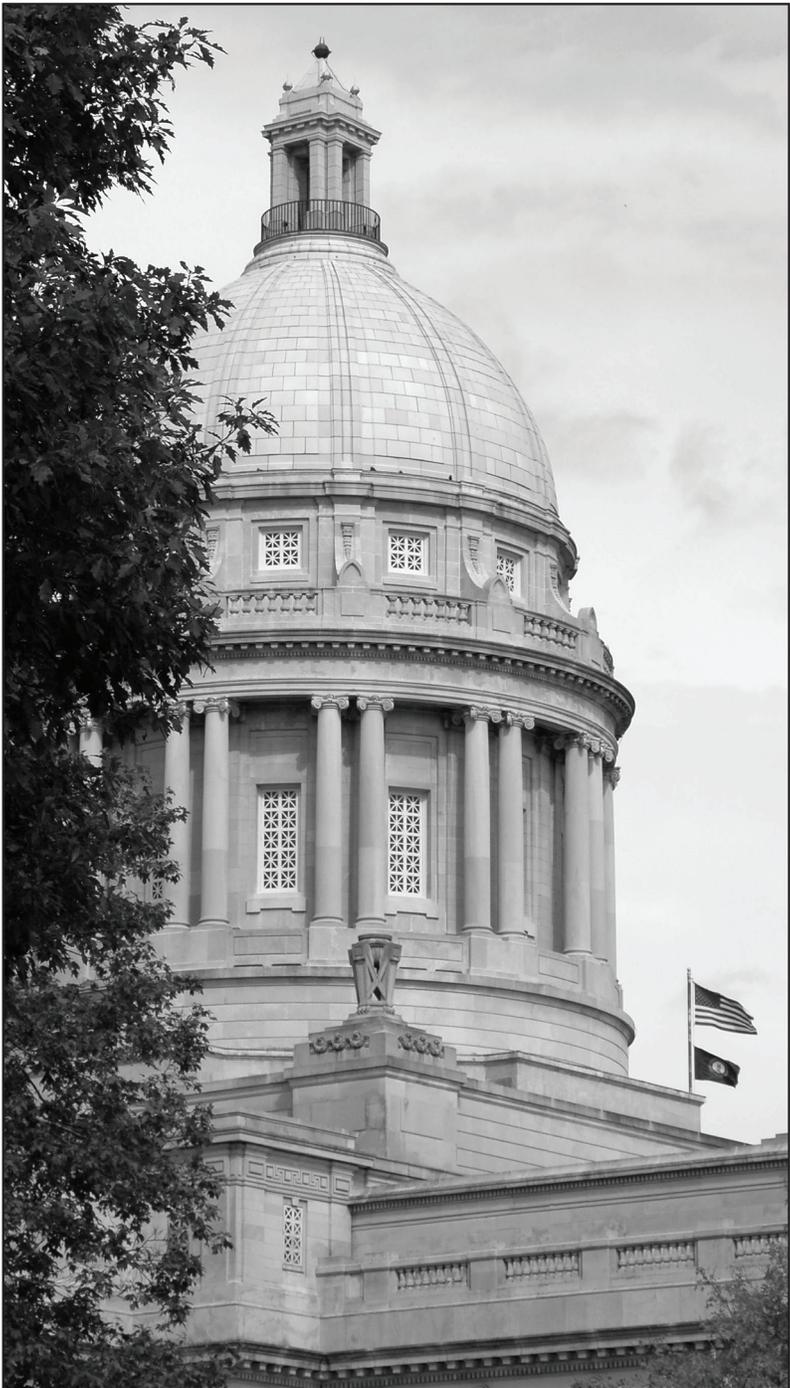


Kentucky Municipal Statutory Law

Informational Bulletin No. 145

Revised October 2016



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Informational Bulletin No. 145

Legislative Research Commission
Frankfort, Kentucky

Revised October 2016

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 2016 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.

It should be noted that 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.

A handwritten signature in black ink, appearing to read 'DAB', with a long, sweeping horizontal line extending to the right.

David A. Byerman
Director

Frankfort, Kentucky
October 2016

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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 Legislative Research Commission has established a website that contains information regarding recent legislative action and other useful information about the legislative branch. The address is lrc.ky.gov.

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. 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 2012, the US Census Bureau counted approximately 90,000 governmental units in the United States.¹ 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.”² 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.”³

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—or the city may merge with the county and form an urban-county government or a charter county government.

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 most 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 may 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.⁴

2014 HB 331: Omnibus City Reclassification

The General Assembly passed House Bill 331 during the 2014 Regular Session. HB 331 made omnibus revisions to the Kentucky Revised Statutes relating to municipal law. The historic six classes of city and the various powers, duties, and responsibilities of these classes of city

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 was held in 1799 and produced the second Kentucky constitution, which was a slightly longer reworking of the 1793 constitution and which also failed to mention units of local government.

To a large extent, the 1850 constitution was drafted to more firmly fix the institution of slavery within the law of the commonwealth. 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.⁵

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 their cities. "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."⁶

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 changed as of January 1, 2015). The classes were defined by population, and the legislature was required to enact uniform legislation 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."⁷ A clear 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 with the entire state treasury to points unknown. 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."⁸

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.

All local units of government (cities, counties, special districts, and school districts) are now legal subdivisions of the state. They derive their powers from the state and can do only those things permitted by the constitution and the laws the General Assembly has passed. In addition to prohibiting the use of special or local legislation, the 1891 constitution established six classes of cities, based on population, so that all laws relating to a particular class of city would apply equally to all cities within the same population 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 (Ky. Const., sec. 156). 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 (Ky. Const., sec. 157 and 158).

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 of Kentucky 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. While some proposals offered sweeping, comprehensive reforms, 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 the same 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.

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 3,000–14,999, 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 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 upon 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 alderman form of government (historically, Louisville before it merged with Jefferson County to become a consolidated local government) is a city 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

Governance Model	Class
Mayor/alderman	First
Mayor/council	Home rule
City manager	Home rule
Commission	Home rule

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, while 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 shall reside in each ward.

Section 152 specifies that vacancies in offices are to be filled by appointment. The appointee shall serve until the next regular city, county, district, or state election, unless such 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 fix the date on which officers take office, unless it is otherwise fixed in the constitution. For municipal officers, section 167 fixes 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.

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.

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.

Disqualifications also result if any officer profits through the use of public funds (Ky. Const., sec. 173) or if any officer accepts free passes or reduced rates not common to the public on any common carrier (Ky. Const., sec. 197).

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 such 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.

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

As calculated by the Department for Local Government, the \$12,000 limit equals \$119,079.66 in 2016 dollars, and the \$7,200 limit equals \$71,447.80.

seem).⁹ 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, 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.¹⁰ 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.¹¹ 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

Section 169 provides that, unless otherwise specified by law, the fiscal year shall begin 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

Section 170 also provides that the General Assembly may grant cities the power to exempt manufacturing establishments from municipal taxation for a period 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 shall 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 such 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 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 such a power is implied from this section and others that refer or relate to such 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 shall acquire debt in any year in an amount exceeding the income and the revenue produced in such 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

Population	Maximum Indebtedness
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.

Section 159 requires that municipal indebtedness be amortized in not more than 40 years. Before such 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 shall be 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 such 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 such 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 shall be before the Circuit Court of the county in which the area is located. To commence the action, a petition shall be filed with the clerk of the Circuit Court. The petition shall contain

- 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 shall be 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 five standards discussed above have been met (KRS 81.060).

If the court decides in favor of the incorporation, it shall issue 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 shall serve as mayor and members of the legislative body until the next regular election.

A copy of the order establishing the city shall be 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 alderman 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 alderman 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 shall be 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(1)).
- 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 the second Tuesday in August preceding the general election. If a majority of those voting favor dissolution, the city shall be 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(2)).

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.

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 has in effect a cooperative compact with its county pursuant to KRS 79.310–79.330 may annex contiguous unincorporated territory only if the voters in such area approve. To commence annexation, the board of aldermen enacts an ordinance declaring its intention to annex the area (KRS 81A.005). KRS 81A.425 requires that notice be sent by first-class mail to each property owner in such an area. A copy of the ordinance is delivered to the county clerk, who places the question on the ballot at the next regular election, if the ordinance is filed with the county clerk by the second Tuesday in August

preceding the regular election, in those precincts contained in the area being annexed. The question shall be stated as: “Are you in favor of being annexed to the City of _____?” If a majority of those voting are in favor of annexation, then within 60 days of the certification of the election, the board may enact the second ordinance annexing the area to the city. If the question fails to gain 50 percent approval, the first ordinance becomes ineffectual (KRS 81A.005). After a failed annexation attempt, the city may not propose to annex the same area for at least 5 years (KRS 81A.460).

Once a city of the first class having in effect a compact gives the first reading to the first ordinance proposing annexation, the city has priority in the area proposed to be annexed. Until the annexation is defeated or the ordinance is withdrawn, repealed, or amended as to area, no city may be incorporated within the area, nor may any other city annex any part of the area. This priority does not apply to incorporations or annexations begun before the first reading of the ordinance (KRS 81A.005).

A city of the first class that does not have in effect a compact with the county pursuant to KRS 79.310–79.335 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 such 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.010–81A.020
- A statement of the city’s plans for extending each major city service to the area to be annexed. The statement shall
 - provide 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;
 - provide for the extension of streets, major trunk water mains, sewer lines, and utility lines;
 - set out the proposed timetable for the extension of city services;
 - provide an estimation of tax rates in the area to be annexed for each year until all major services are provided; and
 - describe the planned methods for financing the extension of services (KRS 81A.050)

After the preparation of the annexation report, the city shall hold at least two public hearings before enacting the first ordinance. At each hearing, the city shall explain the annexation report and listen to testimony. The board of aldermen shall consider the testimony. If the report is amended, another hearing shall be held on such amendments (KRS 81A.060).

If, after the preparation of the report, the board of aldermen desires to annex the territory, it shall enact an ordinance stating its intention to annex an area. The ordinance shall be published

pursuant to KRS Chapter 424, and a notice shall be 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 shall be 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 shall not tax for such service unless the service is actually provided by the city as a lawful replacement for an existing service (KRS 81A.070).

Relocation Of Cities. The 1996 General Assembly created a new section of KRS Chapter 81 to allow cities in counties containing a city of the first class, which have been adversely affected by a public project of that city, to relocate to any unincorporated area of the county. The relocated city shall be restricted to the same acreage as the original location and all financial assets shall be 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).

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

- is 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 shall 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 such publication is not reasonably calculated to inform the public of its rights.¹²

- Step 3** Notification pursuant to KRS 81A.425 shall be sent to all owners of property in the area proposed for annexation. This shall be done at least 14 days before the meeting at which the annexation ordinance is to receive its second reading.
- Step 4** 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. To be adequate, the petition must contain the names of 50 percent of the resident voters or owners of real property.
- Step 5** If a sufficient petition is received, the question of annexation shall be put to a vote by the residents of the area to be annexed, at the next regular election if the petition is presented to the county and certified as sufficient by the second Tuesday in August preceding the regular election. KRS 446.010(28) defines *regular election* to mean the November election and not a primary election. The question on the ballot shall read: “Are you in favor of being annexed to the City of _____?”
- Step 6** Election. The annexation effort shall be voided if 55 percent or more of those voting oppose annexation. If opposed by less than that percentage, the area shall become part of the city.
- Step 7** If the residents fail to vote down the annexation, or if no petition is received during the 60-day period of Step 3, 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 shall include a map showing the zoning of the newly annexed area (KRS 81A.420).

Provisions Applicable To All Cities

Assumption Of Liabilities. Whenever any city annexes territory, it shall be 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 shall file with the county clerk, the Department for Local Government, and Office of the Secretary of State a map and metes and bounds description of the area within 60 days of such annexation. Failure to file such notice shall bar the city from levying taxes on the residents or property in the annexed territory (KRS 81A.470 and 81A.475).

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. If an annexation effort is being challenged, 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 such land consents (KRS 81A.500). Also, individual landowners may request the annexation of their respective property. In such cases, the property must still meet the requirements of KRS 81A.410 and the city is not required to wait 60 days before proceeding with the annexation (KRS 81A.412). Legislation in 1994 amended KRS 81A.412 to require cities that annex territory with the prior consent of the landowner to

enact and publish only a final public notice of the action, without being bound by the requirements of KRS 81A.425.

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 contiguous to the boundary of the city;
- it is both contiguous and compact; 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.

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.¹³

When a county containing a city of the first class has a cooperative compact with that city, no other city may annex territory subject to an annexation ordinance of the city of the first class, nor may an area in that territory become incorporated. Such prohibition shall arise once the ordinance receives its first reading and shall continue until the annexation effort is defeated, or until the ordinance is repealed, withdrawn, or amended as to the area in question (KRS 81A.005).

Reduction Of Territory

The reverse procedure from 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 shall enact an ordinance stating such 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 shall be 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 shall adopt 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 shall be made for 5 years from the date of the rejection (KRS 81A.460).

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 shall assume 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. 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 shall enact an ordinance calling an election on the question of merger. The question shall be 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 shall be 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 81.410–81.440).

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 shall be 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 shall be tabulated separately for each city and for the unincorporated territory of the county. The plan shall be 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 such 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 81.300–81.360).

Cooperative Compact

The 1986 General Assembly mandated that a city of the first class and the county containing such city enter into a compact within 120 days of July 15, 1986. Louisville and Jefferson County, being the only city and county meeting these qualifications, entered into the original cooperative compact. This original compact expired on June 30, 1998. The 1998 General Assembly enacted legislation that allows the extension of the cooperative compact process without further time restrictions (KRS 79.335).

The compact provides a framework for cooperative activity between the two governments. The mayor and the county judge/executive execute the compact with the approval of the respective legislative bodies. The compact may be amended by agreement of the two local governments.

The compact may contain any provisions that the parties agree on, but it must at a minimum provide that during the time the compact is in effect

- annexation by a city of the first class shall be pursuant to KRS 81A.005,
- occupational license fees collected by the city and the county shall be distributed in accordance with the formula provided in KRS 79.325 instead of the location of the taxpayer, and
- control and responsibility for various joint agencies shall be reassigned pursuant to the Act (KRS 79.310–79.335).

The purpose of the compact is to resolve annexation struggles between the city and the county. The heart of the compact is an agreement by the city not to annex unincorporated territory, reciprocated by an agreement of the county to share occupational tax revenues generated by new growth outside the city.

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.343–45A.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.

Violation of the code may be punished by a fine of up to \$1,000 or imprisonment not to exceed 1 year (KRS 45A.990).

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 contract is for the purchase of perishable items brought at frequent intervals,
 - the contract is for replacement parts where the need cannot be anticipated,
 - the contract is for proprietary items for resale,
 - the contract is for purchases on trips,
 - the contract is for purchase of supplies sold at auction,
 - the contract is for insurance, or
 - the contract is for supplies at reduced prices (KRS 45A.380).
- Small-purchase procedures may be used where the aggregate amount of the contract is less than \$20,000 (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.450–45A.460).

Another method allows an alternative for procuring architectural and engineering services. Local public agencies (this includes cities and urban-counties) may adopt KRS 45A.730–45A.750 and procure such 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 such violations or to comply with laws is grounds for cancellation from future contracts for 2 years (KRS 45A.343, 45A.485).

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, equipment, or nonprofessional services that involve an expenditure in excess of \$20,000 (KRS 424.260).

Also relative to purchasing, KRS 45A.500–45A.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.352–45A.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. No function may be performed jointly unless all parties to the agreement are empowered to perform the function independently (KRS 65.240). KRS 65.245 clarifies that local governments may share their revenues through interlocal agreements.

An interlocal cooperation agreement, except one exempted under KRS 65.260, must be approved by the attorney general and shall contain

- the duration of the agreement;
- the organization and nature of any separate entity created or, if no separate entity is created, provision for an administrator or joint board responsible for administering the joint activity;
- the manner of financing the activity;
- the procedure for terminating the agreement; and
- any other necessary and proper matters (KRS 65.250–65.300).

Agreements involving the construction, reconstruction, or maintenance of a municipal road or bridge (with a written agreement from each affected governing body) and agreements between school boards and counties are exempt from the need for the approval of the attorney general (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 79.130–79.180.

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.

Joint Purchasing

Any city may enter into a contract with other local governments to establish a joint agency responsible for purchasing or civil service (KRS 79.010).

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 statute specified that all codes be enacted by January 1, 1995. The code of ethics ordinance may be amended but may not 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 (KRS Chapter 65).

Recordkeeping

City Clerk

Home rule cities must employ a city clerk who shall be 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 Governor’s Office for Local Government (KRS 83A.085).

Open Records Act

The open records law gives private individuals the right to examine public records of public agencies, within certain limits (KRS 61.870–61.884). 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 otherwise prohibited from disclosure

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

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, or faxed, and the public agency shall mail copies of requested records to a person whose residence or principal place of business is outside the county where the records are located. Prepayment of a fee for copies of public records may be required. Such a fee shall 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 3 working days whether to comply with a request to inspect records and so notify the requesting party. Any denial for inspection shall 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 shall have 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 any mechanical processing. If a person requests that public records be mailed, the official custodian shall 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 (725 KAR 1). 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 or microphotographic process.¹⁴ 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.

