COMMONWEALTH OF KENTUCKY
MASON FISCAL COURT
ORDINANCE NO. 17-_____

AN ORDINANCE RELATING TO THE ABATEMENT OF NUISANCES IN THE UNINCORPORATED AREAS OF MASON COUNTY, KENTUCKY

WHEREAS, the Mason Fiscal Court has the authority pursuant to KRS 67.083 (3)(a) and KRS 381.770 to enact ordinances to cause the abatement of nuisances; and,

WHEREAS, there exists in areas of Mason County, Kentucky, properties whose condition or use causes or tends to cause substantial diminishing value of residential or commercial properties adjacent thereto, or prevent or interfere with the use and enjoyment of adjoining property, or tends to render such properties as dangerous or detrimental or adverse to the health and welfare of the residents of Mason County, Kentucky; and

WHEREAS, the Mason Fiscal Court adopted Ordinance No. 02-03 to address these issues, and adopts this ordinance to amend such ordinance and republish such amended ordinance herein.

NOW THEREFORE, be it ordained by the Fiscal Court of the County of Mason, Commonwealth of Kentucky, as follows:

I. DEFINITIONS

1. Definition of "Nuisance." For the purpose of this ordinance, the term nuisance refers to a public nuisance, which is any condition or use of premises which is detrimental to the property of others, the use and enjoyment thereof, or the value of other property in the immediate vicinity in which such premises are located. This includes, but is not limited to, the accumulation, keeping or existence of the following:

a. Ashes, rubbish, garbage, lumber, bricks, cinder blocks, installation
material, building debris, construction waste, unused appliances, inoperable or unregistered vehicles or auto parts, unused or inoperable farm equipment, or other equipment and any other refuse or waste of any kind, whether liquid or solid.

b. Any structure which becomes unfit or unsafe for human use, habitation or occupancy or other condition on property which renders said property unhealthy, unsanitary, dangerous or injurious to occupants of the property or to other individuals, including mobile homes.

c. Abandoned, discarded or unused objects or equipment such as mobile homes, manufactured homes, campers, partially dismantled, wrecked or otherwise inoperable automobiles, furniture, and appliances. Campers or recreational vehicles which are stored when not in use, but are otherwise in usable condition, shall not be considered a nuisance when stored when not being recreationally used.

d. The growth of grass, trees, vines, underbrush or other forms of vegetation or the accumulation of dead trees, vines, bushes, weeds, underbrush, or other vegetation in such a manner and extent that the subject property may reasonably become inhabited by rodents, mosquitos or other vermin or animals, so as to endanger the public health and safety, as to cause or support the transmission of disease. The existence or growth of untended vegetative growth in excess of eight (8) inches in height shall be prima facie evidence of a nuisance hereunder. However, in determining the existence of such nuisance, the proximity to other property owners and historic or traditional use and maintenance of the subject property and adjoining properties shall be considered.

e. Brush piles or other discarded vegetative materials, unless stored at least 500 feet from the property line of an adjoining neighbor, provided that active composting
shall be exempted herefrom unless causing noxious odor emanating on to the property of others, and further exempting grass clippings or yard waste which may be stored on a residential property for up to thirty (30) days prior to removal.

f. Used tires if more than twenty (20) tires accumulate upon property in a building or other enclosed structure protected from the elements and out of view of any public roadway, or more than ten (10) tires accumulate or are stored upon property outside of a building or enclosed structure. Contiguous properties under common operation shall be considered one property for purposes of this section. Under no circumstances shall tires be accumulated or stored within view of a public roadway or adjoining property. If more than twenty (20) tires accumulate in the normal course of business or agricultural activity, such tires shall not be determined to be a nuisance under this ordinance if stored in an enclosed roadworthy trailer until shipment to a recycler or disposal facility. “Normal course of business” shall refer to automobile or equipment repair, or the other use of tires as part of such automobile or equipment, and not to the business of shipping, storing, or trading used tires, which shall be subject to the limitations above unless a licensed tire retailer.

2. Nothing herein shall preclude enforcement of Mason Fiscal Court Ordinance No. 95-l, or state or federal statutes and regulations, pertaining to solid waste, and the accumulation of any substance, whether specified hereunder, shall be deemed a nuisance if defined as solid waste by Ordinance No. 95-l, or other applicable law.

II. PROHIBITED ACTS AND/OR OMISSIONS

It shall be unlawful for the owner, occupant or person having control or management of land within Mason County, Kentucky, to permit or cause a nuisance to develop or exist thereon.
III. **ABATEMENT OF NUISANCE**

1. **Complaints.** Any citizen may make a Complaint to the Mason Fiscal Court, provided that such Complaint shall be made in writing on a form provided by the Mason Fiscal Court, and shall identify the complainant. Whether or not a citizen Complaint is made, nuisances shall be investigated by the Solid Waste Enforcement Officer, peace officers, or any other County employee as designated by the County Judge/Executive.

