

ORDINANCE 09-02

Property Maintenance Ordinance

Ordinance was not adopted.

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Madison County Fiscal Court

Summary of Ordinance No. 09-02

The purpose of this Ordinance is to provide enforcement of the provisions of the property maintenance code; and providing for the remedy for nuisances or violations of the property maintenance code.

This Ordinance makes provisions for the costs of nuisance and property maintenance codes abatement to be placed on the County Tax Bill for the property and is subject to penalty and interest as county taxes.

Provisions are also made in the Ordinance to provide for personal notice to the property owner in nuisance abatement proceedings; and for alternative notification provisions where notice on the premises is not feasible or practicable; permitting notice of a nuisance or property maintenance code abatement proceeding by certified or first class mail; and providing that a nuisance or property maintenance abatement without notice in the event of an emergency certified in writing.

The Ordinance establishes a Uniform Code Citation along with a fines and penalties schedule for violations of the codes of Madison County.

CODE ENFORCEMENT PROCEDURE

NOTICE OF VIOLATION
(KRS 65.8825(2) and PMC § 107)

or

CITATION (KRS 65.8825(1)(2)(3))

Delivery of Citation to Code Enforcement Board (KRS 65.8825(4))

If no response, right to hearing waived, and violation deemed committed; Board to enter final order and impose fine specified in citation.

Response requesting hearing filed within 7 days of issuance.

Hearing of CEB scheduled within 14 days of request; notice within 7 days (KRS 65.8828(1))

If Respondent fails to appear, deemed to have waived right to hearing to contest citation and that violation committed; Board to enter final order and impose fine specified in citation.
(KRS 65.8828(1))

Hearing - separate prosecuting atty. (65.8828(2)); testimony under oath and recorded; CEB to determine whether violation committed; if none, citation dismissed; if CEB determines violation committed, order upholding citation and may order civil fine, or direct remedy of continuing violation, or both; if authorized by ordinance (65.8828(4)(5))

County has lien on property for all fines found by final order, and charges and fees (65.8835)

Appeal to District Court within 30 days of final order (65.8831)

The County always has the right to immediate action to remedy violation if serious threat to public safety interest (65.8838)

ORDINANCE NO. 09- 02
MADISON COUNTY CODE ENFORCEMENT BOARD

AN ORDINANCE OF THE MADISON COUNTY FISCAL COURT PURSUANT TO KRS 65.8801 TO KRS 65.8839 ESTABLISHING THE CODE ENFORCEMENT BOARD, IDENTIFYING MEMBERS, APPOINTMENTS, TERMS, QUALIFICATIONS, RULES AND REGULATIONS OF THE BOARD; ESTABLISHING FINES AND OR PENALTIES FOR VIOLATIONS; ESTABLISHING PROCEDURES AND PROCEEDINGS FOR ENFORCEMENT OF THE CODE; PROVIDING PROCEDURES FOR HEARINGS, NOTICE OF ORDERS, AND ADOPTING PROCEDURES FOR LIENS, FINES, CHARGES, AND FEES.

WHEREAS, it is the intent of KRS 65.8801 to KRS 65.8839 to protect, promote, and improve the health, safety, and welfare of the citizens residing within Madison County by authorizing the creation of an administrative board with the authority to issue remedial orders and impose fines in order to provide an equitable, expeditious, effective and inexpensive method of ensuring compliance with the ordinances in force within the County; and

WHEREAS, this ordinance will provide an additional or supplemental means of enforcing the local ordinances enacted by the Fiscal Court of Madison County, and

WHEREAS, the Fiscal Court of the Madison County, after due consideration, has determined that the creation of an administrative body to enforce certain local ordinances will provide a desirable alternative method of such enforcement.

NOW THEREFORE BE IT ORDAINED, Madison County through authority granted it in KRS 65.8801 to 65.8839 does hereby create a code enforcement board, pursuant to KRS Chapter 65, which shall have the power to issue remedial orders and impose civil fines as a method of enforcing a county ordinance when a violation of the ordinance has been classified as a civil offense in accordance with state statutes. This enforcement board shall have no power to enforce any violations which are offenses under any provision of Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

SECTION 1 – Definitions

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a difference meaning:

Code Enforcement Board shall mean an administrative body created and acting under the authority of the Local Code Enforcement Board Act of Kentucky Revised Statutes Chapter 65.8801 to 65.8839.