Legal Publication

The Kentucky Revised Statutes requires cities to routinely publish information concerning their activities so that the public can be informed. KRS Chapter 424 sets out detailed rules for publishing such information.

Qualification Of Newspapers

Notices required to be published 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 and has a bona fide circulation, is published at least once a week for at least 50 weeks during 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 or title, 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).

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—shall be 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 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

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 such mailing, including postage, supplies, and reproduction costs, would be less than the cost of newspaper publication (KRS 424.190).

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 shall be the officer’s responsibility to ensure proper publication; if it is the city generally that is charged to publish, responsibility shall rest with the city clerk or, if there is no such officer, the mayor (KRS 424.150).

Matters To Be Published

Year-End Financial Statements. After each fiscal year, all cities, consolidated local governments, and urban-county governments must publish either a copy of their 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).

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

Ordinances. Except for cities of the first class or charter county governments, a city must publish ordinances before they can become effective. Ordinances may be published in summary form, in which case the summary shall be prepared and certified by an attorney licensed to practice law in Kentucky and shall 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 shall still be published within 10 days of their enactment (KRS 83A.060).

Miscellaneous Matters. KRS Chapter 424 requires publication of the following events or activities:

- 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, equipment, or nonprofessional services, involving an expenditure in excess of \$20,000 (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. If the bonds are in excess of \$10 million, the advertisement shall be published in a publication having a national circulation among bond buyers (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 61.805–61.850, 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. Closed meetings may be conducted for the following purposes:

- 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
- 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 such 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 shall 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 such meetings. Also, a written notice shall 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 shall 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 shall describe the emergency circumstances that prevented the giving of 24-hour notice; these comments shall be a part of the minutes (KRS 61.823). Minutes of all meetings shall be 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, and penalties may be imposed on the 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 shall 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 shall preside over the legislative body. In the mayor's absence, the legislative body shall appoint 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."¹⁵

A municipal order is "an official act of the legislative body ... 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(15)). Section 43 of the Kentucky 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

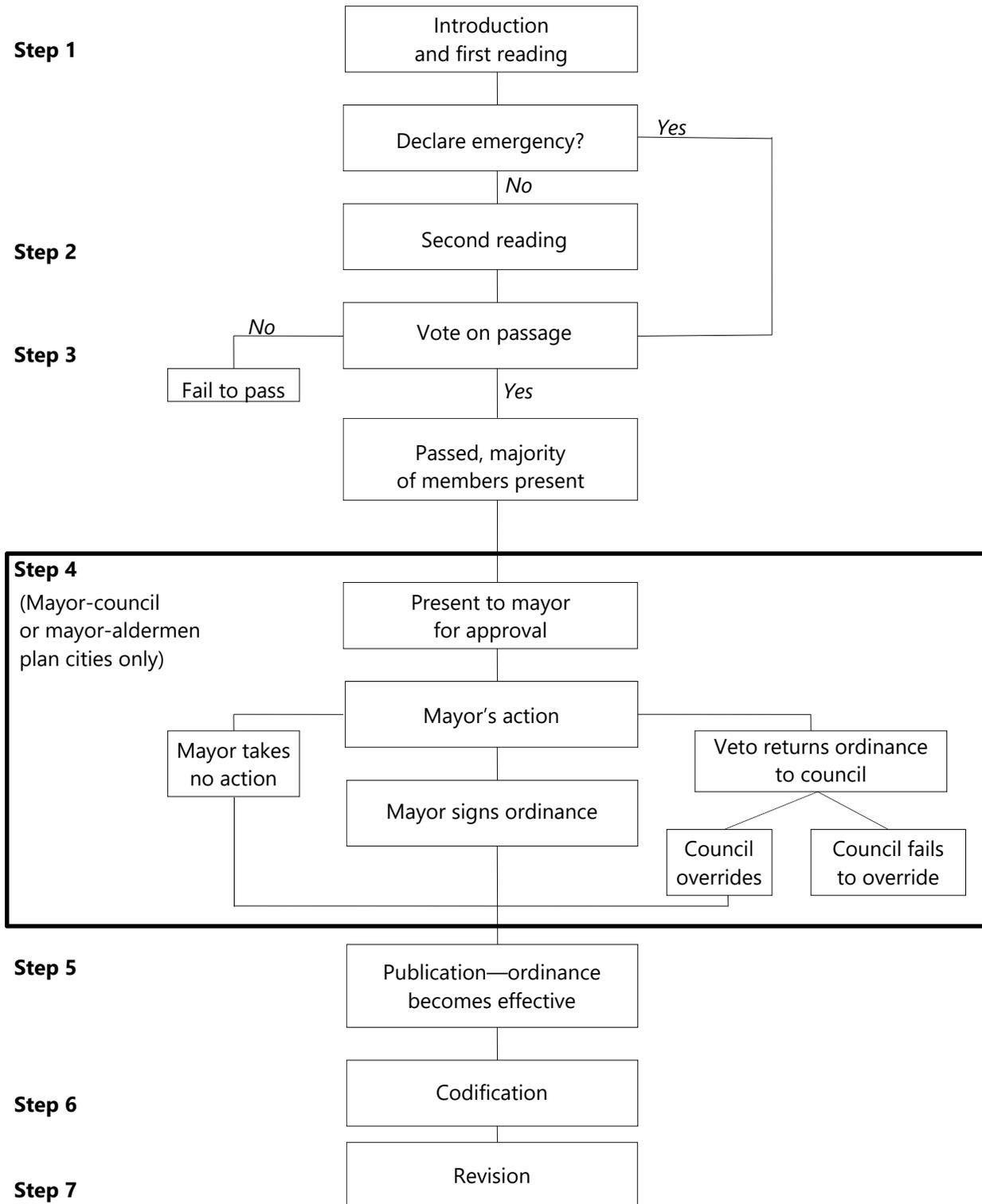
KRS 83A.060 mandates a procedure for the enactment of ordinances. The procedure does not apply to orders or resolutions. It represents the minimum steps that must be followed for the enactment of ordinances. The legislative body may adopt additional requirements.

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 (OAG 83-404). The ordinance is not voted on at the first reading; it is merely read (OAG 84-208). 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(7)).
- 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 (KRS 83A.060(8)). 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(6)).
- 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 effective until published pursuant to KRS Chapter 424. All ordinances may be summarized or published in full as determined by the legislative body. A summary shall 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 shall 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 (KRS 83A.060(9)). Emergency ordinances, though effective without prior publication, must nevertheless be published within 10 days of enactment (KRS 83A.060(7)).
- 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(8)).
- Step 7 Revision.** At least every 5 years, the ordinances in the composite index or code of ordinances shall be examined and revised to eliminate “redundant, obsolete, inconsistent, and invalid provisions” (KRS 83A.060(11)). See Figure 3.A.

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



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 _____” (KRS 83A.060). Figure 3.B illustrates a sample ordinance.

Figure 3.B
Annotated Ordinance Form

Ordinance No. ____	
AN ORDINANCE relating to _____	←Title, clearly reflecting subject
Whereas ... Whereas ...	←“Whereas” clauses—not required by law, but useful in explaining intent
Be it ordained by the City of _____	←Enacting clause—all that follows is enacted as a general law; all that is above is not enacted.
Section 1. _____ _____	←Text
Section 2. _____ _____	
Section 3. This ordinance shall take effect after its passage and upon publication.	←Effective date—may be immediate or delayed
Enacted this ____ day of ____, 2016	
_____ Mayor	←Signatures—ordinances must be signed as proof that they were properly enacted.
ATTEST: _____ City Clerk	

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(3)). Figure 3.C illustrates how an ordinance is amended.

Figure 3.C
Amending Ordinance

<p>An ordinance relating to _____</p> <p>Be it ordained by the City of _____</p> <p>Section 1. Ordinance ___ is amended to read as follows:</p> <p>No person shall operate a [truck, automobile, or other] vehicle upon any city street or other thoroughfare on a <u>federal holiday or other day that is not a workday</u> [Saturday or Sunday].</p>	<p>← Deleted language, no replacement</p> <p>← Added language</p> <p>← Deleted language replaced by added language</p>
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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(5)).

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 shall be in writing and may be adopted only at an official meeting. An order may be amended by either a subsequent order or ordinance. Orders shall be 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. 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.

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. Such a penalty shall be equal to that imposed by statute for the same offense. The violation of city ordinances that prescribe a criminal penalty shall be 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 overloaded District Court dockets tend to place less emphasis on ordinance violations. The Local Government Code Enforcement Board Act (KRS 65.8801–65.8839) allows cities to create code enforcement boards with the power to issue remedial orders and fines for local ordinance violations.

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.^{16 a}

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 almost 100 years, and 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 that grants general powers to cities.¹⁷ This grant is designed to give cities the broadest possible discretion in carrying out their affairs.

As mentioned in Chapter 2, 1994 SB 256 proposed a major constitutional revision affecting local governments. The electorate adopted it in November 1994.

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.

^a 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, Ky.*, 68 S.W. 413 (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, Ky.*, 333 S.W.2d 515, 517 (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 *Ex parte City of Paducah*, 3 S.W.2d 609).

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. Its power 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 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 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 was deciding 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.’ ”¹⁸

The main point about public purpose that can be gained from the bond cases is that the term encompasses a broad range of activities. 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 the development of the natural and manufactured resources of the state and hence constituted a public purpose.¹⁹ 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.²⁰

Basically, *public purpose* means what it says on its face. The purpose of 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.”²¹

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.”²²

“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.”²³

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 including, but not limited to, the provisions of Chapters 95 and 96 [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 adhered to 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.”²⁴

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.”²⁵

The Kentucky court elaborated on *Harlan* in *Boyle v. Campbell*, another case concerned with 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.”²⁶ 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.”²⁷

The court in *Boyle* touches on the question of when state legislation will be said to “cover the field,” by stating 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 legislation will be considered to “cover the field.”²⁸

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*.²⁹ 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.”³⁰ The court set out the basic 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.³¹

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.”³²

The Kentucky Supreme Court, in *Com. v. Do, Inc.*,³³ endorsed the *Hubbard* test for preemption as set out in *Boyle*. 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 shall 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.³⁴

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. The statute goes on to give two examples of comprehensive schemes: KRS Chapter 95, dealing with police and fire departments, and KRS Chapter 96, governing municipal utilities. It is doubtful whether a court would feel bound by the statutory declaration if it otherwise determined that those chapters did not meet the common law standards of “covering 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. Since KRS 82.082 applies to all cities in the commonwealth, Louisville (the only city of the first class)—no longer a city but a consolidated local government having access to the powers of a city of the first class—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.”

While KRS 83.420 is the basic home rule grant, 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].

While at least in theory 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, there is still a large body of laws making specific grants of power. The General Assembly, being 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, 93, 95, 96, 97, 98, 99, 103, 104, 106, 107, 108, and 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

Three basic organizational plans may be adopted by cities: 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. Also, since organizational plan dictates city class, a change in organizational plan affects the class of a city switching to or from an alderman form of government (KRS 81.005). Under the various plans, the powers remain the same but are distributed differently. Table 5.1 shows the distributions of powers.

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 tem	M	C	C

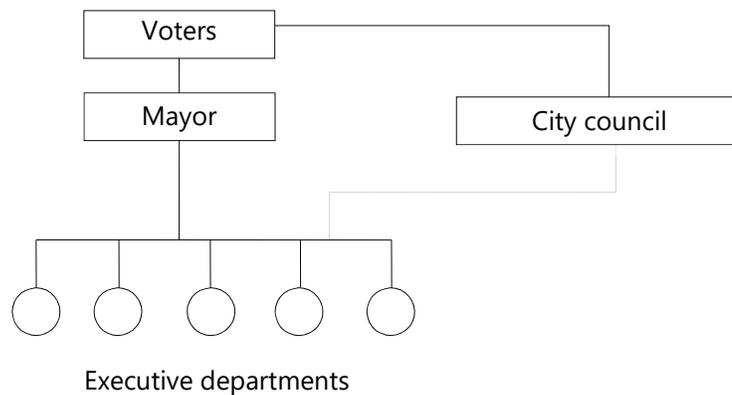
Note: M = mayor; C = council, commission, or board of commissioners; CM = city manager.

* With approval of council

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.^a

Figure 5.A
Mayor-Council Plan



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

- shall enforce the mayor-council plan, city ordinances and orders, and applicable state statutes;
- shall supervise all city departments and the conduct of all city employees;
- shall maintain liaison with local governments with respect to all interlocal contracting and joint activities;
- shall report no less than annually to the city council regarding the activities and condition of the city;
- shall promulgate procedures for administering city government, subject to disapproval by the council;
- shall preside at all meetings of the city council but shall not be a member of the council nor have a vote, except to break a tie;
- shall make or execute all bonds, notes, contracts, and written obligations of the city;
- shall be the appointing authority for all city employees, except for the staff of the city council; and
- may administer the official oath to any elected or appointed officer of the city (KRS 83A.130).

^a 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.

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).

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 shall become effective without a signature. If vetoing an ordinance, the mayor shall return 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).

The mayor may delegate powers and duties to subordinate officers and employees, and such delegation shall be by executive order. All executive orders shall be 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 such action, with approval of the council. If the 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 is vested in a unicameral legislative body called the city council, and the council may not perform any executive function except as expressly permitted by statute (KRS 83A.130). The size of the city council depends on the class to which the city belongs. (These numbers apply only to cities that have elected, pursuant to KRS 83A.160, to adopt the mayor-council form of government. Otherwise, cities operate under the commission plan or the city manager plan, with a commission composed of four commissioners and the mayor.) These are the sizes of councils:

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

The council shall 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 such meetings must be given, to comply with the provisions of KRS Chapter 61, 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 shall be kept of the proceedings of all meetings of the council. The city clerk and the presiding officer shall sign the minutes. The mayor shall preside 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).

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 such 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 such investigation, may require any officer to submit a sworn statement regarding the

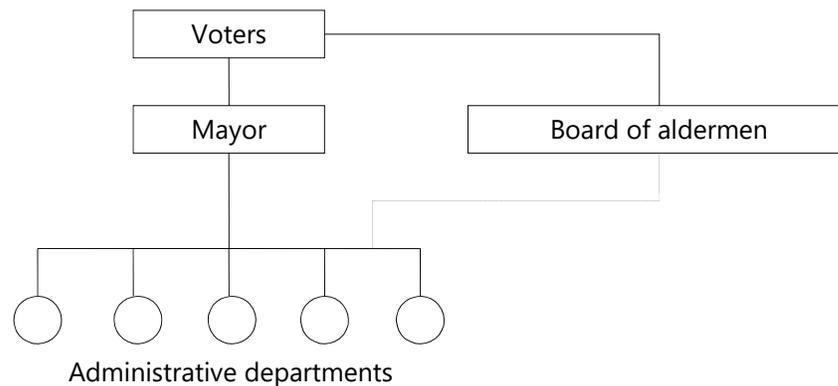
performance of duties; if the officer under investigation is under the jurisdiction of the mayor, the mayor shall be given written notice and shall have the right to review any statement to the council and to appear on behalf of any department, office, or agency (KRS 83A.130).

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.010–83A.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.

Figure 5.B
Mayor-Aldermen Plan



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 such departments and agencies 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, shall act as mayor pro tem. The board may provide additional compensation to a president serving as mayor pro tem and may deduct such 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 is the general statement of 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 shall include
 - 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 8:00 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 shall become 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(1)(d) 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 and 83A.030). 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.

The location of the meetings shall be in the city and shall be fixed by ordinance and not changed, except by a vote of two-thirds of the board (KRS 83.480).

The majority of the membership of the board shall constitute a quorum. A lesser number may adjourn from day to day. The board shall adopt 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 shall be introduced. An ordinance shall encompass only one subject, and the title shall reflect that subject.
- Step 2** The ordinance or resolution shall be read in full at a succeeding meeting. Free discussion shall 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, shall 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 shall become effective without signature.
- Step 4** If vetoing the ordinance or resolution, the mayor shall return it to the board and enter 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 shall become 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 shall establish such 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 shall also designate the duties and powers of those offices. The offices must be under the supervision of a director appointed by the mayor. The directors shall hold office until they resign or are removed. They shall appoint and remove at pleasure (unless civil service laws apply) the employees of their offices (KRS 83.610).

All offices and agents of the city not required by law to be elected or appointed in any other manner shall be 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). Additionally, the board must approve all appointments made by the mayor 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(2)).

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 shall designate one commissioner as mayor pro tem. If the mayor’s disability continues for 60 consecutive days, the commission may declare the office vacant and appoint a new mayor pursuant to KRS 83A.040 (KRS 83A.140(4)).

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.

