

MARSHALL COUNTY ORDINANCE
No. 2007 - 01

**AN ORDINANCE RELATING TO THE ENFORCEMENT OF ABATEMENT
OF NUISANCES PURSUANT TO KRS 381.770**

BE IT ORDAINED BY THE FISCAL COURT OF MARSHALL COUNTY,
COMMONWEALTH OF KENTUCKY;

SECTION I

The Marshall County Fiscal Court hereby creates the Marshall County Nuisance Code Enforcement Board and vests said Board with all necessary powers to carry out its duties under this Ordinance. The Marshall County Nuisance Code Enforcement Board shall be comprised of, at any given time, the then sitting members of the Marshall County Refuse Board.

Pursuant to KRS 381.770, this Ordinance is being enacted to establish procedures for the enforcement of KRS 381.770. The Marshall County Sheriff and the Marshall County Nuisance Code Enforcement Board are hereby appointed to enforce this section by and through the powers of their offices, the powers granted to them by KRS 381.770 and this Ordinance.

SECTION II

The Marshall County Sheriff shall create forms necessary for complaints filed by the general public pursuant to this action and be responsible for maintaining all records of filings pursuant to this Ordinance.

The Marshall County Sheriff shall further pursue the enforcement of this action upon the filing of a formal complaint with his office as well as observation by him or his agency.

SECTION III

Whenever the Marshall County Sheriff has reason to believe that a public nuisance exists, he shall investigate and gather all relevant evidence pertaining to said alleged nuisance. After all relevant evidence has been gathered, the Marshall County Sheriff shall, if he determines that a public nuisance exists, send notice to the property owner(s) in question. The Marshall County Sheriff may, but is not required to, consult with the Marshall County Attorney's Office prior to sending notice. The notice shall:

1. Specify the violation and its location.
2. Request the violation to be resolved.

3. Advise the said party they have ten (10) days to resolve the violation or to make a written demand for a hearing before the Marshall County Nuisance Code Enforcement Board.
4. Advise the said party that if no hearing is requested, the decision of the Marshall County Sheriff shall become final regarding the existence of a public nuisance.
5. Advise the party that once a public nuisance is deemed to exist, the Marshall County Fiscal Court has the authority to order abatement of the nuisance by any reasonable means, which can include, but not be limited to, entering onto the real property in question and taking the necessary actions to abate the nuisance. The party shall also be advised that the party will be held responsible and liable for any and all costs of clean-up, including, but not limited to, costs of the Sheriff's office and the Marshall County Fiscal Court in man hours, expenses and/or fees. A lien may be attached to the property in question and may be judicially enforced through foreclosure or other legal or equitable means permitted by law.
6. Notice shall be sent by registered mail to the last known address of the owner of the property whereon the nuisance is located. Where the owner of the property is not the occupant thereof, such notice shall be mailed also to the occupant(s).
7. Notice shall also be sent to the last registered and legal owner of record of any items located on the property where registration and documentation of legal ownership are applicable unless the owner is the owner or occupant of the premises wherein the nuisance is located and unless identification numbers are not available to determine ownership of the vehicle or the property is of such that there is no documentation of ownership. If the owner or his address of the property is not known or cannot be readily ascertained, the notice to him to abate and of his right to a hearing may be given by attaching such notice to the property no less than ten (10) days before action is to be taken. If the latter method of notice is used, the Marshall County Sheriff shall make an affidavit attesting to such facts. Where property that carries a registered title or registration of ownership is found to be upon any public property within the county, notice to the owner is all that shall be required. Where property that carries no evidence of ownership is found on public property, no notice shall be required.

