

ORDINANCE NO. **BG2025 - 26**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE REPEALING AND REVISING
CHAPTER 21 (PUBLIC INFRASTRUCTURE,
RIGHTS-OF-WAY AND STORMWATER),
SUBCHAPTER 21-2 (STORMWATER QUALITY)
RELATED TO STORMWATER REQUIREMENTS
OF THE CITY OF BOWLING GREEN CODE OF
ORDINANCES

WHEREAS, the City of Bowling Green staff and elected officials had work sessions over the years on the topics of fee-in-lieu of construction (FILOC) and stormwater utility, most recently at the Strategic Goal Planning Work Session on January 30, 2025 and a work session at the March 18, 2025 Board of Commissioners regular meeting; and,

WHEREAS, following direction from the Board of Commissioners to proceed with amending the ordinance to include FILOC and stormwater utility, the Environmental Compliance Division of the Public Works Department worked with consultants on proposed ordinance language; and,

WHEREAS, the City now desires to repeal and revise Chapter 21 (Public Infrastructure, Rights-of-Way and Stormwater), Subchapter 21-2 (Stormwater Quality) related to stormwater requirements; and,

WHEREAS, it is in the best interest of the City to approve the repeal and amendments of Subchapter 21-2 of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 21 (Public Infrastructure, Rights-of-Way and Stormwater), Subchapter 21-2 (Stormwater Quality) of the Code of Ordinances is hereby repealed and amended as follows:

...

21-2 STORMWATER QUALITY

21-2.01 Purpose.

The purpose of this Subchapter is to safeguard persons, protect property, and prevent damage to the environment. The United States Environmental Protection Agency, through the Clean Water Act, promulgated Municipal Separate Storm Sewer System (MS4) Phase II regulations that are enforced by the Kentucky Division of Water (KYDOW) through the MS4 permit issued to the City of Bowling Green (City). The City constructs, operates, and maintains a separate storm sewer system to serve the community. The City completes these tasks in accordance with State and Federal requirements.

21-2.02 Definitions.

The terms as used in this Subchapter are further defined in the City of Bowling Green Stormwater Best Management Practices Manual (“BMP Manual”), which is hereby incorporated by reference. The following definitions are used in this Subchapter:

“Developed Property” shall mean any real property which has been altered from its natural state by Grading or the addition of any improvements, including but not limited to buildings, structures, or other impervious areas.

“Equivalent Residential Unit” (ERU) shall mean the impervious surface area associated with a single-family residential property in the Service Area as calculated using statistical methods. The initial ERU for the City shall be four thousand and two hundred (4,200) square feet.

“Fee-in-Lieu of Construction” (FILOC) shall mean a payment made by a developer in lieu of the obligation of building required stormwater quality infrastructure on the development site.

“Non-Developed Property” shall mean real property which remains unaltered from its natural state.

“Non-Single Family Residential” (Non-SFR) shall mean residential multi-family dwelling property, commercial property, or industrial property.

“Person” shall mean any individual, association, organization, partnership, firm,

corporation or other entity recognized by law.

“Private Drainage Facilities” shall mean drainage systems located on private property and designed to discharge directly through pipes, channels or other infrastructure, or indirectly as sheet flow or subsurface flow into the City's drainage system.

“Service Area” shall mean all land and underlying subsurface karst features including caves, underground streams, sinkholes, springs, and cavities within the corporate limits of the City.

“Single-Family Residential” (SFR) shall mean residential property containing one (1) or two (2) dwelling units.

“Stormwater Management Fee” shall mean a monthly fee established, charged, and collected for the purpose of managing, operating, and maintaining the surface, subsurface, and storm drainage system within the Service Area.

“Stormwater Utility” (Utility) shall mean a program established by the City to protect the waterways, subsurface karst features, and land in the Service Area. The Utility shall act as the agent for the City in the management, operation, and maintenance of the surface, subsurface, and storm drainage system.

21-2.03 Legal Authority.

Pursuant to Kentucky Revised Statute (KRS) 91A.510-530, the City has the authority to establish and implement a stormwater management program, including the establishment of a stormwater utility.

