

COMMONWEALTH OF KENTUCKY
CALLOWAY COUNTY FISCAL COURT
ORDINANCE NO. 07-1120-A

AN ORDINANCE ESTABLISHING THE MINIMUM REGULATIONS GOVERNING THE MAINTENANCE OF STRUCTURES AND PREMISES ESSENTIAL FOR THE PROTECTION OF THE HEALTH AND SAFETY OF THE CITIZEN OF CALLOWAY COUNTY.

WHEREAS, KRS 82.700 and KRS 381.770 authorized local governments in Kentucky to enact ordinances regulating real property in order to protect the health and safety of the citizens of Commonwealth of Kentucky; and WHEREAS, the Calloway County Fiscal Court desires to protect the health and safety of the citizens of Calloway County through the reasonable regulation of real property to insure that all premises and structures within Calloway County are safe, the following ordinance is hereby adopted;

SECTION I. DEFINITIONS:

As used in this chapter, unless the context otherwise indicates, the following definitions shall be in effect:

Premises: "A lot, plot or parcel of land including any structures thereon.

Structure: "That which is built or constructed or a portion thereof.

Unsafe Structure: "A structure that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure because the structure is in a state of dilapidation, deterioration or decay; faulty construction; or damaged by fire to the extent so as not provide shelter, or, is in danger partial or complete collapse.

Unsafe Premises: " In addition to including unsafe structures, unsafe premises means any physical condition or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, abandoned shafts, abandoned swimming pools, abandoned ponds, abandoned basements, abandoned excavations and any abandoned mobile homes, abandoned manufactured homes, abandoned refrigerators, abandoned iceboxes, abandoned ice chests, or other similar abandoned devices or abandoned appliances assessable by children.

Owner: "Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, country or municipality as holding title to the property; or otherwise having control of the property; including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person: “An individual, corporation, partnership or any other group acting as a unit.

Occupant: “Any person living or sleeping in a building; or having possession of a space within a building.

Operator: “Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

Ordinance Officials: “The officials who are in charge of administration and enforcement of this ordinance are The Calloway County Sheriff or his duly authorized representative and the Calloway County Environmental Planner. Each ordinance official may act independently to enforce the provisions of this ordinance.

Agriculture: This ordinance is not applicable to structures or premises used primarily for active agricultural purposes.

Geographic Boundaries: This ordinance does not apply to areas within the geographic boundaries of any incorporated city located within the boundaries of Calloway County.

SECTION II: POLICY:

Policy Statement: “Any owner, person, occupant, or operator shall not maintain an unsafe structure or unsafe premises within the boundaries of Calloway County, Kentucky.

SECTION III: DUTIES AND POWERS OF THE ORDINANCE OFFICIAL:

A. General: The Ordinance Official shall enforce all provisions of this ordinance.

B. Notices and orders: Ordinance Officials shall create and issue all necessary complaint forms, notices, or orders to insure compliance with this ordinance. The Calloway County Sheriff, or his official designee and the Calloway County Environmental Planner are hereby appointed the Ordinance Officials for this ordinance. The Calloway County Sheriff or his official designee or the Calloway County Environmental Planner shall be responsible for maintaining all records and filings pursuant to this ordinance.

C. Right of Entry: In the enforcement of this ordinance, the ordinance officials or their duly authorized agents, assistants, employees or contractors may enter upon private or public property to examine the unsafe premises or structure, obtain information to identify any structure or premises creating the unsafe condition and the identity of the person, owner, occupant, or operator responsible therefore, and to correct the unsafe condition on the premises or in the structure pursuant to this ordinance.

D. Identification: The Ordinance Officials shall carry proper identification when examining unsafe structures or premises in the performances of the duties under this ordinance.

E. Relief from personal responsibility: The Ordinance Officials charged with the enforcement of this ordinance, while acting for the jurisdiction, shall not thereby be rendered liable personally, and are hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act required or permitted in the discharge of official duties. Any suit instituted against an officers or employees because of this ordinance shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings pursuant to the provisions of this ordinance; and any officer, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

SECTION IV: NOTICES AND ORDERS:

A. Notice to owner or to person, occupants and operators responsible: Whenever the ordinance officials determine that there has been a violation of this ordinance or has grounds to believe that a violation has occurred, notice shall be given to the owner or the persons, occupants or operators responsible therefore in the manner prescribed in Sections B and C.

