

COMMONWEALTH OF KENTUCKY
CALLOWAY COUNTY
ORDINANCE NO. #16-0021-B

AN ORDINANCE relating to amending Calloway County Ordinance Number #16-0021-B regarding 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 Calloway County has the authority pursuant to the provisions of KRS Chapter 67.083(3)(a) and KRS 65.8840 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 Calloway County Ordinance Number 16-0021-B is amended to read as follows:

SECTION I: DEFINITIONS

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

“Abatement costs” means Calloway County’s necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve public health, safety, and welfare in accordance with this and any other Calloway County Ordinance;

“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;

“Code enforcement officer” means a county police officer, sheriff, deputy sheriff, Calloway County Deputy Judge-Executive, Calloway County Solid Waste Management Coordinator, or deputy Calloway County Solid Waste Management Coordinator;

“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, KRS 65.8840 and KRS 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; and

“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 within Calloway County, Kentucky.

SECTION 3: PUBLIC NUISANCE PROHIBITED

It shall be unlawful for the owner, occupant, or person having control or management of any premises or 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), a used motor vehicle dealer as defined in KRS 190.010(6), or a motor vehicle auction dealer as defined in KRS 190.010(11);
 - (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 means;
 - (c) Any motor vehicle as defined in KRS 281.010 that is owned, controlled, operated, managed, or leased by a motor carrier;
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 potential 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 have 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 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. Additionally, if the EP/SWC or his/her duly authorized agents, assistants, employees or contractors are denied entry or requested to leave at any point during the investigation or enforcement of a violation of this ordinance, then any civil fines assessed for a violation of this ordinance shall be doubled for such period of time as that denial or request continues.

(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) **Violation Hearing and Determination:** At the expiration of the abatement period and any extension(s), if any, granted by the EP/SWC, if, in the opinion of the EP/SWC, the violation has not been fully abated, then the EP/SWC shall schedule a hearing before the Calloway County Fiscal Court to determine whether or not a violation of the ordinance exists and the party or parties responsible for the violation. The hearing shall be conducted at a regularly scheduled meeting of the court, and notice of the hearing shall be delivered to all potential violators for the premises at least seven (7) days prior to same. Alleged violators may be represented by legal counsel if they so choose at his/her own expense. The court and any

alleged violator shall have the right to subpoena any witness whose attendance is reasonably necessary to enable the court to make a proper determination as to the existence of a violation and responsibility for same. Alleged violators may waive their right to a hearing regarding the existence of a violation and responsibility for same. Any such waiver signed by an alleged violator shall be considered a binding admission of the violation and responsibility for same. The EP/SWC shall have discretion to grant a reasonable extension of the abatement period in exchange for an alleged violator's waiver of the violation hearing. If the violation has not been abated following any waiver of hearing and extension granted therefor, the fiscal court may order any penalty or sentence authorized by this ordinance without the need for further hearing or notice of same. If, following a violation hearing, the fiscal court determines that no violation exists, then it shall order that no further action be taken with regard to the specific allegations of the complaint. If, following a violation hearing, the fiscal court concludes that a violation does exist, then it shall assess responsibility to the party or parties it determines are responsible for such violation and may assess penalties and take action it believes appropriate to remedy the violation and/or appropriately punish and deter the alleged violator(s), as authorized by this ordinance.

(F) Method of Service of Notices: Such notices to abate a nuisance or of the setting of a violation hearing 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.

(G) Notice to lien holders: Unless imminent danger exists on the subject premises that necessitates immediate action, then, within fourteen (14) days of a final determination after violation hearing or waiver of hearing by the owner, a copy of the determination shall be sent to any lien holder of record of the subject premises by first-class mail with proof of mailing. The lien holder of record may, within forty-five days from receipt of that notice, correct the violations cited or elect to pay all civil fines assessed for the violation and all charges and fees incurred by the local government of Calloway County in connection with the enforcement of this ordinance, including abatement costs.

(H) **Lien to be filed with Clerk:** Calloway County shall have a lien against the entirety of the subject property for all civil fines assessed for the violation and for all charges and fees incurred by it in connection with the enforcement of the ordinance, including abatement costs. The affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 65.8840, and shall be recorded in the office of the Clerk of Calloway County. The lien shall be notice to all persons from time to time of its recording and shall bear interest at the rate of 10.0% per annum thereafter until paid. The lien created shall take precedence over all other liens, except state, county, school board, and city taxes, except that the lien shall not take precedence over any lien which lien holder the local government failed to provide a copy of the determination as required in section 5(G) above or in the event that a lien holder takes full corrective action or pays all fines and costs as set forth herein.