- a. The Utility shall be established and operated as a Division of the Public Works Department and supported by necessary City resources.
- b. The Environmental Manager of the Public Works Department shall serve as the Utility Manager.
- c. The Utility shall have the authority to manage the following:

1. Exercising all lawful powers necessary and appropriate for the construction, purchase, condemnation, acquisition/acceptance, maintenance, management, operation, and regulation of a separate storm sewer system consisting of both constructed and naturally occurring elements;
2. Developing, adopting and carrying out policies and procedures as needed to implement this Subchapter and to carry out other responsibilities, including but not limited to the billing and collection of monthly stormwater management fees;
3. Administering and enforcing this Subchapter and all procedures relating to the planning, acquisition, design, construction, and inspection of stormwater facilities in accordance with the BMP Manual;
4. Developing and implementing a program that includes administration, inspection, and enforcement activities as it pertains to Private Drainage Facilities to ensure continued compliance with the requirements of this Subchapter and other laws and regulations;
5. Advising the Board of Commissioners and City Manager on an annual basis regarding matters relating to the Utility;
6. Establishing and implementing programs to maintain compliance with applicable water quality standards established by State and/or Federal agencies as now or hereafter adopted and maintain compliance with the City's MS4 permit; and,
7. Conducting public education programs related to protection and enhancement of the drainage system.

21-2.04 Liability Limitations.

- a. Nothing contained in this Subchapter is intended to be or shall be construed to create or form the basis for liability on the part of the City, its officers, employees, agents, or the Utility for any injury or damage resulting from flooding or flood related events due to improperly sized drainage facilities or surface and storm events which exceed design capacities or the capacity of the karst

features underlying Warren County and the City, including caves, sinkholes, springs, and underground streams.

b. Floods from groundwater, surface water, and stormwater runoff may exceed the capacity of surface, subsurface karst features, and stormwater drainage facilities constructed and maintained pursuant to this Subchapter. This Subchapter does not imply that designated property responsible for the management of surface and stormwater drainage shall always be free from surface, groundwater, and stormwater flooding or riverine flooding, which occurs when a river, stream or other watercourse overflows its banks. Further, this Subchapter does not purport to reduce the need or the necessity for any property owner, developer, or applicant to obtain flood insurance.

c. The Utility shall use reasonable diligence and care to maintain free flow of surface and stormwater and to avoid any interruption in service. The use of the surface, subsurface, and storm drainage on the premises shall be at the sole risk of the user.

21-2.05 Facility Ownership.

a. The City has property interests in all elements of the surface, subsurface, and storm drainage system in the public rights-of-way. These interests extend to all the easements or tracts dedicated to and accepted by the City. The Utility shall act as the agent for the City in the management, operation, and maintenance of the surface, subsurface, and storm drainage system. All other surface, subsurface, and stormwater drainage systems are considered private systems and are the sole responsibility of the property owner, developer and/or applicant to operate and maintain.

b. All funds on deposit in the City's Stormwater Management Program and future revenues shall be used exclusively for the maintenance, inspection, improvement, enforcement, and other activities of the Utility for the management of Storm Drainage System.

c. The City may accept or purchase, upon recommendation by the Utility, ownership (or other property interest) and the responsibilities for privately built drainage facilities when the

following conditions are met:

1. Ownership of the facility by the City would provide public benefit and the Utility has adequate resources and access rights to maintain the facility;
2. Necessary and appropriate property interests are offered by the property owner, developer and/or applicant at no cost or a reasonable cost in the judgment of the Utility; and,
3. The facility substantially meets current standards, as determined by the Utility, or is brought up to current standards by the owner, developer and/or applicant.

