

MARSHALL COUNTY FISCAL COURT
ORDINANCE NO. 2010-07

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 MARSHALL
COUNTY.

WHEREAS, the legislature has amended KRS 65.8805 et. seq. to provide for a comprehensive regulatory scheme for the abatement of nuisances as it relates to real and personal property;

WHEREAS, the Marshall County Fiscal Court and the City of Hardin, Kentucky wish to take advantage of this regulatory scheme to protect their citizens, protect property values, and promote the overall welfare within their boundaries;

WHEREAS, the Marshall County Fiscal Court and the City of Hardin have by separate ordinances entered into an interlocal agreement as permitted by KRS 65.8805 to further the purposes of this ordinance;

NOW, THEREFORE, be it ordained by the Fiscal Court of Marshall County, Kentucky as follows:

SECTION I: DEFINITIONS

Unless otherwise specifically defined herein, words shall be given their usual and customary meaning.

(1) "Abatement costs" means a local government'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 or any other local government ordinance;

(2) "Automobile collector" means a person who collects and restores motor vehicles;

(3) "Board" means an administrative body created and acting under the authority of KRS 65.8801 to 65.8839;

(4) "Code enforcement officer" means a city police officer, safety officer, citation officer, county police officer, sheriff, deputy sheriff, university police officer, airport police officer, Alcoholic Beverage Control Administrator or deputy administrator, or other public law enforcement officer with the authority to issue a citation;

(5) "Final order" means any order:

(a) Issued by the Board following an initial hearing or an appeal hearing;

(b) Issued by an assigned hearing officer that is not appealed to the Board;

(c) Created because a violator neither paid nor contested the citation within seven (7) days as provided in this ordinance;

(d) Created because of a failure of a violator to appear at a hearing the violator requested to contest the citation.

(6) "Imminent danger" means a condition which is likely to cause serious or life-threatening injury or death at any time;

(7) "Local government" means Marshall County Fiscal Court and/or the City of Hardin;

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

(9) "Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property;

(10) "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; and

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

SECTION II: PUBLIC NUISANCE PROHIBITED

(1) Except as provided in subsection (2) of this section, it shall be unlawful for the owner, occupant, or person having control or management of any premises within a local government to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:

(a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;

(b) 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;

(c) Rubbish; or

(d) The excessive growth of weeds or grass such that it measures ten (10) inches or more in yard areas or such that it creates a hazard by impairing sight lines for motorists or pedestrians on or about streets or roadways. This provision is not intended to govern fields, garden areas, or pastures.

(2) The foregoing provisions of this section 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:

1. Licensed automotive recycling dealer as described in KRS 190.010(8);
2. Used motor vehicle dealer as defined in KRS 190.010(6); or
3. Motor vehicle auction dealer as defined in KRS 190.010(11);

(b) Junked, wrecked, or inoperative motor vehicles, including parts cars, stored on private premises 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, or other means; and

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

(3) An owner shall not permit any structure upon his or her premises to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist on the structure or premises which are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures, or other residents of the local government. 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.

(4) Nothing contained in this ordinance shall prohibit a local government from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the existence of the violation presents imminent danger, a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

(5) Absent the presence of an imminent danger, prior to the demolition of any unfit or unsafe structure, the right to a hearing shall be afforded the owner.

SECTION III: CREATION OF CODE ENFORCEMENT BOARD:

(1) There is hereby created the Nuisance Code Enforcement Board of Marshall County and the City of Hardin (Board).

(2) The Board shall be comprised of three (3) members and are appointed as follows:

Initial Appointments:

(a) One (1) member of the Board shall be appointed for a term of one (1) year;

(b) One (1) member of the Board shall be appointed for a term of two (2) years;

and

(c) One (1) member of the Board shall be appointed for a term of three (3) years.

All subsequent appointments shall be made for a term of three (3) years. One (1) appointment shall be made by the Mayor of the City of Hardin, subject to the approval of the Hardin City Council, and two (2) appointments shall be made by the Marshall County Judge-Executive, subject to the approval of the Marshall County Fiscal Court.

