

Livingston County Public Nuisance Abatement Order 11812

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ORDER NO. 11812

AN ORDER OF THE LIVINGSTON COUNTY COMMISSION FOR THE ABATEMENT OF PUBLIC NUISANCES; ESTABLISHING STATEMENTS OF PURPOSE AND FINDINGS RELATING TO THE ABATEMENT OF PUBLIC NUISANCES; ESTABLISHING DEFINITIONS; PROVIDING FOR THE CONDITIONS THAT CONSTITUTE A PUBLIC NUISANCE; REQUIRING A PROCESS FOR RECEIVING COMPLAINTS, MAKING NUISANCE DETERMINATIONS, AND PROVIDING NOTICE TO AFFECTED PROPERTY OWNERS; REQUIRING A PUBLIC HEARING FOR PROPERTY OWNERS FAILING TO TAKE CORRECTIVE ACTION; AUTHORIZING THE COUNTY TO TAKE REMEDIAL ACTION AND ASSESS COSTS THEREFORE; PROVIDING FOR THE APPLICABILITY OF THIS ORDER TO OTHER REGULATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 67.402, RSMo, authorizes Livingston County to confront public nuisances by enacting a nuisance abatement ordinance; and

WHEREAS, The public health, safety and welfare of the County requires the enactment of this Order; and

WHEREAS, this Order is authorized by Section 67.402(2), RSMo; and

WHEREAS, The County Commission has satisfied all notice and public hearing requirements applicable to the adoption of this Order.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF LIVINGSTON COUNTY, MISSOURI:

Section 1. Purpose.

The purpose of this Section is to provide for the abatement of public nuisances. The specific purposes of this Order are to:

- Establish reasonable standards and fair procedures to identify conditions that constitute a public nuisance.
- Provide a consistent process whereby the County receives public nuisance complaints, inspects each of them, and notifies the affected parties of the County's position regarding the existence of a public nuisance and how and when abatement must occur.
- Require the Nuisance Enforcement Officer to call a hearing if a property owner fails to abate the public nuisance in order to determine whether a formal abatement order should be issued.

- Authorize the County to take corrective, removal action when necessary and assess the applicable costs on the responsible property owner.

Section 2. Definitions.

As used in this Order:

“Abatement” means the removal, stoppage, prostration, or destruction of that which causes or constitutes a public nuisance, whether by breaking or pulling it down, or otherwise destroying, or effacing it.

“Derelict” means disassembled, in whole or in part, or unable to move or operate under its own power over the last consecutive thirty (30) days or more.

“Notice of Abatement” means a form submitted to the Nuisance Enforcement Officer by a property owner that certifies that public nuisance identified in the Public Nuisance Notice has been abated.

“Nuisance Enforcement Officer” means any officer or officers designated by the Livingston County Commission to inspect property, issue a Public Nuisance Order, conduct hearings, approve a Notice of Abatement, or to take any other action in response to a complaint as provided in sections 4 through 6 of this Order. If the Livingston County Commission has not appointed a Nuisance Enforcement Officer, the County Clerk is the designated Nuisance Enforcement Officer.

“Owner” means the owner of record based on the County Assessor’s record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

“Property” means any real property, premises, structure or location on which a public nuisance is alleged to exist.

“Public Nuisance” means a condition of any lot or land in residential subdivisions or districts, which may endanger public safety or which is unhealthy or unsafe and declared to be a public nuisance pursuant to this Order.

“Public Nuisance Notice” means an official determination served by the Nuisance Enforcement Officer pursuant to Section 4.E of this Order.

“Public Nuisance Order” means an official order issued by the County Commission for the abatement of a public nuisance after a hearing conducted pursuant to this Order.

“Vehicle” means motorcycles, cars, trucks, construction equipment, or similar machine designed for self-propelled transportation or industrial operations.

Section 3. Conditions Constituting a Public Nuisance.

- A.** The following items that are present on any lot or land constitute a public nuisance if they are found to meet the criteria established in subsection 3.B, below:
 - 1. Rubbish and trash;
 - 2. lumber, bricks, tin, and steel;
 - 3. derelict vehicles and parts thereof;
 - 4. derelict appliances and parts thereof;
 - 5. broken furniture, and
 - 6. overgrown or noxious weeds.
- B.** The conditions listed in subsection 3.A constitute a nuisance and are considered detrimental to the health, safety, or welfare of the residents of Livingston County if any of the following criteria apply:
 - 1. The condition is a health hazard;
 - 2. The condition is a fire hazard;
 - 3. The lot or land lacks sufficient or adequate maintenance, which diminishes the enjoyment and use of property by neighboring property owners and the community;
 - 4. The condition degrades air and water quality; or
 - 5. The condition is a menace, threat, or hazard to the general health and safety of neighboring property owners and the community.
- C.** The following are not considered a public nuisance:
 - 1. Any condition relating to agricultural structures or agricultural operations including, but not limited to, the raising of livestock or row crops;
 - 2. Any condition concerning any railroad company regulated by the Federal Railroad Administration;
 - 3. Junkyards, by virtue of the presence of ten (10) or more derelict vehicles, as defined in the Livingston County Zoning Order.

Section 4. Public Nuisance Determination Procedure.

- A.** Any member of the public may report a public nuisance complaint to the Nuisance Enforcement Officer. The Nuisance Enforcement Officer may from time to time inspect property in the absence of a reported complaint.
- B.** After receiving a complaint or determining that a lot or land potentially meets the criteria in Section 3 of this Order, the Nuisance Enforcement Officer shall inspect the property where the public nuisance was reported. The Nuisance Enforcement Officer shall cause a file to be created for each complaint. The file shall include photographs and a written report of the initial inspection and all subsequent inspections.