21-2.06 Establishment and Uses of Stormwater Management Fee.

a. The Utility is established to protect the waterways, subsurface karst features and land in the Service Area. The cost of designing, developing, improving, operating, maintaining, and monitoring the surface and storm drainage system required in the Service Area is, therefore, allocated, to the extent as practicable, to all real property based on the impact on the stormwater system. In order to provide revenue to fairly allocate those costs, a fee system is established.

b. All revenues collected on behalf of the Utility, including revenues from grants, permit fees, and other charges collected pursuant to this Subchapter, shall be deposited into a special revenue fund. The City may make additional appropriations to this fund as may be determined appropriate and necessary. All disbursements from the special revenue fund shall be for the following purposes:

1. The acquisition by gift, purchase or condemnation of real property, and interests therein, necessary to construct, operate, and maintain the separate storm sewer system;
2. All costs of administration and implementation of the stormwater management program, including the establishment of reasonable operation and capital reserves to meet unanticipated or emergency stormwater management requirements and all costs associated with the City's MS4 permit;
3. Engineering and design, debt service and related financing expenses,

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construction costs for new facilities and enlargement or improvement of existing facilities, including flooding mitigation assessments and improvements;

4. Utility mapping and assessment of all stormwater infrastructure in the Service Area;
5. Operation and maintenance of the stormwater system;
6. Monitoring, surveillance, and inspection of stormwater control devices;
7. Water quality monitoring and water quality programs;
8. Retrofitting developed areas for pollution control;
9. Inspection and enforcement activities;
10. Costs of public education related to stormwater and associated issues;
11. Billing and administrative costs, including property record maintenance and updates; and,
12. Other activities which are reasonably required.

c. A monthly service fee is imposed upon all real property in the Service Area, beginning no earlier than January 1, 2027, to fund stormwater management programs. This service fee shall be known as the Stormwater Management Fee (“Fee”). Any real property developed or added through annexation into the City after January 1, 2027, shall also be subject to a monthly service fee. The Fee may be adjusted as needed and will be increased every five (5) years based on the Consumer Price Index Report over the previous five (5) year period.

1. The monthly stormwater management fee is based on the amount of impervious area on each property in the Service Area.

2. For purposes of determining the Stormwater Management Fee, all properties in the Service Area are classified into one (1) of the following classes:

- i. Single-family residential (SFR) property including one (1) and two (2)

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dwelling units;

ii. Non-single family residential (non-SFR) property including multi-family residential, commercial and industrial; or

iii. Non-developed property.

3. All single-family residential properties with one (1) dwelling unit in the Service Area shall be considered equivalent to one (1) ERU and be charged a flat stormwater management fee, as provided herein. All single-family residential properties with two (2) dwelling units in the Service Area shall be considered equivalent to two (2) ERUs and be charged the stormwater management fee, as set forth herein.

4. The fee for non-SFR property in the Service Area shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by the ERU. At the sole discretion of the Utility, the impervious surface area of non-SFR property may be approximated through site examination, mapping information, aerial photographs, and other available information. The minimum Stormwater Management Fee for non-SFR property shall equal the base rate for single-family residential property.

d. The following schedule of monthly rates for stormwater management fees, as periodically adjusted pursuant to 21-2.06(c), shall apply to each property in the Service Area beginning January 1, 2027, as follows:

<u>Rate Category</u>	<u>Rate per month</u>
SFR - one (1) dwelling unit	\$4.00
SFR - two (2) dwelling units	\$4.00 per dwelling unit
Non-SFR - three (3) or more dwelling units	\$4.00 per dwelling unit
Non-SFR - commercial/industrial/other	\$4.00 per ERU

e. All real property in the Service Area contributes to runoff and either uses or benefits from the maintenance of the surface and stormwater system. Therefore, all real property in the City, including property that is tax exempt from property tax by Kentucky Revised Statute, as amended,

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shall be subject to the fee.

f. Property which is owned by any local, state, or federal government entity shall be subject to the fee.

g. All Federal, State, County and City roads are exempt from the fee and are considered to be part of the City drainage system. However, this does not convey maintenance responsibility from the respective agencies to the City.

h. Non-developed property in its natural state shall be exempt from the fee.