(3) Each member of the Board shall have resided within the boundaries of the local government unit he/she represents for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.

(4) A member may be reappointed, subject to approval of the legislative body that made the appointment.

(5) Any vacancy on the Board shall be filled within sixty (60) days by the executive authority, subject to the approval of the legislative body. If a vacancy is not filled by the executive authority within sixty (60) days, the remaining members of the Board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.

(6) Any member of the Board may be removed by the executive authority appointing for misconduct, inefficiency, or willful neglect of duty. Any executive authority who exercises the power to remove a member of the Board shall submit a written statement to the member and to the legislative body of the local government setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.

(7) All members of the Board shall, before entering upon their duties, take the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky.

(8) The members of the Board may be reimbursed for any out-of-pocket expenses and may, with the local government's permission, be reimbursed for any necessary or required training expenses. The Marshall County Fiscal Court and the City of Hardin may, by resolution and/or affirmative vote of the respective legislative bodies of the local governments, also address compensation for the members of the Board and/or code enforcement officers, but nothing in this ordinance shall be construed to require compensation.

(9) No member of the Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the Marshall County Fiscal Court or the City of Hardin.

SECTION IV: CODE ENFORCEMENT BOARD'S DUTIES AND POWERS:

(1) The Board shall, upon the initial appointment of its members, and annually thereafter, elect a chairman from among its members, who shall be the presiding officer and a full voting member of the Board. In the absence of the chairman, the remaining members of the Board shall select one (1) of their number to preside in place of the chair and exercise the powers of the chair.

(2) The Board shall conduct regular meetings at a designated place and time according to its bylaws. The Board shall be authorized to conduct special or emergency meetings in accordance with KRS 61.805 to 61.850.

(3) The presence of at least a majority of the Board's entire membership shall constitute a quorum. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of the Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for purposes of establishing a quorum.

(4) Minutes shall be kept for all proceedings of the Board and the vote of each member on any issue decided by the Board shall be recorded in the minutes.

(5) All meetings and hearings of the Board shall be open to the public.

(6) The Board shall have the power to:

(a) Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of KRS 65.8801 to 65.8839.

(b) Conduct hearings, or assign a hearing officer to conduct a hearing, to determine whether there has been a violation of this ordinance. Any member of the Board, including the chairman, may be assigned to conduct hearings on behalf of the

Board. All hearing officers shall receive training related to the conduct of administrative hearings in accordance with procedures set out in KRS 13B.080.

(c) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the Board, or an assigned hearing officer, may be served by any code enforcement officer, or any other individual as permitted by law.

(d) Take testimony under oath. The chairman of the Board, or an assigned hearing officer, shall have the authority to administer oaths to witnesses prior to their testimony before the Board on any matter.

(e) Make findings and issue orders that are necessary to remedy any violation of this ordinance.

(f) Impose civil fines as authorized by this ordinance on any person found to have violated one or more of the provisions herein.

(7) The Board may assign a hearing officer to conduct hearings in accordance with the procedures set forth herein.

(8) Any member of the Board, including the chairman, may be assigned as a hearing officer.

(9) Any person assigned to be a hearing officer by the Board shall have experience or shall have received training in the code enforcement process and basic procedural due process. The experience or training shall include, at a minimum, acquired knowledge regarding a party's fundamental due process right to:

- (a) Be accompanied and advised by counsel at the hearing;
- (b) Present evidence and witnesses on his or her behalf at the hearing;
- (c) Examine the evidence opposing the party; and

(d) Confront and cross-examine the witnesses opposing the party.

(10) An assigned hearing officer may administer oaths to witnesses prior to their testimony and subpoena alleged violators, witnesses, and evidence to the hearing to which the officer is assigned.

(11) Any hearing conducted by a hearing officer under this section shall conform to the procedural requirements of this ordinance.

(12) The hearing officer shall make written findings of facts and conclusions of law, and enter final orders, based on the evidence presented, as to whether a violation was committed.

(a) If the hearing officer determines that no violation was committed, an order dismissing the citation shall be entered. If the hearing officer determines that a violation has been committed, the hearing officer shall issue an order upholding the citation and may order the offender to do either or both of the following:

(i) Pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to

(ii) Remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.