- C.** After the inspection is completed, the Nuisance Enforcement Officer shall either:
1. Determine that no public nuisance exists; or
 2. Determine that a public nuisance exists.
- D.** If the Inspector determines that a public nuisance exists, he or she shall serve a Public Nuisance Notice either by personal service or by certified mail, return receipt requested, on the owner of record of the property where the public nuisance exists. The Public Nuisance Notice shall:
1. Specify the nature of the public nuisance, and
 2. describe how the public nuisance may be abated; and
 3. establish a reasonable time period for remediation that is at least thirty (30) days from the date that the Public Nuisance Notice is served; and
 4. outline the follow-up process including, but not limited to, the Notice of Abatement and re-inspection.
- E.** The owner, occupant, lessee, mortgagee, agent, and all other persons having an interest in the property as shown by the land records of the Recorder of Deeds shall be made parties to the Public Nuisance Notice.
- F.** If service is unable to be perfected pursuant to subsection 4.E above, the Nuisance Enforcement Officer may satisfy the notice requirements by:
1. publishing the Public Nuisance Notice in a newspaper of general circulation, once a week for two (2) consecutive weeks, and
 2. providing individual notice by:
 - a. leaving a copy of the Public Nuisance Notice with any individual in possession of the property, or
 - b. if there is no individual in possession of the property, by posting the Public Nuisance Notice conspicuously on the premises.
- G.** The property owner subject to the Public Nuisance Notice may:
1. Request additional time for abatement. If the Nuisance Enforcement Officer deems that this time period is reasonable, an amended Public Nuisance Notice shall be reissued.
 2. File a Notice of Abatement after having abated the public nuisance outlined in the Public Nuisance Notice.
- H.** The Nuisance Enforcement Officer shall inspect each property after the time period for abatement outlined in the Public Nuisance Notice has concluded and determine whether the public nuisance is abated, whether additional work needs to be performed, and to what extent additional work is ongoing. Nuisance Enforcement Officer shall communicate the results of this inspection to both the property owner and the original complainant.
- I.** The Nuisance Enforcement Officer may designate the County Sheriff or other County law enforcement officer to conduct inspections and submit inspection reports as provided in this section.

Section 5. Public Hearing.

- A.** If the recipient of a Public Nuisance Notice fails to commence abatement or fails to proceed continuously with abatement without unnecessary delay within the time period specified on the Public Nuisance Notice, the Nuisance Enforcement Officer shall call full and adequate hearing on the matter before the County Commission.
- B.** The hearing date shall be set for no later than sixty (60) days after the time period for abatement outlined in the Public Nuisance Notice has ended. The County Commission may extend this time period after notifying the parties to the Public Nuisance Notice.
- C.** All affected parties including the owner, occupant, lessee, mortgagee, agent, and all other persons having an interest in the property as shown by the land records of the Recorder of Deeds shall be given written notice of the hearing at least ten (10) business days prior to the hearing date.
- D.** At the hearing any party may be represented by counsel, and all parties shall have the opportunity to be heard and present evidence.
- E.** At the conclusion of the hearing, the County Commission shall either:
 - 1. Issue a Public Nuisance Order if the record supports a finding that the property is a public nuisance; or
 - 2. Not issue a Public Nuisance Order if the record fails to support a finding that the property is a public nuisance.
- F.** The Public Nuisance Order shall contain specific findings of fact, based upon competent and substantial evidence, that shows the property to be a public nuisance and detrimental to the health, safety, or welfare of the community.
- G.** Any party to the Public Nuisance Order may appeal the Order to the Livingston County Circuit Court within 30 days after the Order is adopted.

Section 6. Violations; Costs.

- A.** If a property owner fails to commence abatement of the public nuisance within seven (7) days of receiving notice of the Public Nuisance Order, the Nuisance Enforcement Officer shall enter upon the property and cause the condition constituting the public nuisance to be removed.
- B.** Costs incurred by the County in removing the public nuisance shall be certified to the County Clerk or officer in charge of finance, who shall cause the certified cost to be included in a special tax bill or added to the annual real estate tax bill, at the County Collector's option, for the property.
- C.** The certified cost shall be collected by the County Collector in the same manner and procedure for collecting real estate taxes.
- D.** If the certified cost is not paid, the tax bill shall be considered delinquent, and the collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill from the date of its issuance shall be deemed a personal debt

against the owner and shall also be a lien on the property until paid.

Section 7. Applicability to Other Regulations.

This Section does not provide exclusive regulation of conditions that may constitute public nuisances in certain situations. All uses of land including, but not limited to, junkyards shall comply with any and all applicable regulations imposed in the Livingston County Zoning Order, other County ordinances, and state and federal law.

Section 8. Severability.

If any section, subsection, sentence, clause, phrase or word of this Order is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The County Commission hereby declares that it would have passed and adopted this Order, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

Section 9. Effective Date.

This Order shall be in full force and effect from and after its passage by the Board of County Commissioners.

PASSED AND APPROVED THIS _____ DAY OF _____, 2012.

Eva Danner Horton, Presiding Commissioner

Ken Lauhoff, Eastern District Commissioner

Todd Rodenberg, Western District Commissioner

ATTEST:

Sherry Parks
County Clerk