21-2.07 Billing; Interest and Penalties; Liens; Abatement.

a. For the purposes of billing and collecting stormwater fees, the Utility is authorized to contract with billing agent(s). Payment of the stormwater management fee is to be made to the City or its designated billing agent(s) by approved methods and terms, including all applicable late fees.

b. The City or its designated agent(s) may seek redress and exercise all collection remedies available under Kentucky law.

c. Properties with unpaid fees will not be eligible for new permits of any kind until delinquencies are settled.

d. If a customer moves out of a property and has a delinquent account balance, this balance will be applied to the customer's new account, or other account under the customer's name.

e. If a bill is rendered to a party who is not the property owner and the bill becomes unpaid and/or delinquent, the property owner shall bear the responsibility of payment.

f. The City Attorney, in cooperation with the Utility, is granted authority to use best judgment and discretion to settle any delinquency as deemed to be in the best interest of the City.

21-2.08 Adjustment and/or Amendment of Stormwater Management Fee.

a. A property owner or customer may request adjustment of the fee by submitting the request in writing to the utility within thirty (30) days after the date the assessment notice or the bill is

mailed or issued to the property owner. Grounds for adjustment of the fee include:

1. Incorrect classification of the property for purposes of determining the fee;
2. Errors in the square footage of the impervious surface area of the property;
3. Mathematical errors in calculating the fee to be applied to the property; or,
4. Errors in the identification of the property owner of, or a customer associated

with, a property subject to the fee.

b. The Utility shall make a determination within sixty (60) days after receipt of the property owner's completed written request for adjustment of the fee. The Utility's decision on a request for adjustment of the fee shall be final.

21-2.09 Construction Site Stormwater Management.

a. Permits Required, Exceptions, Requirements and Fees.

1. Permits are required to be obtained from the City for all site construction projects and/or land disturbances as set out in the BMP Manual. The Developer shall also coordinate with the KYDOW and the U.S. Army Corps of Engineers to determine whether permits are required from those agencies before construction begins. Each Developer shall submit an application to the Utility on a form provided by the Utility.

2. No permit shall be required from the City for emergency activity that is immediately necessary for the protection of life, property or natural resources, or for nursery and agricultural operations.

3. All permit applications for activities disturbing more than seven hundred and fifty (750) square feet of soil shall include the appropriate review and inspection permit fee. This review and inspection fee shall be thirty-five (\$35.00) dollars for all residential building permits and two tenths of one cent (\$0.002) per square foot of disturbed area for all other building permits with a minimum fee of seventy-five (\$75.00) dollars.

4. The Utility reserves the right to inspect the site prior to any construction activity in furtherance of the review process.

5. The Utility's approval of the permit is for general compliance with local requirements and the KYDOW General Permit. The designer is ultimately responsible for the details of design of the plan, with the property owner being responsible for implementation.

b. Right of Entry. The Utility or its designated agent may enter the property of the applicant as deemed necessary to make regular inspections to ensure compliance with this Subchapter.

c. General Requirements for Construction Site Stormwater Management. Requirements for the design, maintenance, and implementation of Best Management Practices (BMPs) are located in the BMP Manual. Site construction in the Service Area shall comply with the provisions of the BMP Manual.

21-2.10 Illicit Discharge Detection and Elimination (IDDE).

a. Purpose and Applicability.

1. This section applies to all discharges entering the Municipal Separate Storm Sewer System (MS4) or any stormwater conveyance within the City, from both developed and undeveloped lands, unless specifically exempted by the Utility Manager, Public Works Director, or designee.

2. The Utility is responsible for administering, implementing, and enforcing this section. Compliance with these standards does not guarantee the absence of pollution or contamination.

b. Prohibited Activities.

1. Illicit Discharges. No person shall discharge or cause the discharge of any material other than naturally occurring stormwater into the MS4 or any stormwater conveyance. This

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includes pollutants, hazardous materials, or any discharge that violates water quality standards or creates unsafe conditions in public rights-of-way.