Figure 5.C
Commission Plan
With City Administrative Officer

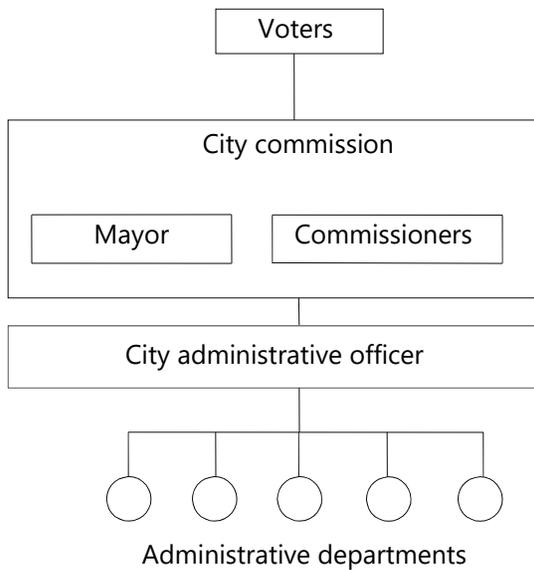
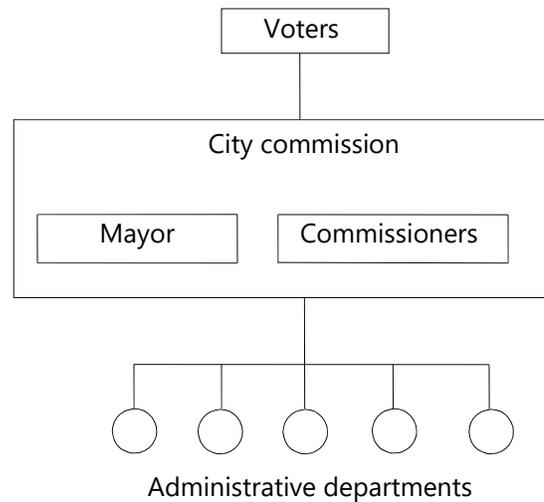


Figure 5.D
Commission Plan
With No City Administrative Officer



In its legislative/executive configuration, the commission

- shall enforce the commission plan, ordinances, orders, and applicable statutes;
- shall maintain liaison with other units of local government respecting interlocal contracting and joint activities;
- shall supervise 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;
- shall prepare a report on the condition of the city not less than annually;
- shall classify the various administrative and service functions of the city under departments and prescribe functions and duties;
- shall establish all appointive offices;
- shall promulgate codes, rules, and regulations necessary for the public health, safety, and welfare of the residents of the city;
- shall provide for sufficient revenue to operate the city and appropriate such funds in an annual budget;
- shall promulgate 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
- shall, at its first meeting, delegate which commission member shall have 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 shall take minutes of all meetings and sign them (KRS 83A.140(7)).

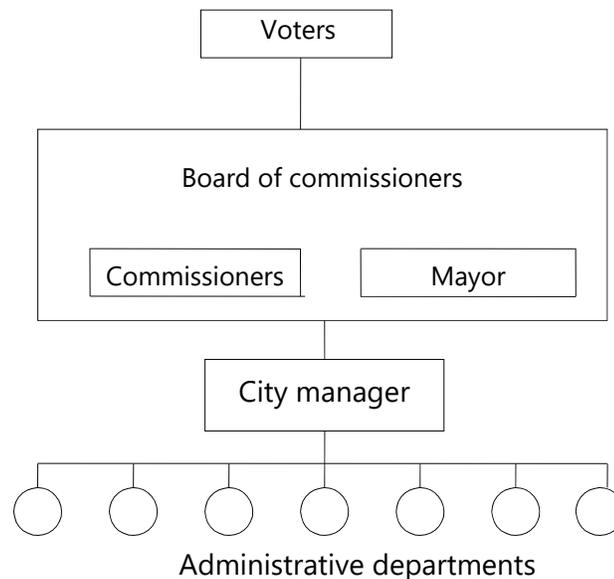
In a model commission plan, the commissioners act in their individual capacities as heads of the city departments. KRS 83A.150 merely states that the commission shall create the necessary city departments and delegate a commission member to have supervision over each department. The commissioners may delegate their responsibility for supervision of the city departments to a city administrative officer established pursuant to KRS 83A.090 (KRS 83A.140(6)).

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



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 shall have 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 (KRS 83A.150(3)).

As in the commission plan counterpart, the mayor, if temporarily absent, cannot appoint a substitute; instead, a mayor pro tem 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(3)).

Board Of Commissioners. The board of commissioners is composed of four commissioners and the mayor (KRS 83A.020). All legislative and executive authority vests in the board. The commission

- shall establish all appointive offices;
- shall promulgate codes, rules, and regulations necessary for the health, safety, and welfare of the residents of the city;
- shall provide for sufficient revenue to operate the city and appropriate such funds in an annual budget;
- may require any officer or employee of the city to make a sworn statement regarding the performance of official duties; and
- shall create the office of city manager and set 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 shall be considered at the special meeting. The mayor (or, in the mayor's absence, the mayor pro tem) presides at meetings. The presiding officer and the city clerk shall 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.³⁵ The manager is appointed by vote of a majority of the members on the board for an indefinite term and shall be 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 shall adopt a preliminary resolution setting out the reasons for dismissal. The preliminary resolution may suspend the manager, who shall continue 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 shall hold such hearing not earlier than 20 days after the request or later than 30 days. The board may then adopt a resolution of removal if necessary (KRS 83A.150(8)).

The board sets qualifications for the manager, which shall 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(7)).

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

- shall have direct responsibility to the board for the proper administration of all assigned duties;
- shall recommend personnel decisions to the board for its action;
- may appoint persons to temporary positions without approval of the board subject to such conditions as the board may impose;
- shall prepare and submit a budget proposal to the board and be responsible for its administration once adopted;
- shall keep the board advised of the financial condition of the city and make recommendations as deemed advisable;
- shall maintain liaison with other local governments regarding interlocal contracting and joint activities;
- shall supervise all city departments and the conduct of the employees and officers and require reports from such as deemed desirable;

- shall enforce the city manager plan, ordinances, and applicable statutes; and
- shall promulgate 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 such delegations shall be by municipal order (KRS 83A.150).

Procedure To Change Plan

A city may change its plan of government, if approved by the residents of the city, 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 shall be at the time a sufficient number of members can be elected. A city shall be in compliance no more than 2 years after the voters adopt the new plan.

After the change, the corporate entity of the city shall remain the same, and all statutes or ordinances in force not inconsistent with the new plan shall remain in effect (KRS 83A.160). If a city goes either to the alderman form of government or from the alderman form of government to another, 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.

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 created 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 such time as expressly abolished by ordinance passed by the legislative body.^b No elected office may be abolished until the termination of the term of the current officeholder (KRS 83A.080).

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 shall
- be 25 years of age,

^b Before 1980, the following offices could be elective: comptroller and inspector (first class); treasurer (second and fourth classes); assessor (second and fourth classes); jailer (second class); 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.

- 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 shall be elected at the regular election in November and shall take 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 (Ky. Const., sec. 160). 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 shall fill any permanent vacancy in the office within 30 days. If it fails to act within that period, the governor shall fill 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 shall be afforded the right to a “full public hearing” and shall have 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 shall be 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, try the charge. If thus removed, the mayor may appeal to the Circuit Court (KRS 83.660). As a general note for removal of all elected officers, a public official convicted under KRS Chapter 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 the mayor, as for all elected officers, shall be fixed not later than the first Monday in May in the year of election. The compensation shall not be changed during the term of office (KRS 83A.070). The compensation of the mayor may not exceed the annual rate set by the Department for Local Government. (See the discussion of section 246 of the Kentucky constitution in Chapter 2 for limitations on the amount of compensation that may be paid.)

City Officer Training Program—Mayor’s Participation. The General Assembly established a city officer training program (KRS 64.5277–64.5279). This is a permissive program that allows city officers, including mayors, to receive additional payment for the completion of 15 hours of qualifying training per year. The base amount awarded shall be 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 shall

- 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 shall be elected for a 2-year term. The election shall be at the regular November election, and newly elected members' terms shall 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. The city shall be divided into a number of wards equal to the number of legislative body members. The wards shall be as nearly equal in population as practicable and shall be reapportioned at least as often as every federal census. Each member of the legislative body shall reside in a different ward. Members shall continue to be voted on citywide in the general election but shall be 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 shall occur within 240 days preceding a general election (KRS 83A.100).

In its 2014 Regular Session, the General Assembly repealed KRS 83A.110, which allowed for the staggered election of city legislative body members. The repeal does not affect cities currently having staggered terms for legislative body members. No new cities may adopt a staggered-term election cycle.

The city 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 their 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 shall, by the last date required for filing notification and declaration forms (no later than the last Tuesday in January before the day fixed by KRS Chapter 118 for holding a primary election), 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 shall be 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 shall be held and those persons shall be deemed to be nominated. In the general election, the nominee receiving the highest number of votes for each office shall be 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 shall be elected (KRS 83A.170). KRS 83A.045 permits cities to forgo nonpartisan primaries. In such cases, all candidates must file their nomination papers no later than the second Tuesday in August before the day fixed by KRS Chapter 118 for holding a regular election.

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

Vacancies. A vacancy on the legislative body shall be 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.³⁶ If there are more vacancies than one, they shall be 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. (For further discussion, see Opinion of the Attorney General 82-207.) If all seats become vacant, the governor shall appoint a sufficient number of members to constitute a quorum, and such members shall then appoint persons to the remaining vacancies. The legislative body has no power to fill a vacancy until such vacancy actually occurs (KRS 83A.040). Any person appointed to fill a vacancy shall serve only until the next regular election, unless such election occurs less than 3 months after the vacancy occurs. At such election, a person shall be elected to fill the term remaining. If there is less than 3 months between the vacancy and the election, the appointee shall serve until the second succeeding election, at which time the position would be filled for any remaining portion of the original term (Ky. Const., sec. 152). When legislative body members are elected on a nonpartisan basis pursuant to KRS 83A.170, additional requirements apply. If the vacancy occurs more than 134 days before the date of the primary election, candidates seeking election to the vacated office must be nominated in the primary and be elected in the general election in accordance with KRS 83A.170. If the vacancy occurs 134 days or fewer before the primary, candidates do not run in the primary but run only in the general election (Ky. Const., sec. 152). However, to appear on the ballot for the general election, a candidate must follow the procedures required of candidates seeking nomination pursuant to KRS 83A.045, 83A.175, 118.365, 118.375, and 83A.047 (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 shall be 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 by impeachment by the General Assembly, since KRS 83A.040 is made specifically inapplicable to cities of the first class and KRS 83.660, which gives the board of aldermen the power to remove city officers, applies only to executive and ministerial officers, and 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 general note for removal of all

elected officers, a public official convicted under KRS Chapter 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 shall be fixed no later than the first Monday in May in the year of their election. The compensation shall not 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 section 246 of the Kentucky constitution 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 Attorney General’s Opinion that said members may not be paid on a per-meeting basis.³⁷

City Officer Training Program—City Legislative Body Members’ Participation. The General Assembly established a city officer training program (KRS 64.5277–64.5279). This is a permissive program that allows city officers, which includes city legislative body members, to receive additional payment for the completion of 15 hours of qualifying training per year. The base amount awarded shall be 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.

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 shall have 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, 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” (KRS 91A.010). The Governmental Accounting Standards Board is an independent body that establishes standards of accounting and financial reporting for state and local governments. For more information about the standards board and its standards, see www.gasb.org.

- **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 the city beyond the amount appropriated for such purpose. Further, the statutes declare that 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 6.950–6.975, 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 More

Annual audits are required.

Audit Requirements For Cities Of Fewer Than 1,000 Persons

An audit is required at the close of each odd-numbered year unless the city has no long-term debt and receives or expends, from all sources and for all purposes, less than \$75,000, in which case no audit is required. Instead, the following requirements shall apply: At the close of

each even-numbered year, the city must prepare a financial statement in accordance with KRS 424.220 and immediately forward a copy to the Department for Local Government and a copy to the Legislative Research Commission.

Penalties. Failure to comply with audit requirements may result in a fine of \$50 to \$500 and 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 65.905–65.925).

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 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 where 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 the 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 Limitations On Taxation

Limits on the General Assembly relating to local taxation appear primarily in section 181 of the constitution. Section 181 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 steam railroad, street railway,

ferry, bridge, gas, water, heating, 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.³⁸

Section 180 requires that every ordinance or resolution passed by any local legislative body levying a tax shall specify the purpose for the tax, and that any tax collected for one purpose shall not be devoted to another purpose. KRS 92.330 requires that all city taxes in cities of the home rule class shall be levied by ordinance, that the purpose of the tax be specified in the ordinance, and that the amounts collected from the tax may not be expended for any purpose other than that specified in the ordinance. KRS 92.330 also provides that failure to specify the purpose of the tax in the ordinance shall render the ordinance invalid. 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.

Section 159 provides that, whenever any city, county, taxing district, or municipality is authorized to contract for indebtedness, it shall be 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.

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.³⁹

The discussion in this section will focus 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 were 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 about 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 (Ky. Const., 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 (Ky. Const., sec. 171). 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 steam railroad, street railway, ferry, bridge, gas, water, heating, telephone, telegraph, electric light, or electric power company (Ky. Const., sec. 181; KRS 91.260).

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 (Ky. Const., sec. 172), unless the property qualifies as agricultural or horticultural property, in which case the property is assessed at its agricultural or horticultural value (Ky. Const., sec. 172a; KRS 132.450).

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. For the 2015 and 2016 tax years, the homestead exemption amount is \$36,900 as published by the Office of Property Valuation in the Department of Revenue.

Section 171 provides that the General Assembly may divide property into classes and may determine which classes shall be 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

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

*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.

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 (see 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 location 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 also 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 99.595–99.605).

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.^a 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.)

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 shall not be 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

^a *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, vermin infested, and unfit for its intended use, or that has been tax delinquent for at least 3 years (KRS 132.012).

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. Appendix D lists authorized special ad valorem tax levies. 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 (KRS 132.285). 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 132.285). 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.^b 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 (KRS 91A.070). The sheriff is entitled to compensation for collecting the city taxes, in an amount not to exceed 4 percent (KRS 91A.070).
- **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 KRS 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).

^b KRS 67C.123 generally provides that the assessment and collection statutes applicable to counties will apply to Louisville, rather than the statutes relating to cities.

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 will also collect delinquent taxes in the manner used to collect county taxes. This means taxes not collected by the sheriff will be turned over to the county clerk along with the county taxes and will be 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 91.484–91.527 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, upon which all taxes, fees, penalties, and charges are extinguished. The land bank can develop, sell, or hold the property. When the property is sold, all partners receive a prorated portion of the back taxes, fees, and costs from the purchase price (KRS 65.350–65.375).

Notice. There is no requirement that a city 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 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, urban-county, and consolidated 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):⁴⁰

- 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.⁴¹

- Policies of insurance insured or reinsured by the Federal Crop Insurance Corporation (7 CFR sec. 400.352)
- 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.

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

Any amounts not paid by the due date bear interest from the due date 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.0804 and 91A.080).

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 2016, the offset applied in seven counties according to the Department of Insurance's *Local Government Premium Tax Schedule Bulletin 2016-2017*.

Levy Statistics

For the 2016-2017 fiscal year, 359 cities imposed some type of insurance premium tax. The range of rates was 3 percent to 15 percent.⁴² Some cities also imposed a minimum tax; insurance companies must pay the greater of the minimum or the percentage-based tax.

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. The situation is even more complicated in counties that include cities that impose a rate lower than the county rate; in such cases, the insurer must pay both the city and the county.

Occupational License Tax

Any county or city may impose an occupational license tax; there are different requirements depending on the population of the county or the classification of the city. The occupational license tax is a feasible 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. According to information compiled by the Kentucky Secretary of State, as of 2016, 124 cities and 63 counties impose an occupational license tax.

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 up to 1.25 percent on wages and net profits (KRS 91.200).

Home Rule Cities

Home rule cities are permitted to levy franchise and license fees with no maximum rate specified (KRS 92.280 and 92.281). Cities of fewer than 1,000 persons are prohibited from imposing a license tax at a percentage rate.

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

In addition, no local governmental unit may levy any occupational tax, 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. These are contained in KRS 68.197 and in 2016 Acts ch. 149 (HB 303), sections 8, 9, and 10. The crediting provisions in HB 303 are not reflected in statute; they will, as a consequence, expire on June 30, 2018.

Uniformity Of Administration

KRS 67.750–67.795 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 (cities with populations of less than 1,000 are not included, as they are not permitted to levy such taxes on the basis of percentage of income or profits). 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.

Standardization Of Forms. The secretary of state must prescribe standard forms that all tax districts will accept (KRS 67.767).

- **Before July 1, 2017.** A local government may opt out of accepting the standard form by adopting a written order, which must be forwarded to the secretary of state with a copy of the occupational license tax forms and instructions that the local government will accept.
- **After July 1, 2017.** 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. Appendix D lists special ad valorem rates and assessments.