Code Enforcement Officer shall mean an inspector in the Madison County Codes and Planning Department, Director of Madison County Solid Waste Office, County Sheriff's Deputy,

or other public law enforcement officer with the authority to issue a citation.

County Judge-Executive shall mean the chief county elected official as prescribed in Kentucky Revised Statutes Section Chapter 65.

Ordinance shall mean an official action of a local government body, which is a violation of a general and permanence nature and enforceable as a local law and shall include any provision of a code of ordinance adopted by the county legislative body which embodies all or part of an ordinance.

SECTION 2 - APPOINTMENT OF MEMBERS, TERMS OF OFFICE; GEOGRAPHIC REPRESENTATION; OATH; COMPENSATION; ALTERNATE MEMBERS.

A. The code enforcement board shall consist of five (5) members and two alternates who shall be appointed by the county judge subject to the approval of the fiscal court. The initial appointment of the members shall be as follows:

- a. One (1) member appointed for a term of one (1) year;
- b. Two (2) members appointed for a term of two (2) years; and
- c. Two (2) members appointed for a term of three (3) years each.
- d. Two (2) alternate members appointed for a term of three years each.

All subsequent appointments shall be made for a term of three (3) years.

B. The county judge shall appoint two alternate members to serve on the Code Enforcement Board in the absence of regular members. Alternate members shall meet all of the qualifications and shall be subject to all of the requirements that apply in regular members of the Code Enforcement Board.

C. Members of the board shall be adequately representative of the diverse geographical nature of Madison County. Accordingly, the County Judge Executive shall at time of appointment ensure the code enforcement board consists of at least one voting member from each of the four magisterial districts.

D. A member may be reappointed, subject to the approval of the fiscal court, for one additional three (3) year term. Members filling unexpired vacancies or receiving initial appointments of less than three years are eligible for two full three year subsequent appointments.

E. Any vacancy on the board shall be filled by the judge-executive subject to fiscal court approval within 60 days of the vacancy. If the vacancy is not filled within that time period, the remaining Code Enforcement Board members shall fill the vacancy.

F. A member of the Code Enforcement Board may be removed from office by the judge executive for misconduct, inefficiency, or neglect of duty. The judge must submit a written statement to the fiscal court setting forth the reasons for removal.

G. Members of the Code Enforcement Board may be reimbursed for actual expenses upon presentation of receipts to the County Treasurer.

SECTION 3 – BOARD MEMBERS

A. Each member of the code enforcement board shall have resided within the boundaries of the county 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.

B. 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.

C. No member of the board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the Madison County Fiscal Court or any of its agencies, boards, or commissions.

D. Members of the Code Enforcement Board shall receive as compensation the sum of \$50.00 for each meeting attended.

SECTION 4 - RESPONSIBILITIES/AUTHORITY/CONFLICTS OF INTEREST

A. The board (including alternate members) shall, initially and annually thereafter, elect on a calendar basis a chair from among its members, who shall be the presiding officer and a full voting member of the board, and in the absence of chairman, the remaining members shall select one from their number to preside in place of the chair and exercise the powers of the chair.

B. The board shall meet periodically to conduct business, but in no event meet less than quarterly. At least three members shall be present and voting to constitute a quorum; all official action of the board shall require the affirmative vote of a majority of the members constituting a quorum.

C. 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.

D. The board shall keep written minutes of all proceedings and the vote of each member on any issue decided by the board shall be recorded in the minutes which shall be subject to Open Records provisions under KRS 61.870-61.884.

E. All meetings and hearings of the board shall be open to the public, according to the provisions of KRS 61.805-61.850.

F. The Fiscal Court of Madison County shall provide clerical and administrative personnel as reasonably required by the board for the proper conduct of its duties.

G. All meetings of the Madison County Code Enforcement Board shall be held at the Madison County Court House, Fiscal Court Room, 101 Main Street, Richmond, Kentucky.