In the event a hearing is requested, such hearing shall be held within thirty-five (35) days after the request is made and shall be conducted by the Marshall County Nuisance Code Enforcement Board who shall hear all the facts and testimony on the condition of the property and the circumstances concerning the location. The hearing shall be recorded and/or transcribed in a manner so as to preserve all evidence and testimony to ensure meaningful judicial review. Such hearing shall not be limited by technical rules of evidence. The Marshall County Nuisance Code Enforcement Board may impose such conditions and take such other actions as it deems appropriate under the circumstances to carry out the purpose of this ordinance. The Marshall County Nuisance Code Enforcement Board may delay the time for clean up or removal of the property if, in its

opinion, circumstances justify it. At the conclusion of any hearing, the Marshall County Nuisance Code Enforcement Board may find that pursuant to KRS 381.770 a public nuisance exists, and order the same removed from the property as a public nuisance and order disposal of the same. The order requiring removal shall include a description of the property. A simple majority vote of the members of the Marshall County Nuisance Code Enforcement Board shall be deemed a decision of the Marshall County Nuisance Code Enforcement Board. In the event of a tie among the Board Members, the Chairman of the Board shall cast the deciding tie-breaker vote. The Chairman of the Board shall also cast an initial vote in addition to having the authority to cast a tie-breaking vote. The Chairman of the Marshall County Nuisance Code Enforcement Board shall be the same person who is, at any given time, the then sitting Chairman of the Marshall County Refuse Board.

Any interested party may appeal the decision of the Marshall County Nuisance Code Enforcement Board by appealing to any court of competent jurisdiction pursuant to the Rules of Civil Procedure within fourteen (14) days after the decision. An appeal, if taken, shall be conducted pursuant to KRS 13B.150 and shall not be a trial de novo. If no appeal is taken with the time prescribed or immediately after a final judicial review affirming the right to remove the nuisance, the Marshall County Fiscal Court may cause the property to be removed and disposed of in any manner it may provide.

SECTION IV

Upon the failure, neglect or refusal to abate by any owner-occupant or owner of private property who has been notified and ordered to abate such public nuisance within the time set forth above, the Marshall County Fiscal Court is hereby authorized and empowered to remove same and dispose of it.

The cost of such removal and disposal shall be accounted for by the Marshall County Fiscal Court, and where the full amount due to the county for such services is not paid by such owner within thirty (30) days after the disposal of such nuisance, then and in that case, the Marshall County Fiscal Court shall cause to be recorded in the Marshall County Court Clerk's Office a sworn statement showing the cost and expense incurred for the work, the date the work was performed, and the location of the property on which said work was done. The recordation of such sworn statement shall constitute a lien on said property and shall remain in full force and effect for the amount due in principal and interest at the legal rate, plus court costs, 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 property designated or described in the statement and that the same is due and collectible as provided by law.

SECTION V

Neither the owner nor occupant of the premises from which any aforesaid nuisance shall be removed, their servants or agents, shall be liable for any loss or damage to said property while being removed or as a result of any subsequent sale or other disposition.

SECTION VI

The removal of the property designated as a nuisance from the premises prior to the time for removal by the County shall be considered compliance with the provisions of this article and no further action shall be taken. Written permission given to the Marshall County Fiscal Court for the removal of the nuisance by the owner of the same or the owner or occupants of the premises on which it is located shall be considered compliance with the provisions of this article on their part and no further action shall be taken against the ones giving such permission except for collection of towing charges or hauling cost for the removal of the nuisance.

SECTION VII

The provisions of this article shall be administered and enforced by the Marshall County Sheriff's Office, the Marshall County Fiscal Court and the Marshall County Nuisance Code Enforcement Board. In the enforcement of this article, the Marshall County Sheriff and the Marshall County Fiscal Court and their duly authorized agents, assistants, employees or contractors may enter upon private or public property to examine the nuisance, obtain information as to the identity of any property creating the nuisance and the owner thereof, and to remove or cause removal of the nuisance pursuant to this ordinance.

SECTION VIII

In addition to the civil remedies provided for in this ordinance, it shall be unlawful for any person to continue and maintain the public nuisance as described herein, and any person violating any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount not less than \$25.00 nor more than \$300.00 or be imprisoned in the county jail for a period of not exceeding thirty (30) days or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

SECTION IX

This Ordinance revokes Marshall County Ordinance No. 2006-02.

The foregoing Ordinance shall be published in *The Tribune Courier* on

March 21, 2007.

1st reading on **March 6, 2007**.

2nd reading on Apr. 13, 2007.

Passed by the Fiscal Court of Marshall County on April 3, 2007, on
the motion of Commissioner Anderson and seconded by
Commissioner Gold.

Mike Miller
MIKE MILLER
MARSHALL COUNTY JUDGE EXECUTIVE