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.

License Fee On The Rental Of Motor Vehicles (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. The fee may not exceed 3 percent of the gross rental charges from rental agreements of 30 days or less. The fee applies to retailers that receive more 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, that are part of services provided by a funeral director, or that 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 the 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. Proceeds are used 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 (KRS 91A.390).

Use Of Funds. Cities that establish tourist and convention commissions must fund the commission and must 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. Excess funds collected in any single year, 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, may be used to defray the costs to operate, renovate, or expand the governmental or nonprofit convention center or fine arts 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.^c 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.”⁴³ 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.

^c 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 (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. Section 164 also requires cities to issue bids for franchises.

Statutory Provisions

Cities must provide for the sale of a 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

Cities may not impose 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.

Public Utilities Owned By Cities

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

Bank Franchise Tax

The bank franchise tax (KRS 136.575) replaces an ad valorem tax on bank shares. County, city, and urban-county 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 (as defined in KRS 243.075) where a successful local-option election is held to discontinue prohibition of 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 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 trafficking of alcoholic beverages is authorized, may levy an annual license fee for the privilege of manufacturing and trafficking in 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 (KRS 243.060). There are limits on the amount that fees may increase over any 5-year period.

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(6)).

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^d

KRS 91A.510–91A.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.^e Some programs combine incentives from the state and various local governments. A few of the larger programs are discussed below.

Tax Increment Financing (KRS 65.7041–65.7069)

Cities may establish local development areas (KRS 65.7047). If state participation will be requested, the development area may be established pursuant to KRS 65.7049.

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.200–91A.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).

^d 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.

^e Property tax incentives available to local governments were discussed under property taxes.

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 82.105–82.180)

To induce governmental entities to locate governmental projects in a city, cities may acquire and improve land for such 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:

- The Kentucky Business Investment Program (KRS 154.32-010 to 154.32-100)
- Kentucky Industrial Revitalization Act (KRS 154.26-010 to 154.26-120)
- 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 formerly 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 during the 1994 general election. The new section 157b 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 shall 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 such financing arrangements 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

The General Assembly enacted the Short-Term Borrowing Act (KRS 65.7701–65.7721) in 1990. 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 such 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. Such a note shall 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

KRS 83A.010 defines a city 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— independent of any superior human authority other than a statutorily prescribed general control.⁴⁴

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."⁴⁵

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 shall be sold or let (KRS 61.010).

No person shall be disqualified from a public office having a residency requirement because of alterations in city or district boundaries (KRS 61.015).

All officers shall 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 shall be taken on or before the day the elective term begins. Appointive officers shall 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.

No officer required to execute bond shall take office before giving the bond (KRS 62.050). The bond shall be a covenant running to the state from the principal and his or her surety that the principal shall faithfully discharge 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).

Conviction of bribery, forgery, perjury, or any felony shall cause forfeiture of office. A pardon will not prevent forfeiture (KRS 61.040). Acts performed by an officer before conviction for any of the above offenses are valid (KRS 61.050).

No official statement made by an officer on a subject that he or she is required by law to make in writing shall 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).

Conviction of an officer for dueling shall cause 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 also 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. Violation of this statute can subject the public servant to conviction of a felony.

No officer or city employee shall 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 (KRS Chapter 61)

Resignations shall be tendered to the officer required to fill the vacancy (KRS 63.010).

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 63.020–63.075).

If a vacancy in any office arises and no other provision for filling the office exists, the office shall be filled by appointment by the governor (KRS 63.190). If a legislative body cannot

fill a vacancy as required because all seats are vacant, the governor shall appoint 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 shall promptly fill it by appointment (KRS 83A.040).

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

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. If an office holder accepts another office that is deemed incompatible, the first office is automatically vacated (KRS 61.090). There is no prohibition against running for an office while holding an incompatible office (KRS 61.070).

KRS 61.080 sets out incompatible offices, summarized below. Pertinent attorney general opinions and court decisions are listed in the annotations to KRS 61.080 in print editions, though not in the version provided at lrc.ky.gov. No municipal officer may fill, simultaneously with occupation of a city office, any of the following offices:

- State office, including member of the General Assembly
- County office
- 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

Appointed Officers

Offices may be elective or appointive. Chapter 5 discusses elective officers.

How Established. The city legislative body shall establish by ordinance all appointive offices as needed. The establishing ordinance shall specify the title of the office; the powers and duties of the office; an oath of office (KRS 83A.010); and the amount of bond required, if any.

The compensation for a nonelected office shall be 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 (KRS 83A.085), the Kentucky Revised Statutes require no executive offices. However, all appointive offices in existence on July 15, 1980, shall remain established until specifically abolished by ordinance. If an office is abolished, the abolition shall not be effective until the termination of the term of any current holder who was appointed for a definite term (KRS 83A.080).

Appointing Authority. The executive authority of the city shall appoint persons to fill the 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, shall establish 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 shall set out the powers of the clerk, which shall at a minimum include

- maintenance and safekeeping of permanent records of the city,
- performance of duties required of “official custodian” or “custodian” pursuant to KRS 61.870–61.882 (see Chapter 3),
- possession of the seal of the city, and
- annual forwarding of prescribed municipal information to the Department of 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, but in commission and city manager plan cities, the legislative body is the executive authority.

As with other appointive offices, the city legislative body shall establish 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 performing duties established by the legislative body, the city administrative officer shall carry 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 such units set out the membership of the governing body and who shall be the appointing authority. Table 7.1 lists such 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 Appointing Authority	KRS Citation	Comments
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 st 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 st 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	3-5	Mayor	90.310	
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 st 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
Urban-County Board of Health	UC	KRS	N/A	Control public health matters	7 + mayor + member of council	Mayor*	212.632
Hospital Building Commission	1 st 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
City/County Housing Authority	All	Resolutions by city and county	Joint	Operate public housing projects	8 (4)	Mayor	80.262
Riverport Authority	All	Ordinance	Either	Operate riverport industrial area	6	Mayor	65.520
Commission on Human Rights	All	Ordinance	Either	Administer civil rights law	Unspecified	None	344.310
Industrial Development Authority	All	Ordinance	Either	Develop and operate industrial parks	6	Mayor	154.50-316
Library Board of Trustees	1 st class	Ordinance	Independent	Operate library	12	Mayor	173.040

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City/County Library Board of Trustees	1 st class, CLG	County contract with city	Joint	Operate library (advisory board may be formed)	12 (6)	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 (7 in cities ≥20,000)	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 (4)	Mayor*	76.030	
Municipal College Board of Trustees	Cities of ≥3,000 but not 1 st class	Ordinance	Independent	Operate municipal college	Unspecified	Mayor	165.160	
Parks, Playground and Recreation Board	All	Ordinance	Independent	Operate parks and recreational facilities	5	Mayor*	97.030	
Joint Playground and Recreation Board	All, CLG	Ordinance	Joint	Operate parks and recreational facilities, zoo, or museums	Not less 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	3-7 (in classes 1-2); 3 (in classes 3-6)	Mayor*	97.110	

Board of Park Commissioners	All	Ordinance	Independent	Advisory board if city operates parks pursuant to KRS 97.465 and other laws	5-7	Mayor	97.455
Park Board	All	Ordinance	Independent	Operate parks and playgrounds	Not more than 5	Elected by members	97.550
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* (after initial appointment, members are elected)	97.630
Motor Vehicle Parking Authority	All	Ordinance	Either	Operate street and off-street parking facilities	5 if independent; 6 (3) if joint	Mayor*	94.810
Planning Commission	All	Ordinance	Either	Regulate land use	5-20 (1/2)	Mayor*	100.133
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.
Tourist and Convention Commission	1 st class, CLG	Ordinance	Either	Promote tourism	9 (3)	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) 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 development area	5	Mayor*	99.350	
Development Authority	1 st class; UC; ≥15,000	Resolution	Independent	Promote land development in designated project area	7	Mayor*	99.625	
Electric and Water Plant Board	Cities presently operating a plant	Ordinance	Independent	Operate water and electric system pursuant to KRS 96.171-96.188	5	Mayor*	96.172	
Board of Waterworks	1 st 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	3-6 + 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	3-5+	Mayor	96.351
City Utility Commission	Home rule class	Ordinance	Independent	Operate electric light, heat, and power plant pursuant to KRS 96.520	5 (≥20,000); 3 (<20,000)	None	96.530
Electric Plant Board	All	Ordinance	Independent	Operate electric plant pursuant to KRS 96.520 and TVA Act	4	Mayor*	96.740

Note: In listings such as “11 (3),” the number in parentheses indicates appointments by the governor. CLG = consolidated local government; UC = urban-county government.

*Mayor’s appointments subject to approval by legislative body.

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

City Employees

It is possible for all positions in a city to be employees, although it is not possible for all positions to be offices, since an office must possess the characteristics enumerated in KRS 83A.080 and KRS 81A.010. An office is a position created by ordinance and designated as an office pursuant to KRS 83A.080 using the definition set out in KRS 81A.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.”⁴⁶

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.⁴⁷ 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.⁴⁸ 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, such 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 14th Amendment or the Civil Rights Act, 42 USC, sec. 2000. 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 shall be 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 such plans 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.⁴⁹

Third, after positions have been classified, written specifications are prepared for each class, which define the “contents and limits of the class.”⁵⁰ 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.”⁵¹

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.”⁵²

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.⁵³

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 will typically be 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.”⁵⁴ 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 Number	Hourly Rates			
	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

The legislative body of the city shall adopt 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 such 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 such 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 such power is 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."⁵⁵

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 90.110–90.230 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, except that some applicants are eligible for bonus credit on civil service exams if they have served in the armed services or as medical personnel during wartime as provided by KRS 90.320. 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 90.300–90.410 is optional. The legislative body may adopt such a system and determine which departments and employees shall be included. The service shall be 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.

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 such 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 has two options: Either it may adopt the provisions of KRS 95.761, 95.762, 95.763, 95.764, 95.765, and 95.766, or it may adopt the provisions of KRS 90.300–90.410. The city may adopt an ordinance establishing a civil service system for its employees who are not police or fire employees. The

city shall adopt the provisions of KRS 90.300–90.410 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 such personnel 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.

Additionally, 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 that 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 (29 USC, sec. 201–219), but in that year the US Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority* that the Act covers all municipal employees.⁵⁶

That decision has had little effect on Kentucky cities because they were already subject to the provisions of the Kentucky wage and hour law (KRS Chapter 337), 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 1 ½ times the regular rate for those hours. In 1994, KRS 337.540 was amended to permit 10 hours of work per day, rather than 8, as a legal day's work.
- 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 (25 CFR, part 553). For further detail, see KRS Chapters 336–344.

Pension Systems

House Bill 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 County Employees Retirement System (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. Now local government employees previously opting not to participate in CERS may 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 is required to 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 such a tax 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 pensions 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 346.155).

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 shall receive a lump-sum payment of \$75,000 paid out of the State Treasury. Such benefit shall be in addition to any other benefit received. "Police

officer” includes auxiliary policy 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 or 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 such officers or employees. A city has several options for establishing such 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 shall 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-846 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 79.080, 18A.225–18A.2287).

Unemployment Compensation. Any city having more than one employee 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 more than one employee is subject to the Kentucky Workers’ Compensation Law (KRS 342.630) and shall be liable to pay compensation to any employee for any work-related injury, occupational disease, or death caused to the employee, without regard to fault (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 shall receive 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 61.555).

Chapter 8

Specific Municipal Powers

The Kentucky Revised Statutes contain several hundred statutes relating to cities. These statutes 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

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

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

Home rule is not a quitclaim deed 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 are limitations of 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 KRS 82.082's enactment is that they might be construed as comprehensive schemes that local legislation cannot vary, thereby providing perhaps unintended limitations of KRS 82.082's authority.

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 6- or 10-member nonpartisan board. In a county containing a city of the first class that has in effect a cooperative compact between the city and the county, the board has 10 members, 2 of whom are appointed by the governor. In a consolidated local government, the board consists of 11 members, with the extra member representing neighborhood associations located within a 5-mile radius of the airport. 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 183.132–183.160).

Blighted And Deteriorated Properties⁵⁷

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 owner has been sent notices that the property violates city codes;
- 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; 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;
- such 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 shall have the power to hold, clear, manage, or dispose of it for residential and related uses (KRS 99.700–99.730).

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 shall be 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 shall dissolve and the unit of local government shall assume control of the bridge (KRS 181.570–181.840).

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 such property abandoned, by authorizing the city attorney to institute suit to acquire title (KRS 381.720–381.767).

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 such records.
- Cemeteries that sell cemetery merchandise on a preneed basis must place 40 percent of the contract price in trust until the merchandise is provided.
- 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 construction within 60 months.
- Each cemetery shall pay 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.
- The officers, owners, and shareholders of any cemetery may be held personally liable for violations of the Act.
- Violation of the trust fund provisions of KRS 367.932–367.974 is a Class C felony (KRS 367.932–367.974 and 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 shall approve any bond issue. The board may establish a law school connected with the university (KRS 165.010–165.150).

A city with a population equal to or greater than 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 165.160–165.200).

Enterprise Zones

Enterprise zones were established in 1982. All established Enterprise Zones have expired. KRS Chapter 154 Subchapter 45, creating Enterprise Zones, has been repealed.

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).

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 such 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 shall have an eight-member board, four members appointed by the mayor and four by the county judge/executive. In a county containing a city of the first class,

special provisions apply if a cooperative compact between the city and the county is in effect. 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 shall be managed by a five-member board appointed by the mayor (KRS 99.330–99.590). Each city of the first class, consolidated local government, or urban-county government shall establish a development agency. The agency shall be operated by a seven-member board of commissioners appointed by the mayor with the approval of the legislative body. The purpose of the agency shall be to assist 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. Such agency may be dissolved at any time by a three-fifths vote of the legislative body that created it (KRS 99.610–99.675).

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 383.500–383.715).⁵⁸ 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 173.300–173.410):

- 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 by any of the above methods, the city shall “make the necessary appropriation or levy to establish and maintain such library service annually and perpetually” (KRS 173.310). Control of the library shall be 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 shall be managed by a board of trustees composed of 12 persons. The board may support the library through an annual appropriation (KRS 173.030–173.040). If the city and the county have in effect a cooperative compact, the board of trustees shall be dissolved and the library shall be operated as a joint city/county agency. An advisory board may be established (KRS 173.105).

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 6 to 8 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 shall 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 shall offer to reconvey the land to the authority. Should the authority accept the offer of reconveyance, it shall return to the organization or industry 95 percent of the purchase price (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. Such 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 91.750–91.762).

Mass Transit

Any city may independently, or jointly with other units of government, establish and operate a transit authority. The purpose of such authority is the promotion and development of mass transportation in the area. An operating board shall manage 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. Such a program shall be submitted to the approval of the voters (KRS 96A.310–96A.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 with a population equal to or greater than 8,000 may acquire or establish a streetcar system and may operate the system within the city and within 10 miles beyond. The 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 such designation, an area shall 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 that cause 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 82.650–82.670).

Parking Authorities

Any city may independently, or jointly with the county, create motor vehicle parking authorities. Such authorities shall have the power to acquire, create, and operate public street and off-street parking facilities. The governing board of the authority shall be composed of five or six members appointed by the mayor with the approval of the legislative body (KRS 94.810–94.840).

Parks And Recreation

Most of the statutes in KRS Chapter 97 are permissive. Following is a summary of the chapter in numerical order:

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 such 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 shall be composed of five persons 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 shall be controlled by a joint board of not fewer than five members. In counties containing a city of the first class, where a cooperative compact is in effect, the joint board shall be dissolved and the system operated as a joint city/county agency (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).

Park 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 97.100–97.240 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.” Any such projects shall be 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 shall appoint 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 shall be 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 shall be held by the city in trust for public purposes (KRS 97.252).

In cities of the first class, employees of the parks and recreation department shall be 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 such purposes by purchase or condemnation,
- lay out 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 97.425–97.485 shall 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 shall execute an oath (KRS 97.560). The board shall have control of 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. Such tax may be levied only if a citizen petition is received and the levy is approved by referendum. The tax may not exceed 10 mills (KRS 97.610). The tax may be repealed by referendum (KRS 97.620).

Any city that has constructed a war memorial shall establish a war memorial commission. In cities of the first class, the commission shall have seven members; in other cities, the commission shall have 15 members. The remaining members shall elect successors for those whose terms expire (KRS 97.630). The legislative body in cities of the first class shall annually appropriate 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 97.640–97.780 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 may not 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.”⁵⁹ 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.”⁶⁰ 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.”⁶¹

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 it is determined that the service should be discontinued because there is no public necessity for it, a city shall advertise 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 shall be granted to the highest and best bidder (KRS 96.010). Each bidder for a franchise, except the holder of the old franchise, shall make 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 shall 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 such utility by purchase or through eminent domain (KRS 96.045).

The legislative body in an authorized city, as defined in KRS 96.050, 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).