2. Illicit Connections. No person shall construct, use, or maintain any illicit connection to the MS4. This includes connections made in the past that were previously lawful. A violation occurs if any line conveying sewage, pollutants, or hazardous materials is connected to the MS4 or allowed to remain connected.

c. Exemptions. The following discharges are exempt, provided they do not violate water quality standards:

1. Potable water line flushing and other potable sources;
2. Landscape irrigation or lawn watering;
3. Diverted stream flows, rising or pumped uncontaminated groundwater, or foundation/footing drains;
4. Air conditioning condensation, springs, and natural wetland or riparian flows;
5. Noncommercial vehicle washing;
6. Swimming pool water discharged to the ground (not streets or storm drains);
7. Firefighting activities and routine municipal operations (e.g., street sweeping);
8. Dewatering of existing ponds, with a Kentucky Division of Water permit;
9. Discharges authorized by the Utility to protect public health and safety;
10. Properly authorized fluorescent dye testing; and,
11. Non-stormwater discharges permitted under a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver, or order in full compliance with applicable regulations.

d. Enforcement, Suspension and Access.

1. Emergency Suspension. The Utility may suspend access to the MS4 without

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prior notice when necessary to prevent or halt an actual or threatened discharge that poses an imminent danger to people, the environment, or waters of the United States.

2. Termination of Access. Any person found to be discharging in violation of this section may have MS4 access terminated. Reconnection without prior City approval constitutes a violation.

3. Industrial and Construction Discharges. All industrial or construction activities subject to an NPDES permit must comply fully with that permit. Proof of compliance may be required before discharge is allowed. If an illicit discharge is detected, the Utility may enforce this section as applicable.

e. Inspections and Monitoring.

1. The Utility may inspect any facility or operation subject to this section to verify compliance.

2. Operators must:

i. Allow immediate access to premises for inspection, sampling, and record review;

ii. Maintain monitoring and sampling equipment in good condition and calibrate as necessary;

iii. Remove any obstruction that prevents safe inspection access;

iv. Install monitoring equipment when required by the Utility; and,

v. Avoid interference with inspections. Denial of access constitutes a violation.

If access is refused, and probable cause exists to believe a violation may be occurring, the Utility may seek a search warrant or other legal remedy to obtain entry.

f. Pollution Prevention and Best Management Practices (BMPs).

1. The Utility shall review and approve BMPs for any activity or facility that may

cause pollution or discharge hazardous materials. Property owners and operators must, at their own expense, implement and maintain structural and non-structural BMPs to prevent illicit discharges.

2. Where necessary, owners shall prepare and follow a Stormwater Pollution Prevention Plan (SWPPP) consistent with NPDES requirements.

g. Watercourse Protection. Property owners or lessees through whose property a watercourse passes must keep it free of debris, vegetation, and obstructions that could impede flow or cause pollution. Structures within or adjacent to watercourses must be maintained to prevent hazards or interference with flow.

h. Spill Notification and Response. Any person responsible for a facility or operation that releases materials which may cause pollution must immediately act to contain and clean up the spill.

1. Hazardous materials: Notify emergency services immediately.

2. Nonhazardous materials: Notify the Utility by phone or email no later than the next business day, and confirm in writing within three (3) business days. Commercial and industrial operators must keep written records of all discharges and response actions for at least three (3) years.

21-2.11 Post Construction Water Quality.

a. Applicability. For construction meeting either of the criteria herein below, review and approval of the Post Construction Stormwater Quality Management Plan as described in the BMP Manual is required prior to the issuance of any permit:

1. Disturb more than one (1) acre, and create greater than ten thousand (10,000) square feet of new impervious surfaces, irrespective of existing impervious surfaces.

2. Hotspot land uses as defined below:

i. Automotive fueling facilities;

ii. Automotive maintenance and repair facilities;

iii. Restaurants with grease collection and disposal; and,

iv. Other land uses as determined to have a high potential of pollutant discharge into the MS4 as determined by the Utility.

b. Fee-in-Lieu of Construction (FILOC) Option for New Development.

1. Purpose and Applicability. In lieu of the construction of stormwater quality infrastructure as described in 21-2.11.a, developers may elect to pay a Fee-in-Lieu of Construction (FILOC) for projects that will disturb over one (1) acre of property and add ten thousand (10,000) square feet of impervious surfaces. Election of the FILOC option is not available for volumetric controls required by the BMP Manual and other City or Warren County regulations. Properties with existing water quality control systems may, at the sole discretion of the Utility, remove those systems and participate in the FILOC program, provided that the remaining infrastructure on site meets volumetric control requirements.