(I) **Appeal:** Any person aggrieved by a notice, order or decision of the code enforcement officer or the fiscal court may first appeal said notice, order or decision directly to the office of the Calloway County Judge-Executive 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 or any extension thereon, or within fourteen (14) days of a determination being issued by the fiscal court. The decision of the Calloway County Judge-Executive or his designee regarding the grievance shall be final and appealable to the Calloway County District Court. Any aggrieved person failing to appeal his grievance to the office of 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.

(J) **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 specific violation.

(K) **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/she sees fit in his sole discretion. A decision regarding extension may be appealed to the Calloway County Judge-Executive as set forth hereinabove.

(L) 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, following a violation hearing or execution of a waiver of same, be deemed to have violated this ordinance, and shall be guilty of a separate offense for each day that the violation continued in existence following the conclusion of the abatement period and any extensions granted thereon. For each such violation, the fiscal court may order any one or combination of the following penalties and remedies: 1) a civil fine of not less than \$5.00, nor more than \$50.00 per day, which fines shall continue to accrue until the violation has been fully abated; 2) that the local government or a third party contracted with by the local government cause the violation(s) to be abated or remediated, with the full costs for same being levied against the violator and the premises; 3) for an additional extension period for the violator(s) to abate the violation; or 4) that the violation be referred to the Calloway County Attorney to review the matter for criminal prosecution 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, however, a

criminal penalty may not sought for any day of violation for which a civil penalty is also imposed.

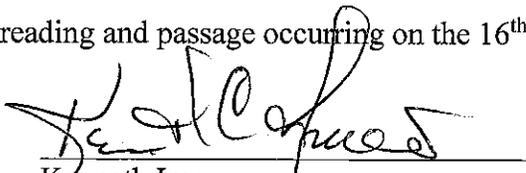
(B.) In the event that any violation is referred to the County Attorney for prosecution, then, and upon receipt of a copy of the determination of violation and a sworn affidavit from the code enforcement officer as to the existence of the violation, it shall be the duty of the Calloway County Attorney 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.

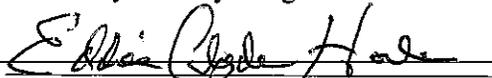
SECTION 7: VALIDITY AND EFFECT:

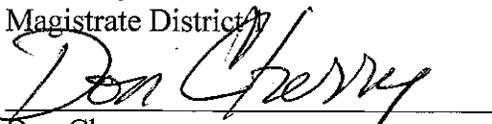
If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect, and, to this end, the provisions of this ordinance are hereby declared to be severable. This ordinance as amended shall take effect and be in full force and effect as of April 17, 2019. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, except that the ordinance hereby being amended shall remain in full effect in all respects which have not undergone substantial and substantive change.

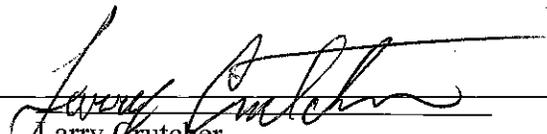
The Clerk of the Court is directed to publish this ordinance in a local newspaper one time within thirty (30) days of passage, to obtain proof of publication thereof and to file said proof in the minutes of this Court.

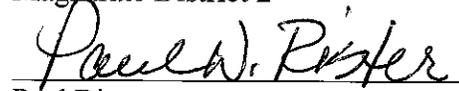
First reading the 19th day of March, 2019. Published not more than seven (7) days nor more than twenty-one (21) days prior to passage on the 16th day of April, 2019. Second reading and passage occurring on the 16th day of April, 2019.


Kenneth Imes
Calloway County Judge Executive


Eddie Clyde Hale
Magistrate District 1


Don Cherry
Magistrate District 3


Larry Crutcher
Magistrate District 2


Paul Rister
Magistrate District 4

Publication of passage occurring on the 9 day of APRIL, 2019.

Attested to as officially adopted and published, by:

Antonia D. Faulkner

Antonia Faulkner,
Clerk of Calloway County