(13) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions of the hearing officer, and the date the order was issued. A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order is issued, the order shall be delivered to that person by regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of

the order. The findings of fact, conclusions of law, and final order shall be forwarded within twenty-four (24) hours of entry to the alleged violator in the manner set forth above and to the Board.

(14) A final order issued by a hearing officer may be appealed by the alleged violator to the Board in accordance with terms as specified below. The appeal shall be filed in writing to the Board within seven (7) days of the receipt of the final order. The failure to file an appeal within seven (7) days shall render the order entered by the hearing officer final for all purposes. An individual receiving a final order under this subparagraph shall be required to exhaust the administrative remedy of appeal to the Board before appealing to District Court as authorized by statute.

(a) Upon review of a final order entered by a hearing officer, the Board shall review the record created before the hearing officer and determine whether there is substantial evidence on the record to support a finding by the hearing officer that a violation was committed. If the Board determines that there is not substantial evidence on the record, it shall issue an order dismissing the citation. If the Board determines that there is substantial evidence on the record that a violation was committed, it shall issue a final order upholding the order entered by the hearing officer.

(b) When an appeal hearing before the Board is requested, the Board, through its clerical and administrative staff, shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the Board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing

therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. The Board may also elect to provide notice of hearing to any lienholders with an interest in the subject premises. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator in the manner set forth above.

(15) If the Board conducts a hearing upon the issuance of a citation as opposed to assigning the hearing to a hearing officer, the Board shall conduct the hearing in accordance with the notice and procedural requirements of this ordinance. A final order issued by the Board after conducting a hearing upon the issuance of a citation may be appealed as provided by statute to the Marshall District Court.

SECTION V: CODE ENFORCEMENT OFFICER AND PROCESS

The primary Code Enforcement Officer shall be the Alcoholic Beverage Control Administrator of Marshall County, with other peace officers authorized to act as code enforcement officers as provided by this ordinance and by statute.

(1) Enforcement proceedings shall be initiated by the issuance of a citation by a code enforcement officer. A code enforcement officer should refrain from engaging in roving patrols

to enforce this ordinance, and should instead primarily respond to complaints. However, nothing in this ordinance shall be construed to prohibit a code enforcement officer from issuing a citation in the absence of a complaint for an obvious and/or egregious violation where safety is a concern.

(2) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of a local government ordinance, the officer is authorized to issue a citation by:

(a) Personal service to the alleged violator;

(b) Leaving a copy of the citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or

(c) Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular, first-class mail of the United States Postal Service to the owner of record of the property if no one is on the premises at the time the citation is issued.

(3) A code enforcement officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

(4) The citation issued by the code enforcement officer shall be on a form and shall contain, at least the following information and data:

(a) The date and time of issuance;

(b) The name and address of the person to whom the citation is issued;

- (c) The date and time the offense was committed;
- (d) The facts constituting the offense;
- (e) The section of the code or the number of the ordinance violated;
- (f) The name of the code enforcement officer;
- (g) The civil fine that will be imposed for the violation if the person does not contest the citation;
- (h) The maximum civil fine that may be imposed if the person elects to contest the citation;
- (i) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(j) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing to contest the citation and that the determination that a violation was committed shall be final, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

(5) After issuing a citation to an alleged violator, the code enforcement officer shall notify the Board by delivering the citation to the administrative official designated by the Board. The code enforcement officer, hearing officer, or Board may also elect to provide notice of the issuance of the citation to any lienholder with an interest in the subject premises.

(6) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived

the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator in the manner set forth in Section V of this ordinance.

(7) When a hearing is requested, the Board, through its clerical and administrative staff, shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the Board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. The Board may also elect to provide notice of hearing to any lienholders with an interest in the subject premises. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court. Notice of the final order shall be provided to the cited violator in the manner set forth in Section V of this ordinance.

(8) Each case that is the subject of a hearing may be presented by an attorney selected by the local government or by a member of the administrative staff of the local government. An

attorney may either be counsel to the Board or may represent the local government by presenting cases at the hearing, but in no case shall an attorney serve in both capacities.