The legislative body in any city may provide utility service to the residents of the city through works or facilities owned by the city or by contract with a person or corporation providing such services. The works or facilities may be located within or beyond the city (KRS 96.190).

The legislative body in any city may provide for the furnishing of water, light, power, heat, and telephone service to residents. Such services may be provided 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).

Cities with populations 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 shall 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 provider, 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 shall 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. The system may be operated under the provisions of KRS 96.172–96.188. The system shall 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 shall be composed of five members appointed by the mayor who are citizens, taxpayers, voters, and users of electric energy or water (KRS 96.172-96.188).

Any city may provide for the furnishing of water, gas, electric power, light, heat, or telecommunications, 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. Such plants 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 (KRS 96.520). The purchase of such a 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 shall be controlled by a city utility commission, composed of five members in cities with populations of at least 20,000 and three members in smaller cities (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).

KRS 96.550–96.900, known as the “Little TVA Act,” provides an alternative method for cities to establish electric plants within or outside the city. To construct a plant or issue revenue bonds for one, the city must receive the approval of the residents of the city through a referendum. The power plant shall be 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 shall be controlled by a board of waterworks, composed of the mayor and four members appointed by the mayor. The board may issue bonds (KRS 96.230–96.310).

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). The net revenues derived from the waterworks shall be used for improvements to public ways (KRS 96.330).

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 96.350–96.510).

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 does not contain a city of the first class or an urban-county government. The commission shall be 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).

The legislative body of any city may impose fines for persons convicted of vandalizing the waterworks system (KRS 96.340).

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 shall be 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. Such agency shall have all powers granted a metropolitan sewer district by KRS 76.010–76.279 except that the establishing ordinance may restrict or qualify such powers. Such agency shall be 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 such services to persons in territory contiguous to the city, except that if such 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. Such classifications shall be established by ordinance. A hearing must be held before the classifications go into effect (KRS 96.910–96.927).

Any city may enforce the payment of sewer charges by requiring that water service be discontinued until the delinquency is paid (KRS 96.930–96.943).

No city of the home rule class that owns a waterworks system shall sell, convey, or lease such system without holding an election on the question and receiving the assent of a majority of those voting (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 such service. This validates a city’s membership in a water district in the absence of an ordinance or resolution authorizing such participation (KRS 74.120).

Joint sewer agencies may use an exemption to the requirement for uniform rates for a period not exceeding 10 years from the date of 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 shall provide that the city shall purchase the output of the facilities, specify what rates shall be charged, and include such other matters as agreed on. The same procedure required before executing the privatization contract must be followed before executing the service contract. The privatization and service contracts shall not be 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 shall be subject to a recall pursuant to the public question provisions of KRS 83A.120 (KRS 107.700–107.770).

Miscellaneous Provisions. Other than the exceptions set out in KRS 96.330 and 96.550–96.900, 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 shall have the dominant right to continue providing such service (KRS 96.538).

Except as provided in KRS 96.171–96.188 and KRS 96.5405, no city of the home rule class that owns a waterworks system or lighting system by gas or electricity shall sell, convey, lease, or encumber such system 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 acquire a franchise to furnish water or light to any other city (KRS 96.120). Such a city may also contract with any other city for the furnishing of light and water (KRS 96.130).

If any city (but not 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 such utility, it shall make just compensation to such utility for the installations taken over. If the city and the utility cannot come to an agreement on the purchase, the city may acquire such 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 shall enact an ordinance closing the public way, then file an action in Circuit Court naming all abutting property owners as defendants. If no defendant objects within 20 days of service, the court shall render 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 them (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 177.220–177.310).

A city may by ordinance establish speed limits within its jurisdiction, though no state highway speed limit set at 55 mph may be altered to exceed 55 mph (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 cost of the sign and its 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 shall pay the costs of such assistance (KRS 178.010).

Riverport Authorities

Any city or consolidated local government may establish independently or jointly with other units of local government a riverport development authority. The purpose of such an authority is 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 65.510–65.650). 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 in any 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.

Health And Human Services

AIDS Education

KRS 214.600–214.635 created a public education and protection program addressing acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus infections. KRS 15.334 requires law enforcement personnel to receive continuing education concerning AIDS.

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 shall be governed by a board

composed of seven members, four of whom shall be appointed by the mayor with the approval of the legislative body (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.

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 shall constitute 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 shall create the district in accordance with KRS 65.182.

The district shall be controlled by a board of directors. If the district consists of one city, the board shall have three members, appointed by the legislative body; if more than one city, the largest city shall appoint two members and the other cities shall 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) shall appoint a member to the board (KRS 108.080–108.180).

Any city may contract with private persons, partnerships, or corporations to provide ambulance service to residents of the city (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).

Board Of Health

In counties containing a city of the first class or consolidated local government, there shall be a joint city-county health agency known as the “.... (name of city of the first class) and (name of county) or (name of the consolidated local government) County Board of Health.”

The board shall be composed of eight resident members; the mayor shall appoint four, and the county judge/executive shall appoint four. The mayor and the county judge/executive shall be ex officio members. The board shall operate the city-county board of health pursuant to KRS 212.350–212.410.

In a consolidated local government, the board and its members shall be appointed and operate as provided (KRS 212.350).

In counties containing cities of at least 15,000, the legislative body of such city and the fiscal court of the county may establish a city-county board of health. The board shall be

composed of 11 members: the mayor or the city manager, as determined by the city legislative body; the county judge/executive; 1 dentist; 1 registered nurse; 3 physicians; 1 veterinarian; 1 engineer engaged in the practice of civil or sanitary engineering; 1 optometrist; and 1 lay person knowledgeable in consumer affairs, appointed by the secretary of the state Cabinet for Health and Family Services (KRS 212.640–212.710).

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 212.720–212.760).

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 such a district is formed, it shall have jurisdiction in all counties and cities in the district. The mayor of each city of at least 15,000, or a designee, shall serve as an ex officio member of the new district board or department of health (KRS 212.780–212.794).

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 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 shall be composed of four members appointed by the mayor, with the approval of the board, the mayor serving as ex officio member (KRS 98.040–98.170).

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 65.750–65.760).

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 include adult bookstores and adult motion picture theaters (KRS 82.088).

The US Supreme Court has authorized the regulation of adult establishments selling sexually explicit materials.⁶² Because the First Amendment guarantee of freedom of speech generally protects the selling of such materials, it is difficult for local governments to prohibit such activities. However, the court stated that merely requiring such establishments to be located in certain areas does not violate the First Amendment but constitutes a “content-neutral” time, place, and manner of regulation. Such regulation is aimed not at the content of the materials sold but at the secondary effects of such establishments. “The ordinance, by its terms, is designed to prevent crime, protect the city’s retail trade, maintain property values, and generally ‘protect and preserv[e] the quality of [the city’s] neighborhoods, commercial districts, and the quality of urban life,’ not to suppress the expression of unpopular views.”⁶³

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 trafficking in alcoholic beverages, any city may license and regulate premises selling alcoholic beverages by the package. In other counties, only cities of at least 3,000 may permit the sale of alcoholic beverages. In a county that prohibits the sale of alcoholic beverages, the sale of alcoholic beverages 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). 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 such precincts as “limited sale precincts” (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. The mayor shall appoint the administrator, except in cities using the city manager plan, where the city manager shall appoint the administrator (KRS 241.170). The administrator shall have the same functions with respect to city licenses and regulations as the state Alcoholic Beverage Control Board has with respect 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 pursuant to KRS 243.030 and 243.040. Fees imposed may not exceed the amounts specified (KRS 243.070). A city may add the following to

those on whom the city may impose a license fee: supplemental bar licensee, special temporary licensee, caterer licensee, and other special licensees (KRS 243.070). Licenses to sell alcoholic beverages by the package may be issued only for premises within the city if the county maintains an adequate police force (KRS 243.230). Cities of at least 8,000 may issue licenses to sell alcoholic beverages by the drink to premises in the city if the county maintains an adequate police force (KRS 243.230). Cities of 3,000 to 7,999 may issue special licenses to specified premises in the city to sell alcoholic beverages by the drink if the voters of the city approve the proposal in a referendum (KRS 243.230) or upon adoption of an ordinance if the city, or a county containing such a city, has determined that an economic hardship exists within the city or county (KRS 243.072).

In any city that permits the sale of alcoholic beverages, the legislative body shall have the exclusive right to establish the times and hours when alcoholic beverages may be sold (KRS 244.290). In any city that permits the sale of alcoholic beverages, the legislative body may, by ordinance, authorize the issuance of licenses permitting the sale of distilled spirits and wine by the drink on Sunday. Such licenses may be issued only to hotels, motels, and restaurants that seat more than 100 persons and that derive at least 50 percent of gross income from the sale of food (KRS 244.290). The sale of distilled spirits and wine by the drink on Sunday may be permitted in urban-county governments only if approved by the voters of the urban-county in a referendum (KRS 244.295).

In cities of 3,000 to 7,999—and counties containing such cities—that permit the sale of alcoholic beverages by the drink in hotels, motels, inns, and restaurants, as provided by KRS 243.072, the city or county may also provide for and regulate distilled spirits and wine sales on Sunday to those establishments (KRS 244.290).

The legislative body shall designate an official to issue city alcoholic beverage licenses and collect fees. The form of the license shall be 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 shall notify the state Alcoholic Beverage Control Board of the fees imposed by the city legislative body (KRS 243.610).

No applicant for a state license to sell alcoholic beverages in a city shall qualify for such license until the application for a city license has been granted (KRS 243.370).

In any city qualified under the provisions of KRS 243.075 that permits the sale of alcoholic beverages, the legislative body may levy a regulatory license fee on the gross receipts of every establishment selling them. The fee shall be in addition to any other authorized tax or fee and shall be levied at the beginning of the fiscal year (KRS 243.075).

A dry or moist city of any size may hold a separate, citywide election to become a wet city. If a countywide election to reinstate prohibition is held in any wet county containing a wet city by separate election, the city shall continue to be wet even if the rest of the county becomes dry. Individual city precincts in a wet city may become dry through a precinct-level election. A city's moist status may be changed only by a local option election on the original same moist election proposition (KRS 242.125).

Any area annexed by a city shall assume 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, or other party when the Alcoholic Beverage Control Board deems that the necessity for a license exists. Such licenses shall be for a specified and limited time not

exceeding 30 days, and all restrictions and prohibitions applying to regular retail drink licenses shall also apply to special license holders (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 242.1238).

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 such retail sales, the question of such permission shall be put to an election by the residents of the city, if a petition requesting such 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 And Limousines

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 (KRS 281.635). In addition, any city has the right to license and supervise the operation of taxicabs and supervise the conduct of taxi drivers in the city (KRS 281.635).

Any city may impose an annual license on all certified taxicabs and limousines operating in the city. The license tax shall not exceed \$30 per taxi or limousine (KRS 281.631).

Cemeteries

All cities shall 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 381.700).

Gun Control

No city shall 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). 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 will not be 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 shall hold a public hearing and approve or disapprove such facility (KRS 224.40-310). KRS Chapter 224 also 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.”⁶⁴

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.”⁶⁵

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 shall adopt the agreement by ordinance. A copy of the agreement shall be 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 shall be composed of 5 to 20 members (KRS 100.133). In counties of at least 300,000, the planning commission shall consist 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 shall make appointments to the board (KRS 100.137 and 100.141). Appointments shall be 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 shall be 4 years, except that the terms of elected officials shall be coextensive with their elected terms (KRS 100.143). Vacancies shall 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 shall 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 shall elect a chairman and other necessary officers (KRS 100.161). At least six regular meetings shall be held per year. The chairman may call special meetings (KRS 100.163). The commission shall adopt bylaws and keep records of its proceedings (KRS 100.167) and may employ staff (KRS 100.173).

A quorum of the planning commission shall equal 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 shall consist of five members. A majority vote of those present shall decide all matters, except that a majority of the total membership shall be 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 shall have 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).

Figure 8.A shows the planning commissions extant in Kentucky as of 2012, the most recent information compiled.

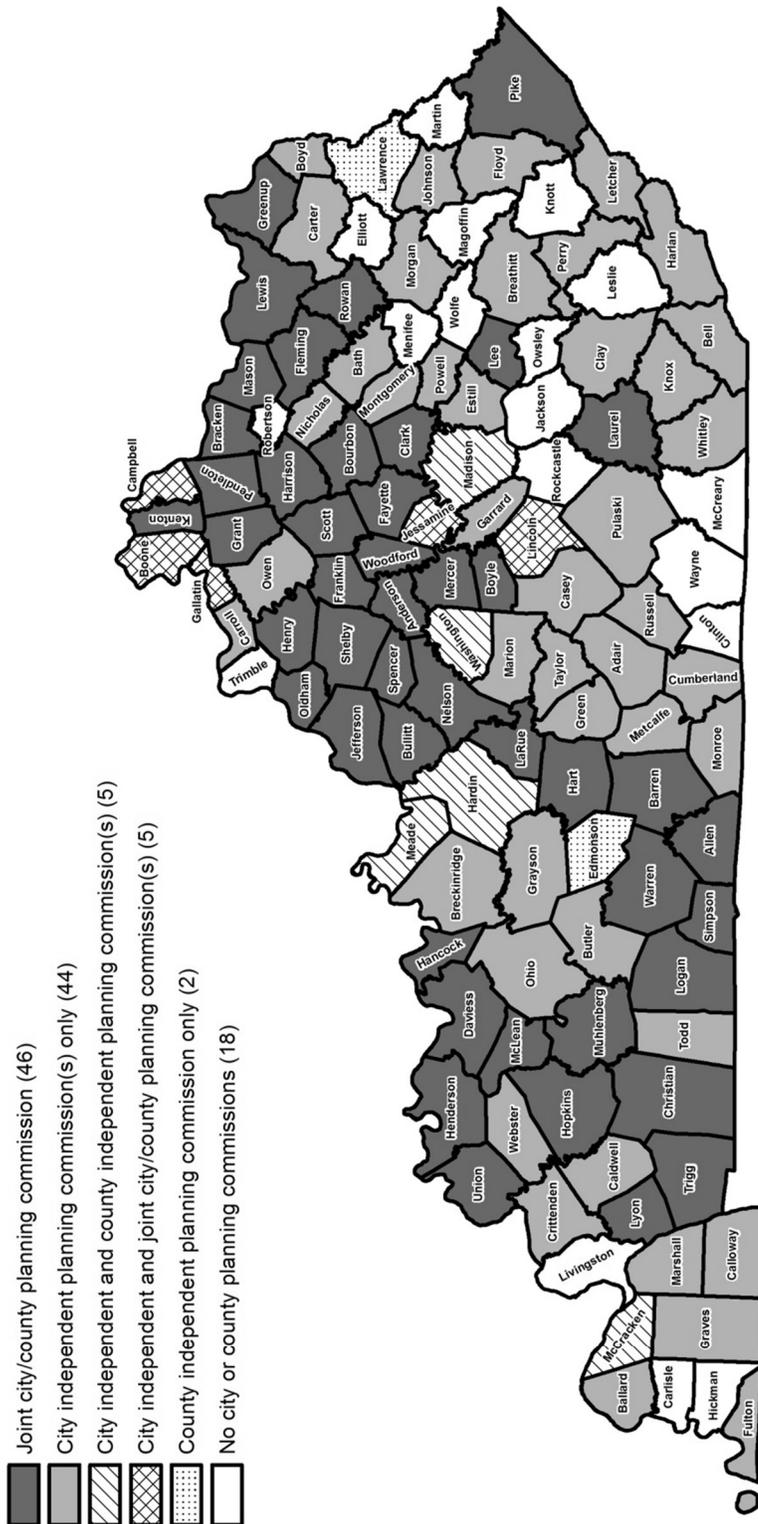
Comprehensive Plan. The planning commission must prepare a comprehensive plan, "which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships" (KRS 100.183). A comprehensive plan must be adopted before local government may exercise land use control. The plan must contain at least four elements:

- A statement of goals and objectives, which shall serve 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 (KRS 100.197), but the statement of objectives and principles shall be adopted first, to serve as a guide for preparing the other elements. Each member of a planning unit may develop goals and objectives for its jurisdiction that the planning commission shall consider 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 such enactment must be sent to specified public officials in adjacent cities and counties (KRS 100.193 and 100.197).

Figure 8.A
Planning Commissions, 2012



Source: Kentucky. Transportation Cabinet. Division of Planning.

The statement shall be presented to the member local governments for their adoption (KRS 100.193). The elements of the plan shall be 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.

Cellular phone utilities seeking to build cellular phone towers in cities of the first class or consolidated local governments must seek approval of the appropriate planning unit (KRS 100.324). The utility must also seek approval from the Public Service Commission (KRS 278.650).

Zoning regulations, consisting of both a text and a map, shall be prepared by the planning commission. The text shall list 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 shall 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 shall show the boundaries of the area to be zoned and the boundaries of each zone. After proper notification is given, the commission shall hold at least one public hearing (KRS 100.203 and 100.207).

