

COMMONWEALTH OF KENTUCKY
CALLOWAY COUNTY
ORDINANCE NO. 11-0021-B

AN ORDINANCE relating to the abatement of nuisances and governing the maintenance of structures and premises essential for the protection of the health and safety of the citizens of Calloway County.

Be it ordained by the fiscal court of county of Calloway, Commonwealth of Kentucky:

WHEREAS, the Fiscal Court of has the authority pursuant to the provisions of KRS Chapter 67.083(3)(a), KRS 82.700 through KRS 82.725, and KRS 381.770, to enact an ordinance to cause the abatement of public nuisances and governing the maintenance of structures within the county; and,

WHEREAS, there exists in areas of Calloway County, Kentucky, privately owned properties and structures whose condition or use causes or tends to cause substantial diminution in value of nearby properties or tends to render such properties as dangerous or detrimental or adverse to the health and welfare or offensive to the senses of the residents of Calloway County, Kentucky;

NOW, THEREFORE, be it ordained by the Fiscal Court of Calloway County, Kentucky that:

SECTION I: DEFINITIONS

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

“Agricultural Land” means property situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.

"Automobile collector" means a person who collects and restores motor vehicles.

"Garbage" means all putrescible wastes, except sewage and body waste, including vegetable or animal offal and carcasses of dead animals, but excluding recognizable industrial establishments and from all residences.

"Geographic Boundaries" means the all of Calloway County, Kentucky outside the city limits and excluding any incorporated cities within the borders of the county.

"Local government" means the local government of Calloway County, Kentucky.

"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.

"Nuisance code" or "Nuisance Ordinance" means this ordinance enacted by the Calloway County Fiscal Court pursuant to KRS 65.083, KRS 82.705 and 381.770.

"Operator" means any person who has charge, care and control of a structure or premises which is offered for occupancy.

"Ordinary public view" means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property.

"Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.

"Parts car" means an automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of other automobiles.

"Person" means an individual, corporation, partnership or any other group acting as a unit.

"Premises" means a lot, plot, or parcel of land, including any structures upon it.

SECTION 2: POLICY STATEMENT

Any owner, person, occupant, or operator shall not maintain an unsafe structure or unsafe premises or cause any portion of a structure or premises to become or contain a public nuisance.

SECTION 3: PUBLIC NUISANCE PROHIBITED

It shall be unlawful for the owner, occupant, or person having control or management of any land other than agricultural land within the geographic boundaries of Calloway County, Kentucky to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of any of the following:

1. One (1) or more junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment, existing on the premises for more than thirty (30) days within ordinary public view; except that the provisions of this subsection shall not apply to:

(a) Junked, wrecked, or inoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);

(b) Junked, wrecked, or inoperative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, within a building, or by other reasonable other means;

(c) Any motor vehicle as defined in KRS 281.010 that is owned, controlled, operated, managed, or leased by a motor carrier;

(d) Junked, wrecked, or inoperative motor vehicles or parts of same located on the business premises of a lawfully operated and maintained junk yard in the business of long term sale of parts;

(e) Junked, wrecked, or inoperative motor vehicles, machinery, or equipment, or parts of same located on the business premises of a lawfully operated and

maintained mechanic's shop or similar enterprise regularly engaged in the business of repairing, maintaining, or restoring automobiles, machinery, or equipment.

2. One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or inoperative and which are not inhabited;
3. Rubbish, garbage, refuse, junk, or debris;
4. Scrap building materials within ordinary public view;
5. Abandoned, discarded, or unused objects or equipment, excluding operative or inoperative farm equipment, such as automobiles, boats, furniture, stoves, refrigerators, freezers, other household or commercial appliances, tires, scrap metal, cans, or containers;
6. Manure, compost piles, or other material which is of such a nature as to be likely to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin, or other disease-carrying pests, animals, or insects. This subsection shall not apply to farming and nursery operations where the matter is kept over 100 feet from the nearest property line;
7. Filth, unsanitary matter, deleterious materials, or septic material, unless such material is retained in containers or vessels which deny access to humans, flies, insects, rodents, or animals. This subsection shall not apply to overflowing septic tanks and lateral lines as those items are subject to existing health department regulations or to farming or nursery operations where the matter is kept over 100 feet from the nearest property line.
8. Structures or other aspects of the premises existing in such a visibly filthy, dangerous, or other obtrusive condition that they cause substantial diminution in the value of other surrounding properties.

SECTION 4: UNSAFE STRUCTURES AND PREMISES PROHIBITED

It shall be unlawful within the geographic boundaries of this county for the owner, person, occupant or operator of property to permit the owned, occupied or operated premises, or any

structure existing thereon, to be or become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist on the premises or in the structure which are dangerous or injurious to the health or safety of the occupants or users of the premises or structure, the occupants of neighboring premises or structures, or other residents of the county.