B. Such notice prescribed in Section A shall:

1. Be in writing;
2. Include a description of the premises or structures sufficient for identification;
3. Include a statement of the reason or reasons why the notice is being issued; and
4. Include a correction order allowing a reasonable time, generally not to exceed ten days (10), for the repairs and improvement required to make the structure or premises safe.

C. Method of service: Such notice shall be deemed to be properly served if a copy thereof is (a) delivered to the owner personally; or (b) sent by certified or registered mail addressed to the owner, person, occupant, or operator with return receipt requested. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure or premises affected by such notice. Service of such notice in the foregoing manner upon the responsible owner's, person, occupants, or operators agent shall constitute service of notice upon the owner, person, occupant, or operator.

D. Corrective Action by Owner, Person, Occupant, or Operator: The correction of the unsafe condition in the structure or on the premises prior to the time for correction as set forth in the notice herein shall be considered compliance with the provisions of this ordinance and no further action shall be taken. Written permission given to the Calloway County Sheriff or a member from his agency or the Calloway County Environmental Planner for the correction of the unsafe conditions in the structure or on the premises by the owner, occupant, or operator shall be considered compliance with the provisions of this ordinance and no further action shall be taken against the ones giving such permission except for collection of cost associated with the correction of the unsafe conditions in the structure or on the premises.

E. Corrective Action by Ordinance Officials/ Real Estate Lien: If the owner, occupant, person, or operator of a structure or premise fails to comply with notice and order under the provision of this ordinance, the ordinance officials shall be empowered to take reasonable steps necessary to insure that the unsafe conditions no longer pose a threat to public safety. These arrangements can be made either thru, available public agency or by contract or arrangement with a private person. No County funds shall be expended under the provisions of this ordinance without prior approval of the County Judge Executive as authorized by the fiscal court. The cost of alleviating or correcting the unsafe structural problems or unsafe premises problems shall be charged against the structure or premises and shall be a lien upon such structure or premises. The cost of such corrective action shall be accounted for by the ordinance officials, and where the full amount due to the county for such services is not paid by such owner, occupant, operator within thirty (30) days after the corrective action, then and in that case, the ordinance official or a member of their agency shall cause to be recorded in the Calloway County Court Clerk's Office a sworn statement showing the cost and expense incurred for the corrective action, the date the action was performed, and the location of the structure or premises on which said action was done. The recording of such sworn statement shall constitute a lien on the said structure or premises and shall remain in full force and effect for the amount due in principal and interest at the legal rate, plus court cost, if any, for collection until final payment has been made. Sworn statements recorded in accordance with the provisions hereafter shall be prima facie evidence that all legal formalities have been complied with and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the structure and premises designated or described in the statement and that the same is due and collectible as provided by law. The lien shall be superior to and have priority over all other liens on the property, regardless of when the lien was filed, except state, county, school board, and city taxes.

F. Transfer of ownership: It shall be unlawful for the owner of any premises or structure who has received a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner, operator, person, or occupant shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the ordinance official and

shall furnish to the ordinance official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

E. Emergency Situations: In those situations where the ordinance officials determine that an unsafe condition or premises poses and imminent threat of death or serious physical injury, or presents and imminent risk of harm to the public health, the ordinance officials may take immediate action to correct the unsafe condition or secure the unsafe premises until such time as further enforcement proceedings under the provisions of this ordinance occur.

SECTION V: APPLICATION FOR APPEAL/ CALLOWAY COUNTY PROPERTY PROTECTION BOARD:

A. Any occupant, operator, owner, or person affected by a decision of the ordinance official or a notice or order issued under this ordinance shall have the right to appeal to the Calloway County Property Protection Board. This appeal should be made in writing within ten (10) days of issuance of the notice or order herein.

B. The Calloway County Property Protection Board shall consist of five (5) residents of Calloway County. One board member shall be the Calloway County Judge Executive or his designee. The remaining board members shall reside in that portion of Calloway County located outside the corporate city limits of any incorporated city within the boundaries of Calloway County. One board member shall be appointed from each magisterial district. One of the appointed board members shall be a farmer actively engaged in the business of agriculture. The Calloway County Judge Executive shall appoint the remaining four board members, with the approval of the fiscal court, and they shall serve for four year terms. Three members shall constitute a quorum. A majority of board members present and voting shall be necessary to constitute actions by the board.

C. Upon receipt of a written application for appeal, the Calloway County Property Protection Board shall serve notice upon the affected owner, operator, person, or occupant of the date, time and place of the appeal hearing. Notice shall be served by certified mail as set forth in Section IV B & C of this ordinance. The hearing held by the Calloway County Property Protection Board should be held within ten (10) days after the issuance of this notice.

D. At the hearing before the Calloway County Property Protection Board, the technical rules of evidence shall not apply, however, any affected person, owner, occupant, or operator shall have the right to counsel, the right to present evidence on their behalf and to confront and cross examine any witness or rebut any proof submitted against them. The Calloway County Property Protection Board shall issue a ruling in writing within ten days (10) after the appeal hearing.

E. Any person, occupant, operator, or owner adversely affected by a decision of the Calloway County Property Protection Board will have the right to appeal the decision to the Calloway County Circuit Court within thirty days (30) after the written decision of the Calloway County Property Protection Board. If no appeal is taken within the time prescribed or immediately after a final judicial review affirming the right to correct the unsafe conditions, the ordinance officials or a member of their agency shall take immediate action to correct the unsafe conditions in any manner as set forth in this ordinance.

F. In addition to the duties described in Section V Paragraph A, B, C, D, E, . The Calloway County Property Protection board shall meet on a quarterly basis to review ordinance violation complaints received from the public and the ordinance officials. After a review of these complaints, the Board will determine by majority vote whether probable cause exists to believe the ordinance has been violated. If the Board determines that probable cause exists for an ordinance violation, the Board shall direct the ordinance officials to proceed with enforcement under Section IV of this ordinance.

SECTION VI: PENALTY:

Penalty: Any person, occupant, operator, or owner who violates a provision of this ordinance shall be subject to a civil fine not less than \$100 nor more than \$500. Each day that a violation continues after notice has been served or after a decision of the Calloway County Property Protection Board shall be deemed a separate offence.

SECTION VII: JUDICIAL ENFORCEMENT:

Legal Enforcement: In any case were the owner, occupant, person, or operator has failed to comply with a notice issued pursuant to the terms of this ordinance or an order of the Calloway County Property Protection Board herein, the Calloway County Attorney is hereby authorized to institute an appropriate proceeding at law in the Calloway Circuit Court to exact any penalties or civil fines levied pursuant to the terms of this ordinance as well as to recover any liens against real property as result of corrective measures taken by the Calloway County ordinance officials pursuant to the terms of this ordinance.

SECTION VIII: VALIDITY:

Validity: If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable.

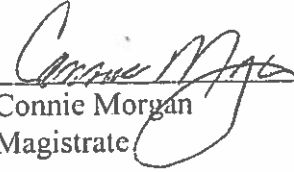
Passed on the first reading 20th, day of Nov., 2007.



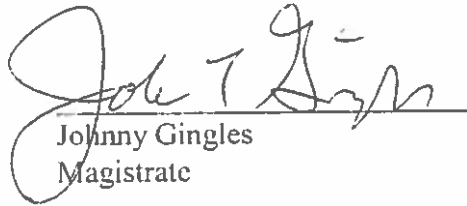
Larry Elkins
Calloway County Judge Executive



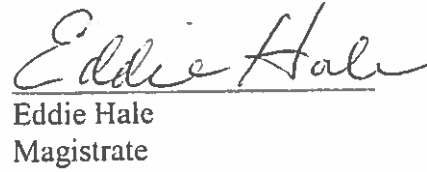
Bobby Stubblefield
Magistrate



Connie Morgan
Magistrate



Johnny Gingles
Magistrate



Eddie Hale
Magistrate

Second Reading
Publication Date 12-2007