SECTION 5 - JURISDICTION

The Code Enforcement Board shall have jurisdiction to enforce and shall enforce those county

ordinances and code provisions which specifically provide for code board enforcement or which contain provisions for the imposition of civil penalties.

SECTION 6 - POWERS OF THE BOARD

The Madison County Code Enforcement board shall have the following powers and duties:

- A. Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with state and local laws.
- B. Conduct hearings to determine whether there has been a violation of any local government ordinance that the board has jurisdiction to enforce.
- C. Subpoena alleged violators, witnesses, and evidence to its hearings. A subpoena issued by the board may be served by any code enforcement officer.
- D. Take testimony under oath. The chairman or vice-chairman of the board 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 a local government ordinance that the board has jurisdiction to enforce.
- F. Impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has the jurisdiction to enforce.
- G. Impose enforcement costs against violators.

SECTION 7 - INITIATION OF PROCEEDINGS

All enforcement proceedings before the board shall be initiated by the issuance of a citation by a code enforcement officer.

- A. The code enforcement officer is authorized to issue a citation to the offender when the officer, either from personal observation or investigation, has reason to believe that a person has committed a violation of a Madison County ordinance. The officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. The notice shall include a statement that if the problem is not remedied, the county shall issue a citation. If the violation is not remedied within the time specified, the code enforcement officer is authorized to issue a citation.
- B. The citation issued by the code enforcement officer shall contain the following information:
 - 1. The date and time of the issuance;
 - 2. The name and address of the person to whom the citation is issued;
 - 3. The date and time the offense was committed;
 - 4. The facts constituting the offense;
 - 5. The section of the code in which the violator is being cited;

6. The name of the Code Enforcement Officer and a number at which he may be reached;
7. The civil fine that will be imposed for the violation if the person pre-pays the citation;
8. The maximum civil fine that may be imposed if the person elects to contest the citation;
9. The procedure for the person to follow in order to pay the civil fine or to contest the citations; and
10. 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 before the Code Enforcement Board to contest the citation and that the determination that the violation was committed shall be final.

C. The code enforcement officer shall notify the board of the issuance of a citation by delivering one copy of the citation to the administrative official of the Office of Planning designated by ordinance or by the County Judge-Executive.

D. 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 before the code enforcement board to contest the citation. If the person fails to respond to the citation in 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 code enforcement board shall enter a final order determining that the violation was committed and imposing a civil fine in accordance with the governing ordinance.

SECTION 8 - HEARINGS, NOTICE, FINAL ORDER

The following procedures shall be followed when a hearing has been requested by the alleged violator:

A. When a hearing has been requested, the code enforcement board shall schedule a hearing within 14 days of the request. (KRS 65.8828(1))

B. Not less than seven (7) days before the date set for the hearing, the code enforcement board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return mail 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. However, if the whereabouts of the requester are unknown and cannot be ascertained by a Code Enforcement Officer in the exercise of reasonable diligence, the notice is properly served if copies of the notice are posted in a conspicuous place on the premises in which an alleged violation has occurred.

C. Any person requesting a hearing before the code enforcement board 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 board shall enter a final order determining that the violation was committed and imposing the civil fine in accordance with the governing ordinance.

D. Each case before the board shall be presented by a code enforcement officer. The County Attorney shall provide counsel to the Code Enforcement Board during its proceedings but may

additionally represent the County on appeal of any decision to District Court.

E. All testimony shall be under oath and shall be recorded. The board shall take testimony, from the code enforcement officer, the alleged violator, 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.

F. At the hearing, the board shall determine, based on the evidence presented, whether a violation was committed. When the board determines that no violation was committed, an order dismissing the citation shall be entered. When the board determines that a violation has been committed, the board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.

G. Every final order of the code enforcement board shall be reduced to writing, which shall include the date the order was issued, and a copy of the order shall be furnished to the person named in the citation. If that person is not present at the time a final order of the board is issued, the order shall be delivered to that person by 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.

SECTION 9 - APPEALS

- A. An appeal from any final order issued by a code enforcement board may be made to the Madison County District Court within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.
- B. If no appeal from a final order of a code enforcement board is filed within the time period set forth in this section, the code enforcement board's order shall be deemed final for all purposes.