2. Fee Determination.

i. Subdivision Projects: six hundred (\$600) dollars per acre to one thousand and eight hundred (\$1,800) dollars per acre based on density; or,

ii. Commercial/Industrial Projects: twelve thousand (\$12,000) dollars per acre.

iii. FILOC fees will be adjust annually on July 1st based on the Consumer Price Index Report issued in December of the previous year.

3. Fee Payment and Use.

i. The FILOC must be paid prior to any land disturbance or the issuance of any permits for development activity.

ii. Payment shall be deposited into a capital project fund for the purpose of stormwater management program projects.

c. Review and Issuance of Permit.

1. For projects requiring post construction water quality, plans shall be submitted

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as part of the application process (e.g. building permit, detailed development plan or subdivision). The plans shall conform to the design criteria set forth in the BMP Manual. Based on the review of the permit application, the Utility will:

- i. Approve the permit application;
- ii. Approve the permit application subject to such conditions as may be necessary to meet the requirements/intents of the objectives of the Subchapter, and issue the permit subject to these conditions; or,
- iii. Deny the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

2. The Utility reserves the right to inspect the site prior to any construction activity in furtherance of the review process.

3. The Utility's approval of the permit is for general compliance with local requirements and the KYDOW general permit. The designer is ultimately responsible for the details of design, with the property owner being responsible for implementation.

d. Maintenance. The property owner shall be responsible for all maintenance and record keeping as detailed in the Maintenance Agreement set forth in the BMP Manual. Property owners are responsible for the ongoing maintenance, replacement, and annual reporting requirements for all on-site water quality control systems.

e. Right of Entry. The Utility and its agents shall have right of entry to inspect, observe, test or perform any related activity to the installation, operation, maintenance and function of the stormwater infrastructure.

f. General Requirements for Post Construction Stormwater Control. Requirements for design, maintenance and implementation of BMPs are located in the BMP Manual.

21-2.12 Penalties; Stop Work Orders; Cost of Abatement; Liens.

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a. Enforcement proceedings for this Subchapter shall be initiated by the issuance of a notice of violation or a citation by a code official as set out in the procedures in Chapter 2 (Administration) of this Code. In addition to all procedures as set out in Chapter 2 (Administration) and other available remedies, the Utility may also take immediate action to remedy a violation of this Subchapter, including the issuance of a Stop Work Order, for construction under an active permit, detailed development plan or subdivision if work is not in compliance with the requirements of this Subchapter. Any person violating any portion of this Subchapter shall be subject to civil penalties as set out in Chapter 27 (Property Code) of this Code.

b. Any person causing a violation of this Subchapter which requires the Utility to expend public funds for the response to the violation, its abatement or the cleanup or removal of any prohibited discharges, pollutants or hazardous materials shall be liable to the Utility for all recoverable costs incurred by the Utility for such response, cleanup and removal, including but not limited to personnel costs of the Police Department, Fire Department, Public Works Department and other responding City departments, replacement costs of supplies and equipment contaminated as a result of the discharge, proper disposal of offending materials, cleanup, evacuation and administrative and other expenses, including legal expenses, incurred in recovering such costs. Any such illegal discharges shall be considered a public health hazard and nuisance and the Utility shall have a lien against the property for its recoverable costs.

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

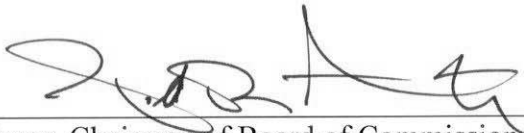
3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on

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November 4, 2025, and given final reading on November 18, 2025,
and said Ordinance shall be in full force and effect upon signature, recordation and publication in
summary pursuant to KRS Chapter 424.

ADOPTED: November 18, 2025

APPROVED: 
Mayor, Chairman of Board of Commissioners

ATTEST: 
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager