

AN ORDINANCE RELATING TO NUISANCES

WHEREAS, it is the duty and desire of the Owen Fiscal Court to protect its citizens from conditions which endanger life, limb or property, or which destroy the enjoyment of dwellings or other uses of property in the vicinity by interfering with the ordinary comforts of human existence.

NOW THEREFORE BE IT ORDAINED BY THE FISCAL COURT OF OWEN COUNTY, KENTUCKY, meeting in regular session on January 14, 2003, having the first reading and on February 11, 2003 having the second reading:

Ordinance # 67 is hereby amended and replaced as follows:

SECTION ONE

(a) It shall be unlawful for the owner, occupant or person having control or management of any land within Owen County, including within any private resort, to permit a public nuisance to develop thereon. The following conditions are declared to be a public nuisance:

(1) The excessive growth of weeds or grass or the accumulation of rubbish, filth, refuse, trash, garbage or any other waste material which endangers the public health, welfare, or safety or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents or insects, or blow rubbish into any street, sidewalk, or property of another;

(2) Permitting conditions to exist in a structure 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 Owen County;

(3) Permitting dangerous trees or other objects adjoining all public roads and private resort roads, including a stack of objects, to stand in such condition that it is potentially dangerous or injurious to the health or safety of persons or property upon the roads adjacent thereto, by falling thereon, including the falling of parts thereof;

(4) The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private premises in any open or unfenced lot or

place;

(5) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of business in violation of KRS §§ 177.905 et seq.;

(6) The storage within two hundred (200) feet of a public roadway of (i) motor vehicles in an inoperative condition, (ii) motor vehicles unfit for further use, or (iii) motor vehicle parts or scrap metal, except on premises authorized by the Commonwealth of Kentucky for such purpose;

(7) The storage or maintenance of mobile homes which are abandoned and/or unoccupied, or are not connected to legal sewage disposal facilities. There shall be presumption that a mobile home is abandoned and/or unoccupied if it is unoccupied for a period of thirty (30) days or more.

(b) There shall be a presumption that a motor vehicle is disabled and/or in an inoperative condition if it is not moved for a period of thirty (30) days or more, provided, however, that this ordinance shall not apply to vehicles that are completely enclosed within a garage or other building, are behind a solid fence of one color and same material which completely obstructs the view, or are otherwise out of sight of such public roadway. The fact that a motor vehicle may have the tags, licenses, and/or insurance necessary for operation shall be considered irrelevant in determining whether a motor vehicle is disabled, in an inoperative condition, or otherwise unfit for further use; however, the absence of such tags, licenses, and/or insurance shall be considered a material fact in such determination.

(c) Farm vehicles other than farm trucks shall not be considered "motor vehicles" for the purpose of this ordinance. Boats and other marine vehicles, whether or not motor-powered, shall be considered "motor vehicles" for purposes of this ordinance.

(d) "Scrap metal" is defined as pieces of or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other materials whether intact or in parts which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

## SECTION TWO

For the purpose of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, but merely that the nuisance be created or contributed to by

licensees, invitees, guests or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible or by the exercise of reasonable care ought to have become aware of.

### SECTION THREE

It shall be the duty of any law enforcement official to serve or cause to be served a notice upon the owner or occupant of any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter and to demand with a written notice that the violation be corrected within ten days. If the responsible party fails to abate the nuisance within the allotted ten day period, the County may enter the property and abate the nuisance and/or file a criminal charge in District Court for the violation.

### SECTION FOUR

(a) Owen County shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this ordinance, and shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding.

(b) Additionally, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and Owen County may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

(c) This section shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area of Owen County 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 property.

SECTION FIVE

~~All county and state roads and roads in private resorts shall be covered under this ordinance. However, in it shall be an affirmative defense to an action brought under this ordinance regarding a nuisance occurring within a private resort that (i) the governing board of the private resort has failed to exhaust whatever remedies it may have with respect to effecting the abatement of the nuisance through a civil action, and (ii) that the nuisance has existed for less than one (1) year, with the defendant being required to establish both elements of this affirmative defense. This affirmative defense is not available when the governing board of the private resort has no remedies available to it for the abatement of nuisances or when the nuisance has existed for longer than one (1) year.~~

SECTION SIX FIVE

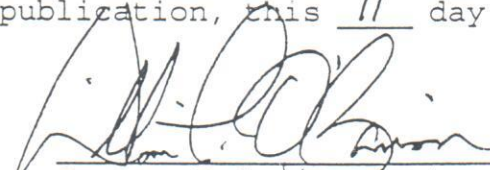
Any person who violates any provision of this chapter shall be fined not less than \$ 10.00 and not more than \$ 500.00 for each offense, and each day's continued violation shall constitute a separate offense.

SECTION SEVEN SIX

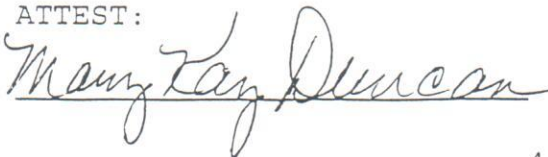
If any provision or section of this ordinance or the enforcement of any such provision or section is held to be invalid or unenforceable by a court or competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this ordinance.

First reading given by the Owen County Fiscal Court this 14th day of January, 2003.

Second reading, with amendments, given and passed by the Owen County Fiscal Court. This ordinance shall become effective upon passage and publication, this 11 day of February, 2003.

  
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County Judge/Executive

ATTEST:

  
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Mary Kay Duncan