

OWEN COUNTY FISCAL COURT
OWEN COUNTY, KENTUCKY

ORDINANCE NO. 155

AN ORDINANCE RELATING TO THE LIMITATION OF CONDITIONS UNDER WHICH NUISANCES SUITS MAY BE BROUGHT AGAINST AGRICULTURAL AND SILVICULTURAL OPERATIONS.

WHEREAS, it is policy of Owen County to conserve, protect and encourage the development and improvement of its agricultural and silvicultural land for the production of food and other agricultural products and silvicultural products and

WHEREAS, agriculture and silviculture continues to be important to the economy of Owen County providing over millions of dollars in revenue for the County, and

WHEREAS, agricultural and silvicultural activity may not always be compatible with the residential housing due to the nature of some agricultural and silvicultural operations which can create noise, odor, dust, and other conditions which may render residential use of property difficult, and

WHEREAS, when no-agricultural or non-silvicultural land uses extend into the agricultural or silvicultural areas, agricultural or silvicultural operations can become the subject of nuisance suits. As a result, some agricultural and silvicultural operations are forced to cease operation and many other are discouraged from making investments in farm improvements. It is the purpose of this ordinance to reduce the loss to Owen County of its agricultural and silvicultural resources by limiting the circumstances under which agricultural and silvicultural operations may be deemed to be a nuisance. It is the further purpose of this ordinance to provide the residents of Owen County notification of Owen County's recognition and support of its agricultural and silvicultural base and to commit to a good neighbor policy. Such effects may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural and silvicultural operations; and

THEREFORE, BE IT ORDAINED by the Fiscal Court of Owen County of Commonwealth of Kentucky, as follows:

- A. For the purpose of this Ordinance the following words and phrases shall have the meaning ascribe to them in this section:

- i. "Agricultural Land," shall mean all real property within the boundaries of Owen County used for agricultural operations.
- ii. "Agricultural Operation" shall mean and include, but not limited to, the cultivation and tillage of the soil, dairying; production, cultivation, growing, harvesting or processing of any agricultural commodity, the raising of livestock, fish or poultry, or such operations, including preparations for market, delivery to storage or to market, or to carriers for transportation to market.
- iii. "Silvicultural operation" includes timber harvest, site preparation, slash disposal including controlled burning, tree planting pre-commercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.

B. Nuisance

It is the intention of this ordinance to protect the right to farm for those persons and companies engaged in agricultural and silvicultural operations in Owen County-Kentucky. It is not the intention of this ordinance to promote or protect commercial industrial farm operations that may choose to locate in Owen County, Kentucky after the enactment of this ordinance.

No agricultural or silvicultural operation or any of its appurtenances become a nuisance or trespass, private or public, or be in violation of any ordinance, or be subject to any ordinance that would restrict the right operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation begun. The provisions of this subsection shall not apply whenever a nuisance, trespass or violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.

An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than five (5) years or one (1) year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation unless the operation is substantially changed.

The provisions of this ordinance shall not affect the right of any person, firm, or corporation, to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream of any person, firm, or corporation.

This ordinance shall not be construed to modify or abridge Kentucky Revised Statue 413.072, or any other applicable provision of state on nuisance. This ordinance is only to be utilized in the interpretation and enforcement of the provisions.

C. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

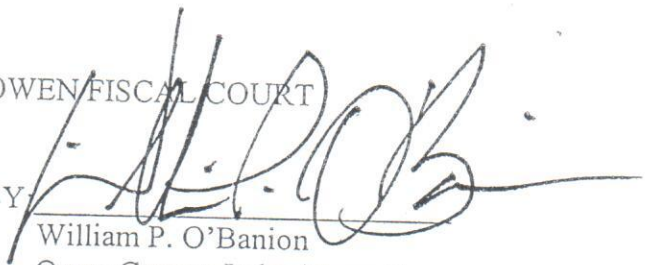
D. Precedence

This ordinance shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict with this, ordinance, they are hereby repealed with respect to the conflict and no more.

Any issues concerning enforceability can be addressed in any court of competent jurisdiction of this Commonwealth.

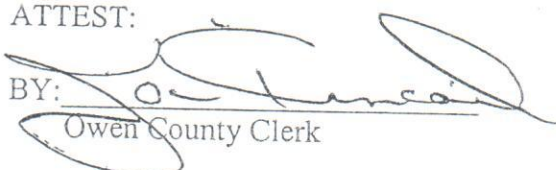
OWEN/FISCAL COURT

BY:


William P. O'Banion
Owen County Judge/Executive

ATTEST:

BY:


Owen County Clerk