The planning commission shall submit 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 shall be referred to the commission, and at least one public hearing shall be held after proper public notification is made. The commission shall give 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 shall become 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 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. The commission 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 shall also be referred to the planning commission. Notice shall be made and at least one public hearing held before the commission shall give 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.

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. Such boards shall be composed of three, five, or seven members appointed by the mayor with the approval of the legislative body (KRS 100.217). Meetings of a board shall be at the call of the chair (KRS 100.221). KRS 100.223–100.261 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 (KRS 100.237), or it may grant a variance, permitting a property owner to depart from dimensional requirements (KRS 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 government, or urban-county governments, any use that has been a nonconforming use for 10 years shall be 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 such restriction. The county clerk shall maintain such records (KRS 100.3681–100.3684).

The local government, in addition to establishing a board of adjustment, shall designate an official to administer the zoning regulations. This official may also be designated the administrator of housing or building regulations (KRS 100.271).

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 shall make recommendations to the legislative body as to the regulations, and a majority vote of the whole body may override such 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 any land without first having the planning commission approve the plat (KRS 100.277). 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 shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate 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 shall be deemed a subdivision within the meaning of this section (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 such 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 Chapter 100 shall govern such regulations (KRS 100.273).

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 The Handicapped. 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 such nuisances. Such 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 such costs (KRS 381.770).

If a city does not take action on thistle eradication, the state commissioner of agriculture may order the removal of thistles threatening the property of other landowners. The landowner must have a 15-day notice before such action, may be fined, and is liable for reasonable removal costs (KRS 249.190).

Cities and merged governments may enact a nuisance code and impose penalties for violations. The ordinance or ordinances that form the code shall

- establish the acts, actions, behaviors, or conditions that constitute violations;
- establish reasonable standards and procedures for enforcement of the code;
- provide for the establishment of a hearing board and hearing officers and the procedures to be followed by the hearing board and hearing officers;
- delegate responsibility for enforcement of the nuisance code to an agency or department of the local government; and
- establish penalties for violations of the code.

Notice shall be given to those who violate the code, informing them of the nature of their violation, the penalties for violation, the procedures for responding to the notice, and the fact that the determination shall be final unless contested before the hearing board (KRS 82.700–82.725).

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. Appeal from a determination by the hearing board shall be to 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. Impounded vehicles that are deemed to be abandoned shall escheat 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 82.600–82.640).

Private Investigators

KRS Chapter 329A prohibits local governments from regulating private investigators.

Rent Regulation

Cities may not control rents on private property (KRS 65.875).

Septic Tank Regulation

The Cabinet for Health and Family Services regulates the construction of on-site sewage disposal systems (septic tanks). No such system 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 systems. The board may issue regulations relating to on-site sewage 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).

Trucks

Any city may, by ordinance, impose license fees on motor trucks, truck tractors, semitrailers, and trailers, 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 shall not apply within the city or within 15 miles of a city of at least 3,000, or 5 miles of a smaller 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 cases of tank leakage (KRS 224.60-110 to 224.60-160).

Uniform State Building Code

The state Board of Housing, Buildings and Construction promulgated the state building code, which is administered by the state Department of Housing, Buildings and Construction. The code establishes standards for the construction of all new buildings, including single-family dwellings. The principal exclusions from coverage are farm buildings and single-family residences not located in a city (KRS 198B.010(4)).

Local enforcement of the Kentucky Building Code shall be the responsibility of local governments. Each local government shall employ 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 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). The building code is set out in 815 KAR Chapter 7.

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 presently recorded on a registry maintained by the Department for Local Government pursuant to KRS 95.450. Such cities, and urban-county governments, must establish police and fire departments (KRS 95.440, as interpreted by OAG 78-90 and reaffirmed in OAG 79-040). City officials have questioned this interpretation in the past, 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 Chapter 95.019 grants police countywide jurisdiction in all cities.

Appointment

In cities operating under the mayor-council plan, police officers and firefighters shall be appointed and removed solely at the pleasure of the mayor, except as otherwise provided by statute, ordinance, or contract (KRS 83A.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 shall be 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 shall have 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 90.300–90.410.

A. Noncivil Service. Police officers and firefighters in cities of the home rule class that 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, or 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 police officer or firefighter must be followed (KRS 95.450):

- Step 1** Charges are filed against the employee with the city clerk. Charges shall be in writing and shall be set out clearly.
- Step 2** Two days before the hearing, a copy of the charges and the scheduled date of the hearing shall be served on the employee.
- Step 3** Within 3 days of the filing of charges, the legislative body shall conduct a public hearing.

An employee may be suspended pending the hearing. Witnesses may be subpoenaed for the hearing.

The legislative body is limited in fixing punishment to reprimand, suspension not in excess of 6 months, reduction in grade, or 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 shall 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 shall communicate such charges 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. The commission may impose the following forms of discipline if it determines the charges are true: reprimand, suspension not to exceed 6 months, reduction in grade, or dismissal. An employee may appeal to the Circuit Court, where the action shall be 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 90.300–90.410. If the city does not establish a civil service system, police officers and firefighters shall be treated the same as other city employees.^a

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. Such 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.

^a The disciplinary procedures for police and firefighters set out in KRS 95.765 may be confusing, and it would appear 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.

Step 1 A charge shall be filed against the employee. The charge shall be in writing and shall clearly and distinctly set out every charge. The charge shall be filed with the mayor, who shall immediately notify the legislative body.

Step 2 Two days before the hearing, the employee shall be served with a copy of the charges.

Step 3 Within 3 days of the filing of the charges, the legislative body shall conduct a public hearing on the charges.

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. Such boards regulate the employment of police officers by the creation and operation of a merit system and establishment of a disciplinary system (KRS 67C.303).

The Police Officers' Bill Of Rights. The 1980 General Assembly enacted the Police Officers' Bill of Rights (KRS 15.520). 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 15.410–15.510, 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 were designed to supplement, not supersede, the existing provisions relating to police discipline.

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 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.⁶⁶

The 2015 General Assembly amended the statute to exempt police officers from the due process administrative rights afforded by KRS 15.520 in matters that relate 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, likely to be arrested, or is a suspect in any criminal investigation, the officer has the same constitutional due process rights of any person.

In conducting hearings pursuant to KRS 15.520:

- The hearing shall be conducted no earlier than 12 days after written notice is given to the accused officer.
- Copies of sworn statements or affidavits shall be provided to the accused officer before the hearing.
- Accusing citizens shall 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 shall be 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*.⁶⁷ The cause of action arose out of the mayor of Worthington's dismissal of the police chief, H.H. 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 Attorney General's opinion 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.⁶⁸

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.”⁶⁹ 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.”⁷⁰ In other words, KRS 15.520 provides procedural rights, not substantive rights.

Miscellaneous Statutes Relating To Police And Fire Departments

All Cities. All police officers and auxiliary police officers originally appointed after July 14, 1992, shall be at least 21 years old and shall have graduated from high school or have received a GED or a high school diploma through an external diploma program (KRS 95.951).

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 shall possess all powers of constables except for the service of civil process (KRS 95.019).

Each police officer shall take a written oath to faithfully discharge the duties of office (KRS 95.200).

Police officers and firefighters shall be 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 shall be 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 shall 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 shall hold their positions for “good behavior” (KRS 95.440).

A. Police. In all cities, the chief of police or other city police officer shall

- attend all sessions of the legislative body, execute its orders, and preserve order at the sessions;
- receive the same fees as sheriffs for similar services (KRS 83A.070 requires all fees to be paid into the city treasury); and
- execute process (KRS 95.480).

Each police officer in a city of the home rule class shall take a written oath to faithfully discharge the duties of the office and shall 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 pursuant to KRS 95.495, along with their urban-county counterparts, may, under certain conditions, work 10-hour, 4-day shifts (KRS 95.495).

Police officers employed by any city may make arrests anywhere in their county (KRS 95.019).

B. Firefighters. The chief of the fire department in all cities and urban-county governments shall

- either send an officer acting under his or her authority or personally be present at all fires and examine their causes;
- “direct and control the operations of the members of the fire department”;
- have the right to examine fireplugs, cisterns, etc.;
- have control over all buildings and equipment furnished the department; and
- perform such 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 shall be 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 shall receive not less than 2 weeks’ leave of absence annually with full pay (KRS 95.500). In cities not required to comply with the provisions of KRS 95.500, the legislative body may provide an additional 24-hour off-duty period every 14 days (KRS 95.505).

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 such departments (KRS 95.761).

Arrest Powers

Peace officers may make arrests without a warrant if there is probable cause to believe a violation of a restraining order has occurred or is about to occur (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. When assistance is requested, such an officer shall have 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 for 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 shall set out the number of officers, their manner of appointment, and rules and regulations governing their powers and duties (KRS 95.445). Such officers shall possess the same powers as regular police officers unless ordinance or statute expressly limits their powers (OAG 78-675). Auxiliary police are defined as “special law enforcement officers.” Such an officer is defined as one whose 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).

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 the officer's presence, and
- issuing citations for violations of KRS 186.430, 186.450, 186.510, and 186.540, which relate to motor vehicle licenses.

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 shall be given 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.400–95A.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 each police officer who attends the minimum number of training courses a supplemental compensation of \$3,000 (KRS 15.460).

In the 2016 Executive Branch Budget, as in a few previous budgets, this incentive was increased to \$4,000. This is a temporary increase. Unless renewed by a subsequent appropriation or an amendment to the underlying statute, the incentive will revert to its statutorily noted \$3,000.

Law Enforcement Telecommunicators

Kentucky law describes two types of law enforcement telecommunicators: CJIS telecommunicators 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 a number of 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 employed after 2006, a law enforcement telecommunicators basic training program. All law enforcement telecommunicators must complete annual training (KRS 15.560). CJIS telecommunicators must complete a CJIS telecommunications course. If a CJIS telecommunicator serving as of 2006 has completed the CJIS-full access course but not the CJIS telecommunications course, he or she is deemed to have met the requirements for qualification in that position. CJIS telecommunicators must complete annual training (KRS 15.565).

See KRS 15.530–15.590 for details regarding definitions, employment, training equivalency and other 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 Chapter 95A.500–95A.560).

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).

All law enforcement officials may cite violations of the open burning laws and issue citations in lieu of arrest (KRS 149.093).

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 Commission on Fire Protection and pays an annual \$3,000 supplement to each firefighter in a qualifying city who attends the requisite number of training programs (KRS 95A.250).

In the 2016 Executive Branch Budget, as in a few previous budgets, this incentive was increased to \$4,000. This is a temporary increase. Unless renewed by a subsequent appropriation or an amendment to the underlying statute, the incentive will revert to its statutorily noted \$3,000. The incentive to qualified volunteer fire departments was increased in the 2016 Executive Branch Budget as well, to \$11,000 from the statutorily noted sum of \$8,250.

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. If no arrest is made, a citation may be issued and the violator may be 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 the establishment of a rescue squad. Such squads may operate in conjunction with the fire department or as separate units. A rescue squad shall consist of at least 12 members and shall have at least one vehicle (KRS 39F.010–39F.990).

Rights Of Police And Firefighters

Members of police and fire departments shall abide by all laws enacted by the General Assembly and all rules promulgated by the legislative body, except that such 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, shall 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, shall 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).

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, 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 shall 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 shall 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 shall

be abolished. The constitutional county officers and such other elected officials as are provided in the comprehensive plan shall be elected, and the urban-county plan shall immediately become 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 the needs of their community. However, because KRS Chapter 67A cannot supersede constitutional provisions, whatever plan is 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 (Ky. Const., sec. 104). 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 shall be deemed a county and shall be deemed to contain such municipalities (retaining number and class) as 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 possessed by urban-county governments pursuant to the first two items above shall 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 the 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 shall be 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 shall be 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 shall be 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) shall be published in full; all other ordinances and resolutions may be published in summary. Such 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 reads in its entirety 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 as 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 such variable tax rates are permissible only with respect to real property.⁷¹

KRS 67A.860 requires property owners to 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 shall remain unaffected unless changed by election. The territorial boundaries of all such cities in the newly formed urban-county shall 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 shall appoint 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.200–67A.310 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 such fund 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 shall be 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.320–67A.340 and 67A.360–67A.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 participating 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. 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 five or seven members. 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 (KRS 65.8825) and are allowed a hearing (KRS 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). The entirety of the Local Government Code Enforcement Board Act is KRS 65.8801–65.8839.

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 shall set 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. Such 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 91.750–91.762).

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.910–67A.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.

Police And Firefighters' Retirement And Benefit Fund. KRS 67A.360–67A.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.

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 shall be 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 department, who shall be elected by ballot by the active members of the respective departments and shall serve for alternating terms of 2 years under rules adopted by the board.

KRS 67A.360–67A.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.710–67A.825. Proceedings to authorize, construct, and finance an improvement are initiated by the enactment of the first ordinance, which shall give notice to all affected residents of the project and shall describe the nature and scope of the

project. The first ordinance shall call 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 shall 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 shall be 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 shall be paid into a sinking fund.

Rent Regulation. KRS 65.875 prohibits urban-county governments from controlling rents on private property.

Safety Officers. Pursuant to KRS 67A.075, the legislative body of the 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 shall 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.871–67A.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 pursuant to KRS 67A.871–67A.894.

KRS 67A.875 provides for the procedure to be initiated by the enactment of an ordinance of initiation, which shall announce the project and make findings of fact. A public hearing must be held pursuant to KRS 67A.876 and 67A.878, and notice of such hearing shall 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 shall be repeated. There is a 30-day statute of limitation 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 such landfills (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.”⁷²

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.⁷³

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.”⁷⁴ 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.⁷⁵

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*.⁷⁶

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."⁷⁷

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.⁷⁸

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."⁷⁹

The court can perhaps be accused of having performed a feat of magic in writing 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 shall not 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:

- 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 67.825–67.875 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 will have a mayor elected at large, who will serve 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 Kentucky constitution and cannot be eliminated.

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). While it does prohibit the incorporation of any new cities after the merger, it will grant the remaining cities in the county annexation authority after a 12-year waiting period following the merger. Such annexations would require the approval of the legislative council of the consolidated local government. Also, any city in existence after the merger could 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 will 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 such counties, 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.301–67C.327).

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 from the concept of a charter county government, the General Assembly authorized a fourth type of merged government—a unified local government—under KRS 67.900–67.940. 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 (KRS 67.906), whereas in the charter county form of government, the county holds 55 percent of the membership of the committee (KRS 67.830). To date, as is the case with charter county governments, no unified local government has been created.

