FISCAL COURT OF HOPKINS COUNTY, KENTUCKY
ORDINANCE 2009-05

AN ORDINANCE REPEALING ORDINANCE NO. 1999-6 AND ESTABLISHING A NEW NUISANCE ORDINANCE FOR HOPKINS COUNTY PURSUANT TO THE AUTHORITY GRANTED IN KRS CHAPTER 67 and KRS 381.770

WHEREAS, it is the duty of the Hopkins County Fiscal Court to protect its citizens from conditions which endanger life, limb, 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 Hopkins County.

1. General

That the Hopkins County Fiscal Court does hereby establish the following reasonable standards, procedures and penalties for the enforcement if KRS 381.770 as it relates to unincorporated areas, of any municipality without a nuisance ordinance within the territorial jurisdiction of Hopkins County.

2. Definitions

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Dwelling." Any part of any building or its premises uses as place of residence or habitation or for sleeping by any person.

"Nuisance." Any Public Nuisance.

"Unfit for Human Habitation." Dangerous or detrimental to life or health because of: want of repair; defects in the drainage, plumbing, lighting, ventilation, or construction; infection with contagious disease; or the existence on the premises of an unsanitary condition likely to cause sickness among occupants of the dwelling or adjoining properties.

3. Common Law and Statutory Nuisances

In addition to what is declared in this Ordinance to be a public nuisance, those offenses which are known to the common law and statutes of Kentucky as public nuisances may be treated as such and be proceeded against as provided in this Ordinance or in accordance with any other provision of law.

4. Certain Conditions Declared a Nuisance.

It shall be unlawful for the owner, occupant, or person having control or management of any land within Hopkins County to permit a public nuisance or health hazard to develop thereon. The following conditions are declared to be public nuisances:

(A) **Dwellings unfit for human habitation**: The erection, use, or maintenance of a dwelling which is unfit for human habitation.

(B) **Dilapidated Buildings**: Any building, house, or structure which is so out repair and dilapidated that it constitutes a fire hazard liable to catch on fire or communicate fire, or which, due to lack of adequate maintenance or neglect, endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants or adjacent property.

(C) **Accumulation of Rubbish**: The accumulation of rubbish, filth, refuse, trash, garbage or any material that endangers the public health, welfare, safety, or enjoyment by owners or occupants of adjacent property because of the danger of its catching or communicating fire, attracting and propagating vermin, rodents, or insects, or its blowing of rubbish into any highway, road, street, sidewalk, or property of another.

(D) **Noxious, Vile, or Odors, or Smoke:** Emissions into the surrounding atmosphere of odor, dust, smoke, or other matter which renders ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible.

(E) **Noise:** Emission of noise that is noxious enough to destroy the enjoyment of dwellings or other uses of property in the vicinity by interfering with the ordinary comforts of human existence.

(F) **Trees and Shrubbery Obstructing Highways, County Roads, and Streets:** The growing and maintenance of trees with less than fourteen (14) feet clearance over roads, or the growing and maintenance of shrubbery within the radius of twenty (20) feet where the curb line of any highway, county road, or street intersects the curb line of another highway, county road, or street is prohibited if it interferes with the visibility of motorists using such public ways or restricts their passage.

(G) **Excessive Growth of Weeds or Grass:** Allowing weeds or grass to grow to an unreasonable length, with the exception of property assessed at the agricultural value.

(H) **Storage of Explosives or Combustible Material:** The storage of combustible or explosive material that creates a safety hazard to other property or persons in the vicinity.

(I) **Keeping of Animals:** The keeping of commercial dog kennels, swine, goats, cattle or poultry within 100 feet of a dwelling other than the dwelling of the owner of the animal(s), or failure to keep the animal's pen, yard, lot or other enclosure in a sanitary condition and free from preventable offensive odor. The forsaking, neglect or refusal to provide for care and support of an animal by its owner or agent. Abandonment shall constitute relinquishing rights and claims by the owner to the animal. A peace officer, animal control officer or officer of the Humane Society may destroy or kill any animal found abandoned and suffering and not properly cared for, appearing to be injured, diseased or suffering past recovery.

(J) **Control of Animals:** Being owner or person in control of animal(s) and failing to exercise control of animal(s) owned or harbored to prevent the following actions by them: chasing of vehicles; excessive, continuous or untimely barking, howling or yelping, so that the sounds are disturbing the peace and quiet of the neighborhood or vicinity; or to be detrimental to the life and health of any individual; molesting of passers-by; attacking other domestic animals; trespassing upon private property, or damaging property of any nature.

Any person owning or having care/custody of any animal shall be liable for any personal injury caused by such animal and for damages caused by such animal to public or private property.

(K) **Junk; Scrap Metal; Motor Vehicles:** The storage of motor vehicles in an inoperative condition, motor vehicles unfit for further use, unlicensed motor vehicles, automobile parts, refrigerators, stoves, washers, dryers, or scrap metal within the County limits except on premises authorized by the County for such purposes.

