup> *Ibid*.
- <sup>38</sup> *Commonwealth v. Do, Inc.*, 674 S.W.2d 519 (Ky. 1984).
- <sup>39</sup> *Ibid*.
- <sup>40</sup> Kentucky. Opinions of the Attorney General OAG 82-168.
- <sup>41</sup> Kentucky. Constitution of Kentucky, sec. 160.
- <sup>42</sup> Kentucky. Opinions of the Attorney General OAG 82-287.
- <sup>43</sup> Kentucky. Opinions of the Attorney General OAG 82-207.
- <sup>44</sup> Kentucky. Constitution of Kentucky, sec. 152.
- <sup>45</sup> *Ibid*.
- <sup>46</sup> Kentucky. Opinions of the Attorney General OAG 82-17.
- <sup>47</sup> *City of Louisville v. Sebree*, 214 S.W.2d 248 (Ky. 1948); *City of Lexington v. Motel Developers, Inc.*, 465 S.W.2d 253 (Ky. 1971); *Patrick v. Frankfort*, 538 S.W.2d 275 (Ky. 1976).
- <sup>48</sup> Kentucky. Constitution of Kentucky, sec. 180.
- <sup>49</sup> Kentucky. Constitution of Kentucky, sec. 159.
- <sup>50</sup> Kentucky League of Cities. *Today’s Kentucky City: A Comprehensive Analysis Of City Operations*. 2013.
- <sup>51</sup> Kentucky. Constitution of Kentucky, sec. 171.
- <sup>52</sup> Kentucky. Constitution of Kentucky, sec. 181.
- <sup>53</sup> Kentucky. Constitution of Kentucky, sec. 172a.
- <sup>54</sup> Kentucky. Department of Insurance, “2013–2014 Kentucky Local Government Premium Tax

- Schedule And Listing Of Payees And Addresses,” Bulletin 2013-01.
- <sup>55</sup> Ibid.
- <sup>56</sup> 7 CFR sec. 400.352.
- <sup>57</sup> Kentucky. Department of Insurance. *Local Government Premium Tax Schedule Bulletin 2024-003*.
- <sup>58</sup> Kentucky. Department of Insurance. *Local Government Premium Taxes, 2024–2025 Schedule*.
- <sup>59</sup> *Greater Cincinnati/N. Ky. Apartment Ass’n., Inc. v. Campbell Cty. Fiscal Ct.*, 479 S.W.3d 603 (Ky. 2015).
- <sup>60</sup> *City of Lancaster v. Garrard Cty.*, 2017 WL 3446983 (Ky. App. Aug. 11, 2017).
- <sup>61</sup> *Russell Cty. Fiscal Ct. v. Kelley*, 823 S.W.2d 941, 943 (Ky. 1991).
- <sup>62</sup> *Kentucky CATV Association v. City of Florence, Kentucky et al.*, 520 S.W.3d 355 (Ky. 2017).
- <sup>63</sup> *Lasher v. Commonwealth*, 418 S.W.2d 416, 417 (Ky. 1967).
- <sup>64</sup> Ibid., p. 418.
- <sup>65</sup> *Firestone Textile Co. Div. v. Meadows*, 666 S.W.2d 730, 731 (Ky. 1983).
- <sup>66</sup> *Grzyb v. Evans*, 700 S.W.2d 399 (Ky. 1985).
- <sup>67</sup> *Firestone; Pari-Mutuel Clerks’ Union v. Jockey Club*, 551 S.W.2d 801 (Ky. 1977).
- <sup>68</sup> 42 USC, sec. 2000.
- <sup>69</sup> *Job Evaluation And Pay Administration In The Public Sector*. International Personnel Management Association, 1960, p. 86.
- <sup>70</sup> Ibid., p. 87.
- <sup>71</sup> Ibid., p. 89.
- <sup>72</sup> Ibid., p. 248.
- <sup>73</sup> Ibid., p. 247.
- <sup>74</sup> Ibid., p. 266.
- <sup>75</sup> EC Yokley. *Municipal Corporations*. Matthew Bender, 1976, sec. 344, p. 177, quoting *Gervais v. New Orleans Police Dept.*, 77 So. 2d 393 (La. 1954).
- <sup>76</sup> 29 USC, secs. 201–219; *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).
- <sup>77</sup> 25 CFR, part 553.
- <sup>78</sup> For further discussion regarding the application of urban renewal statutes, see *Prestonia Area Neighborhood Ass’n. v. Mayor Jerry Abramson*, 797 S.W.2d 708 (Ky. 1990).
- <sup>79</sup> *Miles v. Shauntee*, 664 S.W.2d 512 (Ky. 1983).
- <sup>80</sup> Charles S. Rhyne. *The Law Of Local Government Operations*. The Law of Local Government Operations Project, 1980, sec. 23.1, p. 642.
- <sup>81</sup> David J. McCarthy. *Local Government Law In A Nutshell*. West Publishing Co., 1975, p. 219.
- <sup>82</sup> *City of Owensboro v. Top Vision Cable Co.*, 487 S.W.2d 283 (Ky. 1972), quoting *Ray v. City of Owensboro*, 415 S.W.2d 77 (Ky. 1967).
- <sup>83</sup> *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). See also *Young v. American Mini Theatres*, 427 U.S. 50 (1976).
- <sup>84</sup> *City of Renton* at 48.
- <sup>85</sup> AD Tarlock. “Kentucky Planning And Land Use Control Enabling Legislation: An Analysis Of KRS Chapter 100,” 56 *Ky. L.J.* 556, 580 (1967).
- <sup>86</sup> Ibid., p. 563.
- <sup>87</sup> As interpreted by Opinion of the Attorney General 78-90 and reaffirmed in OAG 79-040.
- <sup>88</sup> *Jeffery T. Pearce v. Univ. of Louisville and Stephen Derrick Hill v. City of Mt. Washington*, 2011-SC-000756-DG2012-SC-000104-DG.
- <sup>89</sup> *McCloud v. Whitt*, 639 S.W.2d 375 (Ky. App. 1982).
- <sup>90</sup> *McCloud*; unpublished opinion of Kentucky Attorney General, to Robert G. Newland, dated Sept. 26, 1980, cited in Brief for Appellee, p. 4.
- <sup>91</sup> *McCloud*, p. 377.
- <sup>92</sup> Ibid.
- <sup>93</sup> Kentucky. Office of the Attorney General. OAG 78-675.
- <sup>94</sup> Kentucky. Constitution of Kentucky, sec. 104.
- <sup>95</sup> *Jacobs v. Lexington-Fayette Urban Cty. Gov’t*, 560 S.W.2d 10 (Ky. 1977).
- <sup>96</sup> *Hempel v. Lexington-Fayette Urban Cty. Gov’t.*, 641 S.W.2d. 51 (Ky. 1982).
- <sup>97</sup> *Pinchback v. Stephens*, 484 S.W.2d 327 (Ky. 1972).
- <sup>98</sup> Ibid., p. 330.
- <sup>99</sup> Ibid.
- <sup>100</sup> *Holsclaw v. Stephens*, 507 S.W.2d 462 (Ky. 1974).
- <sup>101</sup> Ibid., p. 470.
- <sup>102</sup> Ibid., p. 474.
- <sup>103</sup> Ibid., p. 471.