(9) All testimony shall be under oath and shall be recorded. The Board or assigned hearing officer shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(10) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions and the date the order was issued. A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order issued, the order shall be delivered to that person by regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

(11) If the Board is reviewing a final order entered by a hearing officer on appeal, the Board shall review the record created before the hearing officer and determine whether there is substantial evidence on the record to support a finding by the hearing officer that a violation was committed. If the Board determines that there is not substantial evidence on the record, it shall issue an order dismissing the citation. If the Board determines that there is substantial evidence on the record that a violation was committed, it shall issue a final order upholding the order entered by the hearing officer.

SECTION VI: LIENS

(1) Marshall County Fiscal Court and/or the City of Hardin shall possess a lien on property owned by the person found by a nonappealable final order as defined by this ordinance, or by a final judgment of the court, to have committed a violation of this ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred in connection with the enforcement of the ordinance, including abatement costs. An 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 65.8801 to 65.8839. The lien:

(a) Shall be recorded in the office of the county clerk;

(b) Shall be notice to all persons from the time of its recording and shall bear interest until paid;

(c) Shall take precedence over all other subsequent liens, except state, county, school board, and city taxes;, and

(d) Shall continue for ten (10) years following the date of the nonappealable final order, or final judgment of the court; and

(e) May be enforced by judicial proceedings, including an action to foreclose.

(2) In addition to the remedy prescribed in subsection (1) of this section, the person found to have committed the violation shall be personally responsible for the amount of the lien, including all civil fines assessed for the violation and for all charges, fees, and abatement costs incurred in connection with the enforcement of the ordinance. The Marshall County Fiscal Court and/or the City of Hardin may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

(3) Nothing in this section shall otherwise affect the rights or obligations between the owner of the property and those persons who claim a security interest in the property.

(4) The enforcement provisions of this ordinance shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area if the owner, occupant, or person is not the generator of the rubbish or is not dumping or knowingly allowing the dumping of the rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons onto the premises. The City of Hardin shall have the authority to enforce against non-occupant owners (such as landlords) if the non-occupant owner has been given notice of the violation and fails to take reasonable steps to abate. Notice is deemed sufficient if served by regular first-class mail; certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice

(5) The enforcement provisions of this ordinance shall not be enforced by the Marshall County Fiscal Court upon any premises situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.

SECTION VII: FINES

Civil fines for violations of Section II of this ordinance shall be fifty (\$50.00) dollars if the citation for which the violation is issued is not contested, and two hundred fifty (\$250.00) dollars if the citation is contested and upheld. Each day the violation persists constitutes a separate offense and may be cited accordingly. Revenue from fine monies collected from a violation in an unincorporated area of the county shall be deposited in the general funds of the

Marshall County Fiscal Court, and revenue from fine monies collected from a violation in the corporate limits of the City of Hardin shall be deposited in its general fund.

SECTION VIII: DIVISION OF COSTS AND EXPENSES

The Marshall County Fiscal Court shall be responsible for costs and expenses related to the abatement of nuisances under this ordinance for unincorporated areas of the county, and shall likewise be responsible for any reimbursement of out-of-pocket expenses for its two appointed Board members. The City of Hardin shall be responsible for costs and expenses related to the abatement of nuisances under this ordinance for areas within its corporate limits, and shall likewise be responsible for any reimbursement of out-of-pocket expenses for its one appointed Board member.

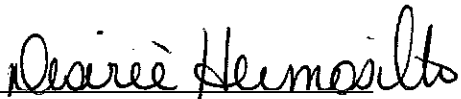
SECTION IX: REPEAL OF PRIOR ORDINANCE

Upon passage, this ordinance is intended to replace and supersede Ordinance #07-01.

PASSED THIS THE 2 DAY OF August, 2016.



KEVIN NEAL, JUDGE EXECUTIVE
MARSHALL COUNTY FISCAL COURT

ATTEST: 
FISCAL COURT CLERK

FIRST READING: July 11, 2016
SECOND READING: 8-2-2016
PUBLICATION: 8-16-2016