(L) **Abandoned Mobile/Manufactured Homes and Campers:** The storage of an abandoned, junked, discarded, or otherwise non-inhabitable mobile/manufactured home or camper.

(M) **Open Wells:** 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.

(N) **Any Condition Which Endangers Public Health.**

5. Abatement Procedure

(A) It shall be the duty of peace officer or other responsible officer designated by the Hopkins Fiscal Court 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 Ordinance and to demand abatement of the nuisance within thirty (30) days unless the nuisance constitutes an immediate danger to the health and well being of the community. If immediate danger is present, the nuisance shall be abated immediately, but not more than 24 hours after notice. Notice shall be served upon persons by personal service or certified mail, but if the address of the persons is unknown and cannot be ascertained in the exercise of reasonable diligence, a peace officer or designated official shall make an affidavit to that effect, and the serving of notice may be made by publication in a newspaper of general circulation for two (2) consecutive days. A copy of the notice shall be posted in a conspicuous place on the premises affected by the notice and it shall be recorded in the office of the clerk of the Fiscal Court.

(B) If the person so served does not abate the nuisance within thirty (30) days, the County may, but it is not required to, proceed to abate the nuisance or the County may employ independent contractors to abate the nuisance. The person or persons employed to abate the nuisance shall have the full right of access to the property with such personnel, machinery and equipment as are necessary to abate the nuisance. The County shall keep a ledger of the costs incurred to abate the nuisance and said costs shall be charged to and paid by the owner and/or occupant.

(C) If the County deems that a nuisance exists as described in subsections 4(A) or 4(B), and moves to abate the nuisance by demolishing the dwelling or dilapidated building, the owner may demand a hearing before the Fiscal Court pursuant to KRS 381.770 (5). It is the responsibility of the owner to notify the clerk of the Hopkins County Fiscal Court and request a hearing at the next regular session of the Hopkins Fiscal Court. A hearing shall be provided within 30 days after notice to the court and the demolition shall be suspended pending the outcome of the hearing.

(D) Charges for nuisance abatement shall be a lien on the premises. Nuisance abatement charges shall include labor, equipment usage, fuel and oil, filing fees, publication cost, court costs, and all other fees and charges when incurred by the County for the abatement of the nuisance, enforcement of the lien and foreclosure on the property. Whenever a bill for charges remains unpaid for sixty (60) days after it had been rendered, the Fiscal Court or its designated representative may file with the County Clerk a statement of lien claim. This statement shall contain a legal description of the premises, the expenses and costs incurred listed on an attached expense ledger, the date the nuisance was abated and a notice that the County claims a lien for this amount. Notice of the lien claim shall be mailed to the owner of the premises if his address is known. However, failure to record the lien claim or to mail the notice, or failure of the owner to receive the notice, shall not affect the right to foreclose the lien for charges as provided in subsection (E) below.

(E) Property subject to a lien for unpaid nuisance abatement charges shall be sold for nonpayment and the proceeds of the sale shall be applied to pay nuisance abatement charges and attorney's fees after deducting costs. This foreclosure shall be in equity in the name of Hopkins County, Kentucky.

(F) The County Attorney may file such foreclosure proceedings as resources permit or the County may employ an attorney to institute such proceedings, in the name of the County, in any court having jurisdiction over the matter, against any property for which the bill has remained unpaid sixty (60) days after it has been rendered.

6. Nuisance Created by Others

The provisions of subsections 5A through 5F 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 rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons on the property.

7. Penalty

Whoever violates and provision of this Ordinance may be fined not less than Ten ($10.00) Dollars nor more that One Hundred ($100.00) Dollars for each offense. Each day's continued violation shall constitute a separate offense. Whoever shall allow a nuisance to remain unabated for a period of thirty (30) days or more after receiving a notice thereof by uniform citation, criminal complaint, personal service or certified mail notice, or otherwise, may also be charged with a Class A Misdemeanor as defined by the Kentucky Revised Statutes.

This Ordinance shall become effective following publication on September 15, 2009.

Upon motion of Magistrate Lynn, and seconded by Magistrate Riggs the ordinance, as first read on the 1st day of September, 2009, was approved.

Upon second reading of the Ordinance, it was moved by Magistrate Riggs and seconded by Magistrate Wilson that the Ordinance be duly adopted. Whereupon the vote was called, and on roll call, the vote stood:

Magistrate Karol Welch	Yes
Magistrate William Groves	Yes
Magistrate Tim Riggs	Yes
Magistrate Larry Wilson	Yes
Magistrate Wilma Rogers	Not Present
Magistrate Mike Duncan	Yes
Magistrate Wesley Lynn	Yes

Whereupon, Hopkins County Judge/Executive Donald Carroll declared this ordinance adopted on this second reading, affixing his signature and the date thereto, and declared that the same be recorded.

HOPKINS COUNTY FISCAL COURT

Donald Carroll
Hopkins County Judge/Executive

Attest:

Devra Steckler
HOPKINS COUNTY CLERK