SECTION 10 - ORDINANCE FINE SCHEDULE

Violations of the ordinance that are enforced by the county code enforcement board shall be subject to the following schedule of civil fines:

- A. If a citation for a violation of an ordinance is not contested by the person charged with the violation, the penalties set forth in that subsection shall apply; however, the board may waive all or any portion of the penalty for an uncontested violation, if in its discretion, the board determines that such a waiver will promote compliance with the ordinance in issue.

Fines and Penalties

Violations	1st Offense	2nd Offense	All Others
Animals	\$25.00	\$50.00	\$100.00
Unsafe & Unfit Structures PM Section 106.2	\$100.00	\$150.00	\$200.00
Garbage PM Section 106.2	\$25.00	\$50.00	\$100.00
Occupational License	\$50.00	\$75.00	\$100.00
Weeds & Tall Grass PM Section 106.2	\$25.00	\$50.00	\$100.00
No Building Permit	\$50.00	\$100.00	\$200.00
Signage Violation	\$25.00	\$50.00	\$75.00
Violation of Zoning Ordinance	\$25.00	\$50.00	\$100.00
Violation of Subdivision Ordinance	\$25.00	\$50.00	\$100.00
Nuisance Violation	\$25.00	\$50.00	\$100.00
If the citation is contested and a hearing before the board is required, the following maximum penalties may be imposed at the discretion of the board.			
Violations	1st Offense	2nd Offense	All Others
Animals	\$50.00	\$100.00	\$200.00
Unsafe & Unfit Structures PM Section 106.2	\$200.00	\$300.00	\$400.00
Garbage PM Section 106.2	\$50.00	\$100.00	\$200.00
Occupational License	\$100.00	\$150.00	\$200.00
Weeds & Tall Grass PM Section 106.2	\$50.00	\$100.00	\$200.00
No Building Permit	\$100.00	\$200.00	\$400.00
Signage Violation	\$50.00	\$100.00	\$150.00
Violation of Zoning Ordinance	\$50.00	\$100.00	\$200.00
Violation of Subdivision Ordinance	\$50.00	\$100.00	\$200.00
Nuisance Violation	\$50.00	\$100.00	\$200.00

Each day of non-compliance shall constitute a separate offense.

SECTION 11 - FINES/LIENS AND CHARGES

- A. The county shall possess a lien on property owned by the person found by a final, non-appealable order of the code enforcement board, or by a final judgment of the court, to have committed a violation of a local government ordinance for all fines assessed for the violation and for all charges, fees and enforcement costs incurred by the county in connection with the enforcement of the ordinance.
- B. The lien 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 at twelve (12%) percent per annum until paid.
- C. The lien shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings.
- D. In addition to the remedy proscribed in Section 12, the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the county in connection with the enforcement of the ordinance. The county may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.
- E. Whenever a bill for the reasonable costs of abatement or removal of a nuisance pursuant to this ordinance remains unpaid for thirty (30) days after it has been sent, the County reserves the right to have the costs placed upon the county's tax books against the property and may be collected, and the liens may be foreclosed, in the same manner as taxes and tax liens are collected and foreclosed, or by other civil suit or process as the Fiscal Court may determine. In addition the County shall have a lien on the property in the amount of such costs and the expense of preparing any lien statements provided for hereafter. The County may file a notice of lien with the Madison County Clerk, pursuant to KRS 381.770, but failure to file such notice shall not invalidate the lien provided for herein. Unpaid bills for the cost of abatement shall bear interest at the rate of twelve percent (12%) per annum, compounded annually. Any notice of lien pursuant to this chapter shall be filed within ninety (90) days after the cost and expense of abatement or removal of nuisance has been incurred by the County. The notice shall consist of a sworn statement setting out:
 - 1) A description of the real estate sufficient for identification thereof;
 - 2) The amount of money representing the cost and expense incurred or payable for the service; and
 - 3) The date or dates when the costs and expense was incurred by the County.
- F. Any purchaser whose rights in and to the real estate have arisen subsequent to removal of the public nuisance and prior to the filing of the notice shall not be held personally liable for the costs of the abatement or removal, and the lien of the County shall not have priority as to any mortgage, judgement creditor or other lienor whose rights in and to the real estate arise prior to the filing of the notice, but the property shall be subject to the lien and addition to the tax bill provided for herein.
- G. Costs and expenses under this ordinance include, but are not limited to the actual costs and expenses in the time of County employees or County authorized contractors and in materials concerning the actual actions of abatement of the nuisance pursuant to this ordinance, transportation to and from the property, title searches, or certifications,

preparation of lien documents, foreclosure and other related expenses, including, but not limited to reasonable attorney's fees.