2. **Notice to Abate.** The County Judge/Executive, Solid Waste Enforcement Officer, County Attorney, or other authorized officer, shall serve or cause to be served a notice upon the owner, occupant or person having control or management of any premises on which there is kept maintained or permitted any nuisance in violation of the provisions of this chapter. Such notice shall describe the nuisance and demand that the nuisance shall be abated within the time provided in the notice. The notice shall provide the owner, occupant or person having control or management of the premises a thirty (30) days period to abate the nuisance, or a longer period should the Solid Waste Enforcement Officer determine that a longer period is reasonably necessary, or may be a period as short as twenty-four hours where it is determined that the condition to be abated constitutes an immediate danger to the health and well-being of the community or adjoining property owners. Where the notice is given to abate the nuisance by mowing grass or other vegetation of excessive height, the notice shall give seven (7) days to abate the nuisance.

   The notice shall also include the following:

   a. A statement to the effect that a determination has been made that a violation has been committed and that if the nuisance is not abated within the prescribed time, the Fiscal Court may proceed to abate the nuisance.
b. An estimate as to the value of the labor and materials necessary to abate the nuisance.

c. A statement to the effect that time cost of abatement constitutes a lien against the property in favor of the Fiscal Court;

d. A statement to the effect that after the Fiscal Court has abated the nuisance or prohibited act, the County Judge/Executive will send an invoice for the cost of abatement, which shall include all labor, materials, reasonable value of equipment used, landfill expenses and any administrative cost incurred, to the property owner and occupant, and if such invoice is not paid within thirty (30) days following the mailing of the invoice, that notice of a lien for the cost of the abatement will be placed against the property or other property owned by the same owner within Mason County; and

e. A statement that maintaining a nuisance is a criminal violation with penalties as set out in Section VII hereof.

3. **Service of Notice.** Notice shall be deemed effectuated upon violators, including owners and occupants of the property, by personal service or by mailing same to the last known address of such person, and proof of receipt shall not be required. Additionally, a copy of such notice shall be posted in a conspicuous place on the premises affected by the notice.

4. **Abatement by Fiscal Court.** If the owner, occupant or alleged violator does not abate the nuisance within the time specified in the notice provided hereunder, the Fiscal Court may proceed to abate such prohibited act, keeping an account of the expense of the abatement; and such expense, including labor, materials, reasonable value of use of equipment, and any administrative cost incurred, shall be charged to and paid by such owner or occupant or alleged violator. The notice periods provided for in this subsection shall be determined to
commence as follows:

a. Where notice is personally served, on the day following service.

b. Where notice is by mail or posting, on the third day following mailing.

IV. ABATEMENT LIEN

1. Creation of Lien. The Fiscal Court of Mason County, Kentucky, shall have a lien against the property upon which the nuisance exists for the reasonable value of labor, materials, equipment use, landfill tipping fees and administrative costs thereby expended and used in abating, correcting or remedying any violation of this ordinance. In addition, such lien shall attach to all other property within Mason County owned by the same property owner who is subject to the abatement, provided that the lien shall describe with particularity the property which is the subject of the abatement and any other properties within the County subject to the lien. The affidavit of the Judge/Executive, or Solid Waste Enforcement Officer, shall constitute prima facie evidence of the amount of the lien and the regularity of the proceeding pursuant to this ordinance, and shall be recorded in the office of the Mason County Clerk. The lien shall be noticed to all persons from the time of its recording and shall bear interest thereafter until paid at the legal rate of twelve (12%) percent per annum. The lien created shall take precedence over all other subsequent liens, except ad valorem taxes due the Commonwealth of Kentucky, Mason County, and other taxing districts or municipalities, and may be enforced by the filing of an action to enforce such lien in the Mason Circuit Court.

2. Perfection of Lien. The lien created hereby shall be evidenced by a Notice of Lien filed in the Mason County Clerk’s office, which notice shall include the affidavit of the County Judge/Executive, Solid Waste Enforcement Officer, or the County Attorney, describing the subject property or other properties within the County and the amount of the Fiscal Court's
costs of abatement as provided herein. The Fiscal Court shall invoice the property owner or occupant of such premises at least once following abatement and no notice of lien claimed shall be filed against the property or other properties within the County until two (2) weeks have elapsed since such post-abatement invoice is sent. A copy of the notice of lien claimed shall be mailed to the owner of the premises at his or her last known address and posted on the property. The failure to mail the owner a copy of such notice or failure to post same, or failure of the owner to receive such notice shall not affect the right to foreclose the lien for such charges as provided hereinafore.