An unsafe structure is one that is dangerous to the life, health, property or safety of the public or the occupants of the structure because it is in a state of dilapidation, deterioration, or decay; constructed in such a fashion as to render it unsafe; or damaged by fire to the extent that it does not provide adequate shelter; is in danger of partial or complete collapse; or otherwise by its condition creates a likelihood of injury to occupants, users or the public.

In addition to including unsafe structures, unsafe premises means any physical condition or occupancy of any premises or its curtilage considered inherently dangerous to its occupants, users or the public.

Additionally, premises that create an attractive nuisance to minors or other members of the public, including, but not limited to, those premises upon which exist abandoned constructs such as wells, shafts, swimming pools, ponds, basements, excavations, mobile homes, and manufactured homes, are hereby deemed unsafe and it shall be unlawful for such conditions to remain on such premises without adequate safeguards to ensure the safety of the public in general and specifically to any minors who might happen upon the premises, even if by trespass.

SECTION 5: ENFORCEMENT OF ORDINANCE:

(A) **General:** The office of the Calloway County Environmental Planner and Solid Waste Coordinator (hereafter "EP/SWC"), or such other person(s) or office(s) as may hereafter be designated by the Calloway County Judge-Executive, shall be primary responsibility for investigating and enforcing violations of this ordinance. It shall also be the duty of any law enforcement officers who are empowered to enforce Kentucky law and County of Calloway

ordinances to enforce the provisions of this ordinance. The EP/SWC shall maintain complaint forms in his/her office as well as the office of the Calloway County Judge-Executive to be used by residents of Calloway County, owners of property within Calloway County, and/or businesses operating at least partially within Calloway County to make complaints regarding alleged violations of this ordinance. Said complaint forms should be filled out as completely as possible by the complainant and delivered to the office of the EP/SWC for further action. The EP/SWC shall investigate all such complaints and any other alleged violations made known to him/her by the Judge-Executive, any other elected official of Calloway County, any member of law enforcement, and any other alleged violations of which he gains knowledge sufficient for him/her to believe that a violation is likely to have been committed. The EP/SWC shall also be responsible for maintaining all records and filings pursuant to this ordinance.

(B) **Inspections and Investigations:** Upon the receipt of a complaint, the EP/SWC or his/her duly authorized agents, assistants, employees, or contractors shall, as soon as is reasonably practicable, enter upon private or public property to examine the condition of said property, identify the person, owner, or occupant responsible therefore, and make a determination as to whether an ordinance violation exists. The EP/SWC or his/her duly authorized agents, assistants, employees or contractors shall carry proper identification when inspecting premises and investigating alleged violations of this ordinance during the performance of their official duties. If, following an investigation, the EP/SWC determines that a violation of this ordinance exists, then he/she shall issue a notice to abate the violation as outlined hereinbelow. If the EP/SWC determines that a violation has not occurred or that it has been abated prior to the investigation, then he/she shall communicate this determination to the complainant.

(C) **Right of Entry:** In the enforcement of this ordinance, the EP/SWC or his/her duly authorized agents, assistants, employees, or contractors may enter upon private or public property to inspect and investigate alleged violations of this ordinance, obtain information and/or evidence

to inspect and investigate alleged violations of this ordinance, obtain information and/or evidence to identify the nature, character and extent of any violation, and identify the person, owner, occupant, or operator responsible therefor. If denied entry or requested to leave, the EP/SWC or his/her duly authorized agents, assistants, employees or contractors must leave, but shall then have recourse to the remedies provided by law to secure entry.

(D) **Notice to Abate Violations:** If, following an investigation, the EP/SWC determines that a violation of this ordinance exists, then he/she shall issue a notice to abate the violation to the person(s), owner(s), occupant(s) or operator(s) deemed responsible therefor. This notice shall be in writing and at minimum shall include: the name(s) of the person(s) deemed responsible for the violation; a description of the location of the violation sufficient for identification; a statement specifying the nature of the violation; a statement concerning the provision of the ordinance that has been violated (in lieu of this statement, a copy of the ordinance may be attached to the notice); a statement detailing the corrective or remedial action that the responsible party(ies) may complete to abate the violation and avoid penalties; a period of time beginning on the date the notice is issued and not less than fourteen (14) days nor generally to exceed thirty (30) days in the discretion of the EP/SWC, except in the event that the violation is found to pose imminent danger, in which case the period shall be not less than seven (7) days; and, a statement setting forth the penalties for failing to abate the violation in the specified time period.

(E) **Method of Service of Notices:** Such notices shall be deemed to be properly served if a copy thereof is either delivered to the responsible party personally, either by the EP/SWC or the Calloway County Sheriff's office at his request, or sent by certified or registered mail addressed to the responsible party with return receipt requested. If the certified or registered letter is returned showing that the letter was not delivered, a copy of the notice shall be deemed to have been properly served if it is posted in a conspicuous place on or about the premises upon which a violation of this ordinance has been deemed to exist.