- H. A copy of the notice of lien shall be mailed by the Clerk to the owner of the property, or to the occupant, or to the person or persons in whose name the real estate was last billed for property tax purposes.
- I. The County may enforce the lien by action initiated in the Madison Circuit Court for the unpaid assessment of the costs and expenses, and the proceeds of the sale applied to pay the charges after deducting costs.
- J. The County may institute proceedings in any court having jurisdiction over the matters against any property for which costs and expenses have remained unpaid for thirty (30) days after a statement of the costs and expenses have been mailed to the property owner, to the occupant, or to the person or persons in whose name the property was last billed for property tax purposes.
- K. After notice of lien has been filed and upon payment of the costs and expenses plus interest from the date thirty (30) days after the bill was sent, the clerk shall file with the Madison County Clerk a release of the lien.
- L. If payment of the County's costs of removal or abatement of the nuisance is not paid to the County within thirty (30) days after the filing of the notice of the lien, the County Fiscal Court is empowered to commence proceedings in the Circuit Court seeking a personal judgement from the owner of or persons interested in the property at the time the complaint for removal or abatement was filed with the Circuit Clerk in the amount of the costs. The action shall be based upon the implied consent for persons to form a contract for the removal or abatement of the nuisances. The action authorized by this subsection shall be in addition to, and without waiver of, any other remedy.

SECTION 12 – IMMEDIATE ACTION TO REMEDY VIOLATION OF ORDINANCES

Nothing contained in this ordinance shall prohibit the Madison County Fiscal Court from taking immediate action to remedy a violation of its ordinance when there is reason to believe that existence of the violation presents a serious threat to the public health, safety, and welfare of. In the event the code enforcement officer determines in writing that a condition is so menacing to the public health, peace, safety or welfare that it is necessary that it be summarily abated, the code enforcement officer may proceed to abate the nuisance without notice or a hearing. The code enforcement officer shall specify in writing the condition and the basis for the emergency, and shall maintain such writing in the code enforcement office.

SECTION 13 – EFFECTIVE DATE

This ordinance shall take effect and be in full force when passed, published and recorded according to law.

SECTION 14 - ADOPTION

INTRODUCED, SECONDED, AND GIVEN FIRST READING APPROVAL at a duly convened meeting of the Fiscal Court of Madison County, Kentucky, held on the _____ day of _____, 2009.

ADOPTED, by the Madison County Fiscal Court after SECOND READING at a the regular meeting on the _____ day of _____, 2009 and on the same occasion signed in open session by the County Judge/Executive as evidence of his approval, attested under seal by the County Fiscal Court Clerk and declared to be in full force and effect.

SECTION 15

That the County Clerk cause this ordinance to be published in accordance with the appropriate Kentucky Revised Statues.

DATE OF FIRST READING: _____

MOTION BY: _____

SECONDED BY: _____

VOTE: YES NO

JUDGE, KENT CLARK
MAGISTRATE LARRY COMBS
MAGISTRATE ROGER BARGER
MAGISTRATE WILLIAM TUDOR
MAGISTRATE HAROLD BOTNER, JR.

DATE OF SECOND READING: _____

MOTION BY: _____

SECONDED BY: _____

VOTE: YES NO

JUDGE, KENT CLARK
MAGISTRATE LARRY COMBS
MAGISTRATE ROGER BARGER
MAGISTRATE WILLIAM TUDOR
MAGISTRATE HAROLD BOTNER, JR.

ATTEST:

Kent Clark
Madison County Judge/Executive

Billy Gabbard
Madison County Court Clerk