See KRS 67.900–67.940 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 July 2015

City	Population	County	Form
Adairville	889	Logan	MC
Albany	2,012	Clinton	MC
Alexandria	9,009	Campbell	MC
Allen	186	Floyd	COMM
Allensville*	—	Todd	—
Anchorage	2,420	Jefferson	MC
Arlington	310	Carlisle	COMM
Ashland	21,108	Boyd	CM
Auburn	1,352	Logan	MC
Audubon Park	1,508	Jefferson	MC
Augusta	1,163	Bracken	MC
Bancroft	508	Jefferson	COMM
Barbourmeade	1,258	Jefferson	COMM
Barbourville	3,174	Knox	MC
Bardstown	13,091	Nelson	MC
Bardwell	694	Carlisle	MC
Barlow	672	Ballard	COMM
Beattyville	1,244	Lee	MC
Beaver Dam	3,618	Ohio	COMM
Bedford	608	Trimble	COMM
Beechwood Village	1,365	Jefferson	MC
Bellefonte	866	Greenup	COMM
Bellemeade	894	Jefferson	COMM
Bellevue	5,892	Campbell	MC
Bellewood	332	Jefferson	COMM
Benham	470	Harlan	MC
Benton	4,357	Marshall	MC
Berea	14,882	Madison	MC
Berry	263	Harrison	COMM
Blackey	158	Letcher	MC
Blaine	47	Lawrence	COMM
Blandville*	—	Ballard	—
Bloomfield	1,052	Nelson	MC
Blueridge Manor	794	Jefferson	COMM
Bonnieville	259	Hart	COMM
Booneville	76	Owsley	COMM
Bowling Green	63,616	Warren	CM
Bradfordsville	298	Marion	COMM
Brandenburg	2,852	Meade	MC
Bremen	195	Muhlenberg	COMM
Briarwood	446	Jefferson	COMM
Brodhead	1,205	Rockcastle	COMM

Broeck Pointe	281	Jefferson	MC
Bromley	809	Kenton	MC
Brooksville	638	Bracken	MC
Brownsboro Farm	664	Jefferson	COMM
Brownsboro Village	328	Jefferson	COMM
Brownsville	826	Edmonson	COMM
Buckhorn	159	Perry	COMM
Burgin	965	Mercer	MC
Burkesville	1,515	Cumberland	MC
Burnside	843	Pulaski	MC
Butler	588	Pendleton	COMM
Cadiz	2,626	Trigg	MC
Calhoun	762	McLean	MC
California	86	Campbell	COMM
Calvert City	2,532	Marshall	MC
Camargo	1,124	Montgomery	COMM
Cambridge	179	Jefferson	COMM
Campbellsburg	828	Henry	MC
Campbellsville	11,237	Taylor	MC
Campton	431	Wolfe	COMM
Caneyville	620	Grayson	COMM
Carlisle	2,010	Nicholas	MC
Carrollton	3,886	Carroll	MC
Carrsville	49	Livingston	COMM
Catlettsburg	1,808	Boyd	MC
Cave City	2,394	Barren	MC
Centertown	443	Ohio	COMM
Central City	5,892	Muhlenberg	MC
Clarkson	895	Grayson	COMM
Clay	1,141	Webster	MC
Clay City	1,095	Powell	MC
Clinton	1,318	Hickman	MC
Cloverport	1,156	Breckinridge	MC
Coal Run Village	1,602	Pike	COMM
Cold Spring	6,170	Campbell	MC
Coldstream	1,137	Jefferson	COMM
Columbia	4,644	Adair	MC
Columbus	160	Hickman	MC
Concord	35	Lewis	MC
Corbin	7,389	Whitley, Knox	CM
Corinth	232	Grant, Harrison, Scott	COMM
Corydon	707	Henderson	MC
Covington	40,997	Kenton	CM
Crab Orchard	833	Lincoln	COMM
Creekside	316	Jefferson	COMM
Crescent Springs	4,010	Kenton	MC
Crestview	486	Campbell	COMM
Crestview Hills	3,340	Kenton	MC

Crestwood	4,847	Oldham	COMM
Crittenden	3,848	Grant	MC
Crofton	754	Christian	MC
Crossgate	230	Jefferson	COMM
Cumberland	2,103	Harlan	MC
Cynthiana	6,423	Harrison	COMM
Danville	16,690	Boyle	CM
Dawson Springs	2,737	Hopkins, Caldwell	MC
Dayton	5,433	Campbell	MC
Dixon	898	Webster	COMM
Douglass Hills	5,669	Jefferson	MC
Dover	245	Mason	COMM
Drakesboro	509	Muhlenberg	MC
Druid Hills	318	Jefferson	COMM
Dry Ridge	2,205	Grant	MC
Earlington	1,395	Hopkins	MC
Eddyville	2,577	Lyon	MC
Edgewood	8,769	Kenton	MC
Edmonton	1,568	Metcalfe	MC
Ekron	146	Meade	COMM
Elizabethtown	29,678	Hardin	MC
Elkhorn City	937	Pike	MC
Elkton	2,175	Todd	MC
Elsmere	8,536	Kenton	MC
Eminence	2,535	Henry	MC
Erlanger	18,797	Kenton	MC
Eubank	324	Pulaski, Lincoln	COMM
Evarts	925	Harlan	MC
Ewing	266	Fleming	COMM
Fairfield	114	Nelson	COMM
Fairview	146	Kenton	COMM
Falmouth	2,127	Pendleton	MC
Ferguson	943	Pulaski	MC
Fincastle	848	Jefferson	COMM
Flatwoods	7,335	Greenup	MC
Fleming-Neon	728	Letcher	MC
Flemingsburg	2,894	Fleming	MC
Florence	32,227	Boone	MC
Fordsville	530	Ohio	COMM
Forest Hills	457	Jefferson	COMM
Fort Mitchell	8,306	Kenton	MC
Fort Thomas	16,398	Campbell	MC
Fort Wright	5,781	Kenton	MC
Fountain Run	211	Monroe	COMM
Fox Chase	476	Bullitt	MC
Frankfort	27,830	Franklin	CM
Franklin	8,787	Simpson	CM
Fredonia	393	Caldwell	MC

Frenchburg	531	Menifee	COMM
Fulton	2,235	Fulton	CM
Gamaliel	366	Monroe	COMM
Georgetown	32,356	Scott	MC
Germantown	150	Bracken, Mason	COMM
Ghent	320	Carroll	COMM
Glasgow	14,470	Barren	MC
Glencoe	359	Gallatin	MC
Glenview	544	Jefferson	COMM
Glenview Hills	330	Jefferson	COMM
Glenview Manor	193	Jefferson	COMM
Goose Creek	305	Jefferson	COMM
Goshen	974	Oldham	COMM
Grand Rivers	374	Livingston	MC
Gratz	77	Owen	COMM
Graymoor-Devondale	2,950	Jefferson	MC
Grayson	4,058	Carter	MC
Green Spring	740	Jefferson	COMM
Greensburg	2,123	Green	MC
Greenup	1,157	Greenup	MC
Greenville	4,395	Muhlenberg	MC
Guthrie	1,437	Todd	MC
Hanson	736	Hopkins	COMM
Hardin	599	Marshall	MC
Hardinsburg	2,333	Breckinridge	MC
Harlan	1,639	Harlan	MC
Harrodsburg	8,394	Mercer	COMM
Hartford	2,750	Ohio	MC
Hawesville	1,002	Hancock	MC
Hazard	5,341	Perry	CM
Hazel	406	Calloway	COMM
Hebron Estates	1,145	Bullitt	COMM
Henderson	28,890	Henderson	CM
Heritage Creek**	1,118	Jefferson	MC
Hickman	2,202	Fulton	CM
Hickory Hill	115	Jefferson	COMM
Highland Heights	7,183	Campbell	MC
Hills and Dales	144	Jefferson	COMM
Hillview	8,080	Bullitt	MC
Hindman	741	Knott	MC
Hodgenville	3,256	LaRue	MC
Hollow Creek	810	Jefferson	COMM
Hollyvilla	551	Jefferson	COMM
Hopkinsville	32,205	Christian	MC
Horse Cave	2,344	Hart	MC
Houston Acres	503	Jefferson	COMM
Hunters Hollow	381	Bullitt	COMM
Hurstbourne	4,359	Jefferson	COMM

Hurstbourne Acres	1,874	Jefferson	COMM
Hustonsville	399	Lincoln	MC
Hyden	351	Leslie	COMM
Independence	26,819	Kenton	MC
Indian Hills	2,959	Jefferson	MC
Inez	684	Martin	COMM
Irvine	2,416	Estill	MC
Irvington	1,178	Breckinridge	MC
Island	457	McLean	COMM
Jackson	2,143	Breathitt	MC
Jamestown	1,884	Russell	MC
Jeffersonton	26,946	Jefferson	MC
Jeffersonville	1,704	Montgomery	COMM
Jenkins	2103	Letcher	MC
Junction City	2,283	Boyle, Lincoln	MC
Kenton Vale	112	Kenton	COMM
Kevil	620	Ballard	MC
Kingsley	392	Jefferson	COMM
Kuttawa	661	Lyon	MC
La Center	1,005	Ballard	MC
Lafayette	171	Christian	COMM
La Grange	8,619	Oldham	MC
Lakeside Park	2,779	Kenton	MC
Lakeview Heights	235	Rowan	COMM
Lancaster	3,864	Garrard	MC
Langdon Place	969	Jefferson	COMM
Lawrenceburg	11,103	Anderson	MC
Lebanon	5,680	Marion	MC
Lebanon Junction	1,917	Bullitt	MC
Leitchfield	6,873	Grayson	MC
Lewisburg	807	Logan	MC
Lewisport	1,698	Hancock	MC
Lexington	314,488	Fayette	UCG
Liberty	2,160	Casey	MC
Lincolnshire	150	Jefferson	COMM
Livermore	1,354	McLean	MC
Livingston	225	Rockcastle	COMM
London	8,126	Laurel	MC
Loretto	722	Marion	COMM
Louisa	2,455	Lawrence	MC
Louisville	763,623	Jefferson	CLG
Loyall	654	Harlan	MC
Ludlow	4,551	Kenton	MC
Lynch	709	Harlan	MC
Lyndon	11,372	Jefferson	MC
Lynnview	940	Jefferson	MC
Mackville	225	Washington	COMM
Madisonville	19,539	Hopkins	MC

Manchester	1,401	Clay	MC
Manor Creek	232	Jefferson	COMM
Marion	2,986	Crittenden	MC
Martin	602	Floyd	MC
Maryhill Estates	181	Jefferson	COMM
Mayfield	10,080	Graves	MC
Maysville	8,819	Mason	CM
McHenry	393	Ohio	MC
McKee	789	Jackson	MC
Meadowbrook Farm	138	Jefferson	COMM
Meadow Vale	758	Jefferson	COMM
Meadowview Estates	373	Jefferson	COMM
Melbourne	467	Campbell	COMM
Mentor	211	Campbell	COMM
Middlesboro	9,710	Bell	MC
Middletown	7,874	Jefferson	COMM
Midway	1,701	Woodford	MC
Millersburg	796	Bourbon	MC
Milton	572	Trimble	COMM
Mockingbird Valley	169	Jefferson	COMM
Monterey	137	Owen	MC
Monticello	6,090	Wayne	MC
Moorland	443	Jefferson	COMM
Morehead	7,045	Rowan	MC
Morganfield	3,578	Union	MC
Morgantown	2,475	Butler	MC
Morton's Gap	852	Hopkins	MC
Mount Sterling	7,208	Montgomery	MC
Mount Washington	14,028	Bullitt	MC
Mt. Olivet	346	Robertson	MC
Mt. Vernon	2,499	Rockcastle	MC
Muldraugh	985	Meade, Hardin	MC
Munfordville	1,640	Hart	MC
Murray	18,954	Calloway	MC
Murray Hill	605	Jefferson	COMM
Nebo	231	Hopkins	COMM
New Castle	926	Henry	COMM
New Haven	887	Nelson	COMM
Newport	15,354	Campbell	CM
Nicholasville	29,754	Jessamine	COMM
Norbourne Estates	454	Jefferson	COMM
Northfield	1,051	Jefferson	MC
North Middletown	650	Bourbon	COMM
Nortonville	1,190	Hopkins	MC
Norwood	381	Jefferson	COMM
Oak Grove	7,444	Christian	MC
Oakland	233	Warren	COMM
Old Brownsboro Place	365	Jefferson	COMM

Olive Hill	1,599	Carter	MC
Orchard Grass Hills	1,711	Oldham	MC
Owensboro	59,042	Daviess	CM
Owenton	1,550	Owen	MC
Owingsville	1,581	Bath	MC
Paducah	24,864	McCracken	CM
Paintsville	4,249	Johnson	MC
Paris	9,870	Bourbon	CM
Park City	555	Barren	COMM
Park Hills	3,007	Kenton	MC
Parkway Village	665	Jefferson	COMM
Pembroke	889	Christian	COMM
Perryville	761	Boyle	MC
Pewee Valley	1,529	Oldham	MC
Pikeville	7,012	Pike	CM
Pineville	1,762	Bell	MC
Pioneer Village	2,840	Bullitt	MC
Pippa Passes	643	Knott	MC
Plantation	859	Jefferson	MC
Pleasureville	844	Henry, Shelby	COMM
Plum Springs	490	Warren	COMM
Poplar Hills	372	Jefferson	COMM
Powderly	732	Muhlenberg	MC
Prestonsburg	3,347	Floyd	MC
Prestonsville	160	Carroll	COMM
Princeton	6,174	Caldwell	MC
Prospect	4,817	Jefferson, Oldham	MC
Providence	3,065	Webster	MC
Raceland	2,387	Greenup	MC
Radcliff	22,387	Hardin	MC
Ravenna	590	Estill	MC
Raywick	136	Marion	COMM
Richlawn	416	Jefferson	COMM
Richmond	33,533	Madison	CM
River Bluff	426	Oldham	COMM
Riverwood	459	Jefferson	COMM
Robards	513	Henderson	COMM
Rochester	156	Butler	MC
Rockport	269	Ohio	COMM
Rolling Fields	662	Jefferson	COMM
Rolling Hills	991	Jefferson	COMM
Russell	3,260	Greenup	MC
Russell Springs	2,511	Russell	MC
Russellville	7,056	Logan	MC
Ryland Heights	1,042	Kenton	COMM
Sacramento	461	McLean	COMM
Sadieville	332	Scott	COMM
Saint Regis Park	1,504	Jefferson	MC

Salem	739	Livingston	COMM
Salt Lick	321	Bath	MC
Salyersville	1,816	Magoffin	MC
Sanders	236	Carroll	COMM
Sandy Hook	630	Elliott	MC
Sardis	100	Mason	COMM
Science Hill	696	Pulaski	MC
Scottsville	4,411	Allen	MC
Sebree	1,559	Webster	MC
Seneca Gardens	712	Jefferson	COMM
Sharpsburg	343	Bath	COMM
Shelbyville	15,523	Shelby	MC
Shepherdsville	11,967	Bullitt	MC
Shively	15,713	Jefferson	MC
Silver Grove	1,120	Campbell	MC
Simpsonville	2,702	Shelby	COMM
Slaughters	209	Webster	COMM
Smithfield	107	Henry	COMM
Smithland	295	Livingston	COMM
Smiths Grove	736	Warren	COMM
Somerset	11,439	Pulaski	MC
Sonora	487	Hardin	COMM
South Carrollton	182	Muhlenberg	MC
Southgate	3,856	Campbell	MC
South Park View	7	Jefferson	COMM
South Shore	1,101	Greenup	COMM
Sparta	266	Gallatin, Owen	COMM
Spring Mill	299	Jefferson	COMM
Spring Valley	671	Jefferson	COMM
Springfield	3,055	Washington	MC
Stamping Ground	730	Scott	MC
Stanford	3,675	Lincoln	MC
Stanton	2,666	Powell	MC
St. Charles	271	Hopkins	COMM
St. Matthews	18,025	Jefferson	MC
Strathmoor Manor	346	Jefferson	COMM
Strathmoor Village	663	Jefferson	COMM
Sturgis	1,912	Union	MC
Sycamore	164	Jefferson	COMM
Taylor Mill	6,769	Kenton	COMM
Taylorville	1,028	Spencer	COMM
Ten Broeck	104	Jefferson	COMM
Thornhill	182	Jefferson	COMM
Tompkinsville	2,289	Monroe	MC
Trenton	386	Todd	COMM
Union	5,795	Boone	COMM
Uniontown	967	Union	MC
Upton	665	Hardin, LaRue	COMM

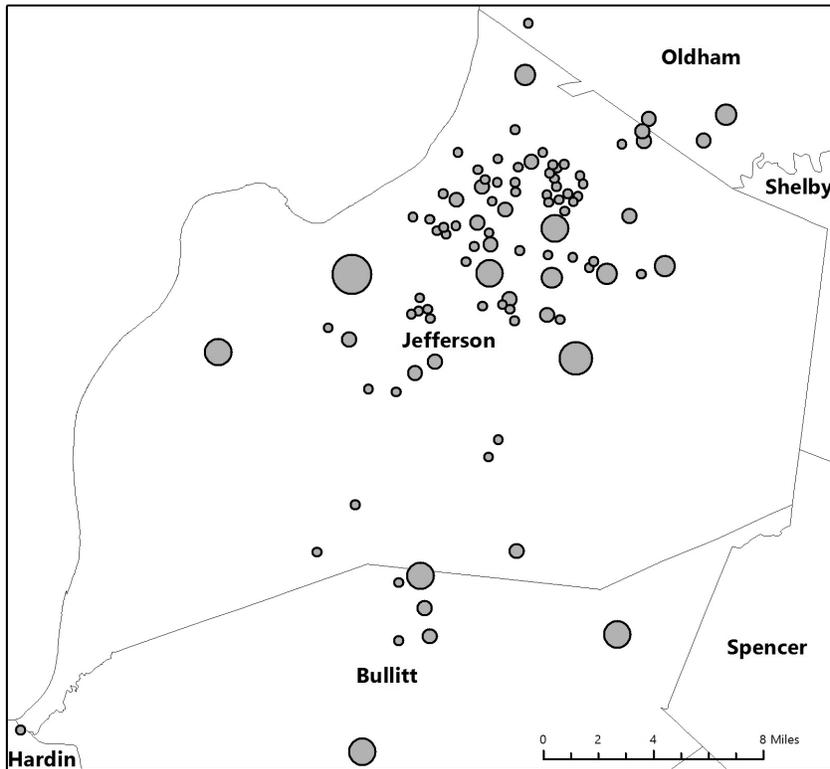
Vanceburg	1,448	Lewis	MC
Versailles	9,146	Woodford	MC
Vicco	320	Perry	COMM
Villa Hills	7,468	Kenton	MC
Vine Grove	5,760	Hardin	MC
Wallins Creek	149	Harlan	COMM
Walton	3907	Boone, Kenton	MC
Warfield	255	Martin	COMM
Warsaw	1,695	Gallatin	MC
Water Valley	282	Graves	COMM
Watterson Park	1,001	Jefferson	MC
Waverly	312	Union	COMM
Wayland	409	Floyd	COMM
Wellington	579	Jefferson	COMM
West Buechel	1,269	Jefferson	MC
West Liberty	3,330	Morgan	MC
West Point	868	Hardin	MC
Westwood	651	Jefferson	COMM
Wheatcroft	155	Webster	COMM
Wheelwright	551	Floyd	COMM
White Plains	872	Hopkins	COMM
Whitesburg	2,006	Letcher	MC
Whitesville	538	Daviess	COMM
Wickliffe	685	Ballard	MC
Wilder	3,088	Campbell	MC
Wildwood	271	Jefferson	COMM
Williamsburg	5,293	Whitley	MC
Williamstown	3,943	Grant, Pendleton	MC
Willisburg	287	Washington	MC
Wilmore	6,247	Jessamine	MC
Winchester	18,446	Clark	CM
Windy Hills	2,428	Jefferson	MC
Wingo	640	Graves	COMM
Woodburn	377	Warren	MC
Woodbury	92	Butler	COMM
Woodland Hills	717	Jefferson	COMM
Woodlawn	232	Campbell	COMM
Woodlawn Park	974	Jefferson	MC
Worthington	1,577	Greenup	MC
Worthington Hills	1,496	Jefferson	COMM
Worthville	184	Carroll	COMM
Wurtland	1,043	Greenup	COMM

Note: City government form was updated using data from the Kentucky League of Cities. CLG: consolidated local government; CM: city manager; MC: mayor/council; COMM: commission form; UCG: urban-county government; —: data unavailable.