3. **Personal Liability for Lien.** In addition to the lien remedy prescribed herein or any other remedy authorized by law, 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. The Fiscal Court may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt.

4. **Property to Be Sold.** Any action to enforce the lien herein shall be filed in the Mason Circuit Court by the Mason Fiscal Court and shall name as Defendants all owners or other persons holding a recorded interest in the subject property. Property subject to a lien for unpaid abatement charges herewith may be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the abatement charges after deducting costs as is the case in the foreclosure of statutory liens.

5. **Release of Lien.** The County Attorney is hereby authorized and directed to execute a release of the lien provided for herein upon payment in full of the abatement charges evidenced by the lien. The release shall be filed in the office of the Mason County Clerk.
V. **APPEALS**

1. **Notice of Appeal.** Within thirty (30) days of mailing Notice of Abatement, any owner, occupant or person aggrieved by the foregoing procedures regarding abatement of nuisance, may appeal the decision regarding the prohibited act or abatement thereof, to the Mason Fiscal Court by filing a notice of appeal with the Office of the County Judge/Executive. Upon filing of time appeal, no further abatement action shall be taken prior to the decision of the Fiscal Court.

2. **Hearing.** At the hearing which shall be held upon at least ten (10) days notice, to the last known address of the owner, occupant or other aggrieved person, the owner, occupant or person aggrieved shall have the right to testify in his or her own behalf, to cross examine witnesses against him or her and to call witnesses and/or introduce evidence on his or her behalf.

3. **Appeal to Circuit Court.** An appeal from the decision of the Mason Fiscal Court may be taken to Mason Circuit Court by the filing of a Complaint and a copy of the order of the Fiscal Court in the same manner as any civil action under the Kentucky Rules of Civil Procedure within thirty (30) days of the date of the order of the Mason Fiscal Court. Such action shall be tried de novo and the burden shall be on the County to establish a violation occurred. If the Circuit Court finds that a violation occurred, the Appellant shall be ordered to pay the County all costs incurred by the Fiscal Court as of the date of the judgment. If the Circuit Court finds that the violation did not occur, the Fiscal Court shall be ordered to dismiss its Notice of Abatement, and bear its own costs.

VI. **DELEGATION OF ENFORCEMENT RESPONSIBILITY**

This code shall be enforced by the County Judge/Executive or Solid Waste
VII. PENALTIES

1. Criminal Penalties. Failure by the owner, lessee, occupant or person having charge of any property where a nuisance is maintained, or person who causes a nuisance or permits same to exist longer than ten (10) days after notice from the County Judge/Executive, or other authorized officer, shall constitute a criminal offense and upon conviction thereof, any such person shall be fined not less than One Hundred ($100.00) Dollars, but not more than Five Hundred ($500.00) Dollars for each offense, and/or be sentenced to a period of confinement not to exceed ninety (90) days. Each day of violation shall constitute a separate offense.

2. Civil Penalties. In lieu of the imposition of criminal penalties as provided hereunder, the Fiscal Court may recover civil penalties in any lien enforcement and cost recovery action before the Mason Circuit Court in amounts equal to the fines for criminal penalties provided in the immediately preceding paragraph.

3. Penalties Cumulative. The criminal or civil penalties provided hereby may apply in addition to the abatement procedures provided hereby, or in lieu thereof, where no abatement procedures are performed by the Fiscal Court.

Given FIRST READING this ____ day of _____________, 2017.

Given SECOND READING, and unanimously passed upon motion duly made and seconded, and enacted this _____ day of _______________, 2017.

____________________________________
Hon. Joseph P. Pfeffer, Judge/Executive

ATTEST:

____________________________________
Stephanie Schumacher, Mason County Clerk
COMMONWEALTH OF KENTUCKY
MASSON FISCAL COURT
ORDINANCE NO. 17-____

At the regular meeting of the Mason Fiscal Court held on January 10, 2017, an Ordinance amending Ordinance No. 02-03 was considered and given first reading. Such Ordinance is summarized as follows:

AN ORDINANCE RELATING TO THE ABATEMENT OF NUISANCES IN THE UNINCORPORATED AREAS OF MASON COUNTY, KENTUCKY

Such Ordinance will be given second reading and considered for adoption at the next regular meeting of the Mason Fiscal Court, on February ____, 2017, at 9:00 a.m. The full text of the amended Mason County Administrative Code is available for review at the offices of the County Judge/Executive, 221 Stanley Reed Court, Maysville, Kentucky 41056.

Honorable Joseph P. Pfeffer
Judge/Executive

To be published _____________ and _____________