(F) Notice to be filed with Clerk: Upon proper service of a Violation Notice, the EP/SWC shall notify and provide a copy of the notice to the Calloway County Clerk's Office for the purpose of recording the violation against the property. The violation notification shall remain attached to the property in such a way that it should be discoverable during a title search of the affected property. The violation should not operate to impede or prevent the sale of the property, but rather to notify future interested persons of the violation. When the violation has been inspected and deemed abated by the EP/SWC, he/she shall immediately notify the Clerk's Office in order that the clerk record a release of the violation notice.

(G) Appeal: Any person aggrieved by a notice, order or decision of the EP/SWC may first appeal said notice, order or decision directly to the EP/SWC by scheduling an appointment with him/her to discuss the grievance. Contact to schedule this appointment must be made within the period of time specified for abatement in the notice. If the grievance is then not satisfied by the decision of the EP/SWC, then the aggrieved person may appeal that decision directly to the Calloway County Judge-Executive by scheduling an appointment with the office of Calloway County Judge-Executive within seven (7) days following the issuance of the EP/SWC's decision. The decision of the Calloway County Judge-Executive regarding the grievance shall be final and appealable to the Calloway County District Court. Any aggrieved person failing to appeal his grievance to both the EP/SWC and the Calloway County Judge-Executive shall be deemed not to have exhausted his administrative remedies and, thus, prohibited from then appealing the notice, order or decision to the court system.

(H) Corrective Action: Upon completion of corrective or remedial actions necessary to abate the violation of this ordinance, the responsible party shall notify the EP/SWC that such action has been completed in order that he/she shall perform a follow-up inspection to determine whether the violation has been fully abated. The complete correction or remediation of the unsafe structure, premise, or nuisance, as determined by the EP/SWC, prior to the conclusion of the time

specified for abatement as set forth in the notice shall be considered compliance with the provisions of this ordinance and no further action shall be taken based upon that violation.

(I) Extension of Time to Abate Violation: A person or entity receiving notice of a violation may request an extension of the time period allowed for abatement by filing a written request with the office of the EP/SWC. This request should be on the form supplied by the office of the EP/SWC and must be fully filled out and returned to said office within the original time period allowed for abatement in order to receive consideration. The EP/SWC shall have discretion to grant reasonable extensions of the time period allowed for abatement based upon good cause and demonstrable need as he sees fit in his sole discretion. A decision regarding extension may be appealed to the Calloway County Judge-Executive as set forth hereinabove.

(J) Liability of EP/SWC and other officials: The EP/SWC, Calloway County Judge-Executive and any other official charged with enforcement of this ordinance, while acting on behalf of Calloway County and in his/her official capacity, 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 by this ordinance or other state law in the discharge of official duties. Official complaints instituted against an official because of this ordinance shall be defended by the county until the final termination of the proceedings pursuant to such a complaint, and any officer, acting in good faith and without malice, shall be free from liability for acts performed or by reason of any act or omission in the performance of official duties in connection herewith.

SECTION 6: PENALTIES FOR VIOLATION:

(A.) Any person, owner, occupant, or operator who fails to correct the violation as specified in the notice to abate violation within its time frame and any approved extension, shall be deemed to have violated this ordinance and shall be guilty of a Class A Misdemeanor as defined by the Kentucky Revised Statutes and subject to penalties including a fine not to exceed \$500

and/or imprisonment not to exceed 12 months. Each day of continued violation beyond the time allowed for abatement in the notice and any approved extensions shall be a separate offense and subject to a separate penalty.

(B.) At the request of the EP/SWC or Judge-Executive, and upon receipt of a copy of the notice to abate violation and a sworn affidavit from the EP/SWC, it shall be the duty of the Calloway County Attorney to review the matter for criminal prosecution. With probable cause he/she may institute criminal proceedings in Calloway District Court to ensure enforcement of this ordinance.

SECTION 7: VALIDITY AND EFFECT:

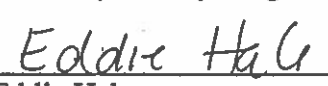
If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect, and, to this end, the provisions of this ordinance are hereby declared to be severable. This ordinance shall take effect and be in full force and effect as of July 1, 2016. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

The Clerk of the Court is directed to publish this ordinance in a local newspaper one time, to obtain proof of publication thereof and to file said proof in the minutes of this Court.


Passed on the first reading 17 day of May 2016.



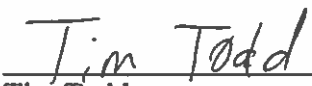
Larry Elkins
Calloway County Judge Executive



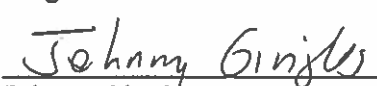
Eddie Hale
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