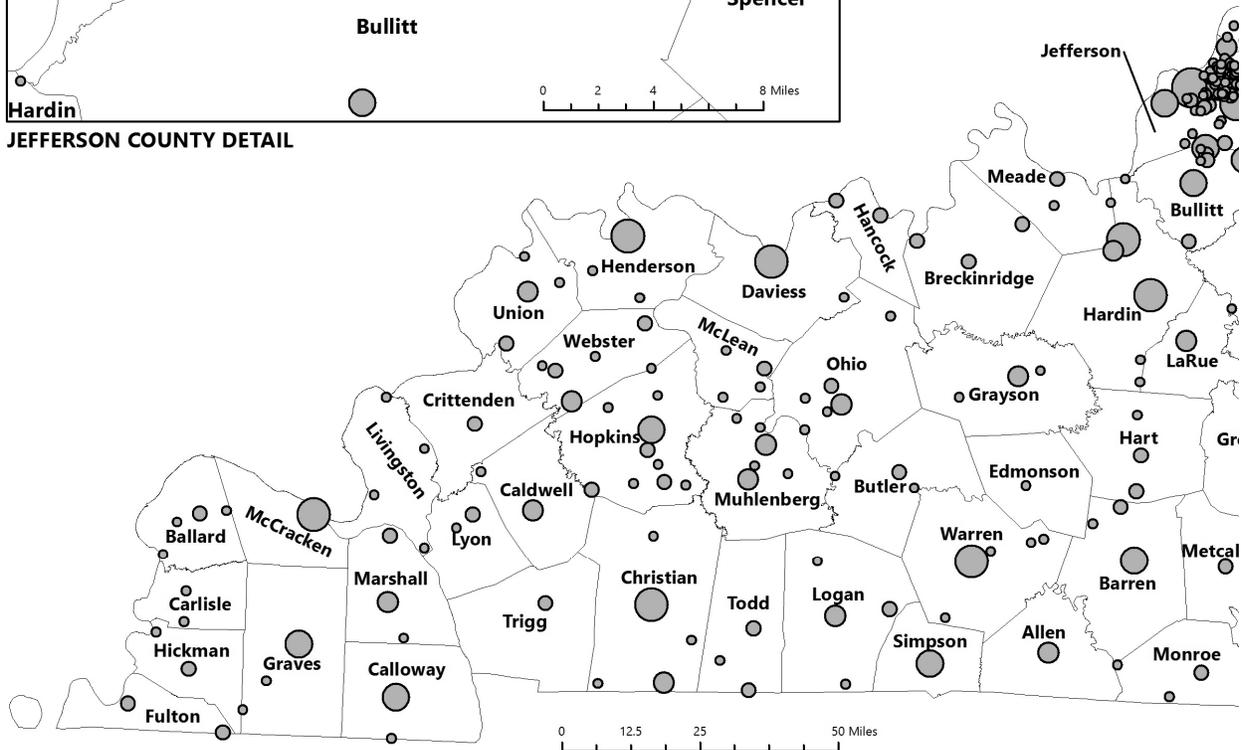
* Indicates a city not included in 2016 census data.

** Formerly Minor Lane Heights.

Source: US. Census Bureau. Data released May 19, 2016.

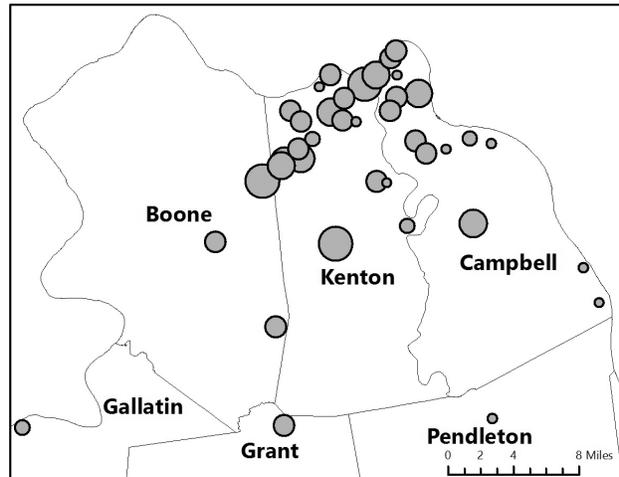


JEFFERSON COUNTY DETAIL

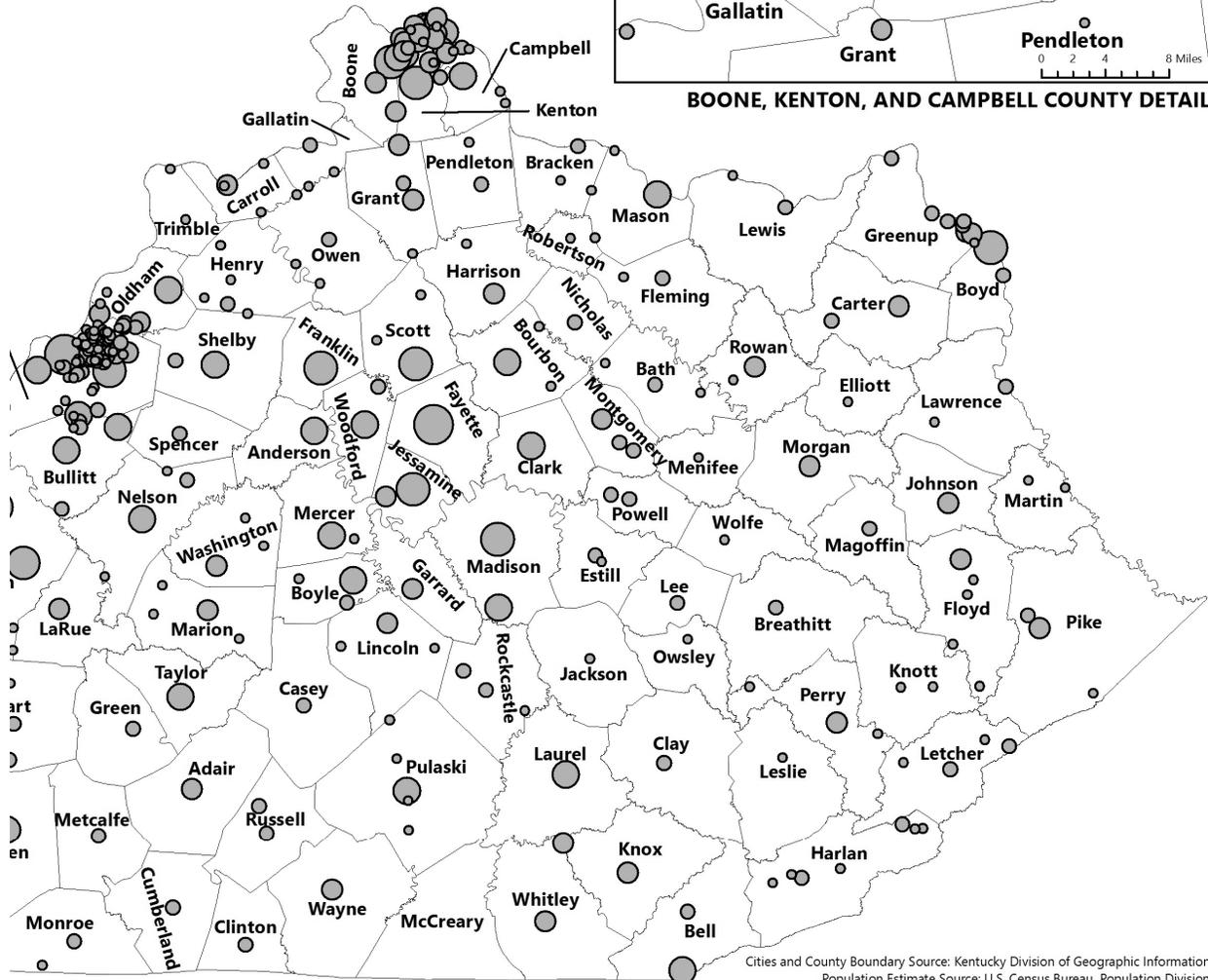


Kentucky Cities and Population 2015 Population Estimate

- 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



Cities and County Boundary Source: Kentucky Division of Geographic Information
 Population Estimate Source: U.S. Census Bureau, Population Division

July 2016

Appendix B

Statutory Tax Exemptions

Property Exempt From Local Taxation (KRS 132.200)

Agricultural Exemptions

- Farm implements and farm machinery owned or leased by a person actually engaged in farming and used in farm operation
- Livestock, ratite birds (such as ostriches), and domestic fowl
- 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

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 newspaper or operating a job printing plant shall be 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 such 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
 - Property certified as an alcohol production facility as defined in KRS 247.910
 - Tangible personal property held in a foreign trade zone established pursuant to 19 USC sec. 81, provided that the zone is activated in accordance with the regulations of the US Customs Service and the Foreign Trade Zone Board
 - Property certified as a fluidized energy production facility as defined in KRS 211.390
 - 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 The 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

Other Exemptions Outside KRS 132.200

Property Tax

- Kentucky constitution, sec. 171—Bonds of the state and of counties, municipalities, and taxing and school districts shall not be subject to taxation.^a
- 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

^a Many statutes creating taxing districts or authorizing the issuance of bonds by public entities also exempt the bonds from taxation.

- 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 103.200–103.280 is 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 132.192—Real and personal property owned by another state or political subdivision that provides a comparable exemption
- KRS 132.205—Bridges built by an adjoining state, the United States, or a commission over a boundary line stream
- KRS 132.208—Intangible personal property
- KRS 132.210—Fraternal benefit society funds
- KRS 132.760—Trucks, tractors, and buses used both within and outside Kentucky subject to the fee imposed by KRS 136.188, and trailers and semitrailers required to be registered under KRS 186.655
- KRS 136.300—The 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

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, shall be 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. Such cities 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 shall 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 shall 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 chart 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 chart does not include all relevant information or requirements for each levy.

Statutory Citation	Levying Authority	Type Of Tax	Voter Approval Required	Comments And Description
Special levy (KRS 65.125)	All cities	Ad valorem	Yes	City may obtain funding for special project, program, or service through 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 shall be in addition to general rate levied. Not subject to recall.
Riverport authority (KRS 65.580)	All cities	Ad 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-county governments (KRS 67A.710–67A.825, 67A.840–67A.849, 67A.871–67A.894, 67A.924–67A.928)	Urban-counties	Ad valorem, license fee, transient room tax	See comments	<ul style="list-style-type: none"> Special public improvement assessment (KRS 67A.710–67A.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. Purchase of development rights (KRS 67A.840–67A.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, occupations, trades, and professions collected from residents of urban-county; or transient room tax not to exceed 1% of rents.

- Sanitary sewers/wastewater collection projects (KRS 67A.871–67A.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.
- Parking authority ad valorem levy (KRS 67A.924–67A.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 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.

<p>Public service programs (KRS 68.510–68.550)</p>	<p>Urban-counties</p>	<p>Ad valorem, license</p>	<p>Yes</p>	<p>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 shall 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.</p>
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Kentucky Municipal Statutory Law

Supplemental tax (KRS 82.095)	Any city of 3,000–19,999 in counties containing city of 1 st 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). 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.”
General and special levies (KRS 91.280)	Cities of 1 st class			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 91.750–91.762)	Cities of 1 st 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.200–91A.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.550–91A.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.
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 97.550–97.600, if any. If park board has not been established, legislative body disburses funds.
Tax for band or orchestra (KRS 97.610)	Cities of the home rule class	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)	Cities of the home rule class	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 107.010–107.220)	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.

Kentucky Municipal Statutory Law

<p>Library taxes (KRS 173.020– 173.107)</p>	<p>Cities of 1st class</p>	<p>Ad valorem</p>		<p>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.</p>
<p>Library taxes (KRS 173.300– 173.410)</p>	<p>Counties and cities except cities of 1st class and counties containing city of 1st class</p>	<p>Ad valorem</p>	<p>Not required; one method of creation involves vote of the people</p>	<p>Governing body may provide library services under any of four methods:</p> <ul style="list-style-type: none"> • May on its own initiative establish independent library. • 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. • 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. • Governing body may contract with nearby library. <p>Maximum and minimum rates:</p> <ul style="list-style-type: none"> • Counties containing city of 1st class: no more than 15 cents per \$100 worth of property assessed for local taxation • Library regions: 3 or 10 cents per \$100 worth of property assessed for local taxation • All others: 5 or 15 cents per \$100 worth of property assessed for local taxation • Statutes refer to minimum and maximum appropriations but do not authorize tax between minimum and maximum levels.
<p>Local air board (KRS 183.132– 183.165)</p>	<p>Counties, cities, or any combination</p>	<p>Ad valorem</p>	<p>No for general levies, yes for assessments to support issuance of</p>	<p>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</p>

Public road district (KRS 184.010–184.300)	Board of directors of district	Ad valorem, based on benefits received	construction bonds Voters must initiate creation of district	vote of the people. If approved, assessments levied to meet expenses. District may be established in cities with certain populations under procedures for creating non-taxing districts (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.
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Appendix E

Central Assessment Of Property

Property Centrally Assessed And Collected

Omitted Personal Property (KRS 132.310–132.340)

Railroad Car Lines (KRS 136.120–136.180)

Commercial Watercraft (KRS 136.1802–136.1806)

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 132.130–132.180)

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.

Unmined Coal, Oil, And Gas Reserves Held Separately From Surface Real Property (KRS 132.820)

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.

Public Service Company Property (KRS 136.120–136.180).

Telecommunications Company Property (KRS 132.486, KRS 136.602–136.660)

Telecommunications 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.

Interstate Trucks, Tractors, Trailers, Semitrailers, And Buses (KRS 136.1873–136.1877)

Endnotes

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- ⁷ *Debates of the 1890 Constitutional Convention*, 1892. P. 2,129.
- ⁸ Manning, John W. *Government in Kentucky Cities*. Local Government Study No. 3. Lexington: Kentucky Municipal League, 1937. P. 22.
- ⁹ *Matthews v. Allen, Ky.*, 360 S.W.2d 135 (1962).
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- ¹³ *City of Jeffersontown v. City of Hurstbourne, Ky. App.* 684 S.W.2d 23 (1984).
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- ²⁰ *City of Owensboro v. McCormick, Ky.*, 581 S.W.2d 3 (1979).
- ²¹ *Smith v. City of Kuttawa, Ky.*, 1 S.W.2d 979, 982 (1928), quoting *In Re Mayor of New York*, 2 N.E. 642.
- ²² *Nourse v. City of Russellville, Ky.*, 78 S.W.2d 761, 764 (1935).
- ²³ *Boyle v. Campbell, Ky.*, 450 S.W.2d 265, 268 (1970), quoting 37 Am. Jur., Municipal Corporations, sec. 165(787).
- ²⁴ *Louisville & Nash. R.R. v. Commonwealth, Ky.*, 488 S.W.2d 329, 330 (1972).
- ²⁵ *City of Harlan v. Scott, Ky.*, 162 S.W.2d 8, 9 (1942).
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- ²⁷ *Boyle v. Campbell, Ky.*, 450 S.W.2d 265, 267 (1970).
- ²⁸ *Ibid.*
- ²⁹ *In Re Hubbard*, 396 P.2d 809 (Calif., 1964).
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- ⁴⁴ *Lasher v. Commonwealth*, Ky., 418 S.W.2d 416, 417 (1967).
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- ⁴⁶ *Firestone Textile Co. Div. v. Meadows*, Ky., 666 S.W.2d 730, 731 (1983).
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- ⁶² *City of Renton v. Playtime Theatres, Inc.*, 106 S. Ct. 925 (1986). See also *Young v. American Mini Theatres*, 96 S. Ct. 2440 (1976).
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