

**ORDINANCE NO. 22-\_\_\_\_**

**AN ORDINANCE RELATING TO THE BOONE COUNTY FISCAL COURT REPEALING SECTIONS 150.60 – 150.68 OF THE BOONE COUNTY CODE OF ORDINANCES TITLED, REPAIR, CONDEMNATION OR DEMOLITION OF STRUCTURES UNFIT FOR HUMAN HABITATION IN ITS ENTIRETY, AND ADOPTING IN ITS PLACE AN UPDATED AND MODERNIZED UNFIT AND UNSAFE STRUCTURES ORDINANCE.**

**WHEREAS**, The Kentucky General Assembly has given authority to the County Fiscal Court to protect and preserve the health, safety, welfare, and convenience of the inhabitants of Boone County pursuant to KRS 67.083; and

**WHEREAS**, The Boone County Fiscal Court exercised such authority to promulgate ordinances related to the repair, condemnation or demolition of structures unfit for human habitation with the adoption of Ordinance 1010.3A passed on June 21, 1994 and Ordinance 01-97-01 adopted on January 28, 1997; and

**WHEREAS**, the Fiscal Court has determined that, after twenty-one years, it is necessary and proper to review, update and modernize the ordinance pertaining to unfit and unsafe structures; and

**WHEREAS**, the Fiscal Court of Boone County, Kentucky after due consideration, has determined that such a review, update and modernization of the ordinance relating to unfit and unsafe structures will provide a more effective, efficient and beneficial system, promoting life safety and protection of property while preserving all current rights and process to which citizens are entitled.

**NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF BOONE, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

**SECTION ONE**

The Boone County Fiscal Court hereby repeals Sections 150.60 to 150.68 of the Boone County Code of Ordinances titled Repair, Condemnation or Demolition of Structures Unfit for Human Habitation.

## SECTION TWO

The Boone County Fiscal Court hereby adopts the following into the Boone County Code of Ordinances:

### **STRUCTURES UNSAFE OR UNFIT FOR HUMAN HABITATION, OCCUPANCY OR USE**

#### **SECTION 1. DEFINITIONS**

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

**CODE OFFICIAL.** Any county officer(s) authorized by the Fiscal Court to exercise the powers prescribed by this subchapter which shall include, at a minimum, officers in the Code Enforcement Department and the Chief Building Official.

**IMMINENT DANGER** - The existence of any condition related to a structure, outbuilding, appurtenances or adjoining site which could reasonably be expected to cause death or immediate, serious physical harm to any person inhabiting a structure or to the general public who enter the structure or outbuildings, ancillary structures, appurtenances and adjoining site belonging thereto.

**NOTICE.** Service upon persons either personally, by hand delivery, or by certified mail at the last known address on record for payment of the ad valorem taxes or by certified mail to the owner's agent by appointment of by law. If the whereabouts of such person is unknown and cannot be ascertained after an exercise of reasonable diligence, then an affidavit to that effect may be made and service shall then be by posting in a conspicuous place upon the involved structure and by publication pursuant to KRS Chapter 424.

**OWNER.** The holder of legal title to the property in fee simple and every mortgagee of record.

**STRUCTURE.** Any building, or part thereof, used or occupied, or intended for human use, occupancy or habitation, or commercial or industrial purposes, or under construction within accepted industry standards, and includes any outbuildings, ancillary structures, appurtenances and the adjoining site belonging thereto or usually enjoyed therewith.

## **SECTION 2. CONDITIONS DETERMINING UNSAFE STRUCTURES AND STRUCTURES UNFIT FOR HUMAN HABITATION, OCCPANCY OR USE**

**A. Determination of Unsafe Structures or Structures Unfit for Human Habitation, Occupancy or Use.** Upon investigation, a *Code Official* may determine a structure is unsafe or unfit for human habitation, occupancy or use if it is found to be dangerous to the life, health, property, or safety of the occupants of the structure, the general public or adjacent structures. For the purposes of this section, a structure is unsafe or unfit for human habitation, occupancy or use when: a) it is damaged, decayed, unstable, dilapidated, unsecured, has the presence of a hazard that creates an unreasonably dangerous condition, or is structurally deficient to the point that it is dangerous to the safety, health and well-being of the occupants of the structure, the general public or adjacent structures; or b) structure lacks operational sanitary systems/facilities; or c) structure is a fire hazard such that the structure could easily catch fire or cause a fire that endangers the safety, health and welfare of the occupants, general public or adjacent structures. Determination of a fire hazard shall be made in consultation with the fire marshal with proper jurisdiction.

## **SECTION 3. NOTICE OF VIOLATION**

**A. Notice of Violation.** If a *Code Official* determines a structure is unsafe or unfit for human habitation, occupancy or use under the provisions of this section, before any additional action may be taken, with the exception of subsection 7 of this section, the *Code Official* shall issue a Notice of Violation.

1. The Notice of Violation shall state the following:
  - a. Reason for the violation.
  - b. Reference to this subchapter.
  - c. A specific order listing the conditions creating an unsafe/unfit condition and listing the corrective actions that the owner must take to eliminate the condition(s).
  - d. Provide that the owner shall have seven (7) days from the date of receipt of notice or publication of notice to either:
    - i. complete corrective action; or
    - ii. arrange for demolition of the structure; or
    - iii. contest the notice of violation and request a hearing; or
    - iv. request to mitigate the cause of the violation by alternate means and/or be granted a reasonable amount of additional time to complete the corrective action.

2. The Notice of Violation shall be served upon the owner of the structure either personally, by hand delivery, or by certified mail to the last known address on record for payment of the ad valorem taxes or by certified mail to owner's agent by appointment or law. If the whereabouts of such person is unknown and cannot be ascertained after an exercise of reasonable diligence, then an affidavit to that effect may be made and service shall then be by posting in a conspicuous place upon the involved structure and by publication pursuant to KRS Chapter 424, hereafter "publication or publication of notice."
3. The owner of a structure who has been issued a Notice of Violation, within seven (7) days of receipt of notice or publication of *notice*, may elect to: a) complete the corrective action addressing the identified problems consistent with the *Notice* and notify the *Code Official*; b) demolish the structure; c) contest the determination of an unsafe structure/ structure unfit for human habitation, occupancy or use pursuant to subsection 4; or d) present an alternate plan to secure the cause of the violation and/or request a reasonable extension of time to complete the corrective action that is approved by the *Code Official*. The *Code Official* shall provide written notice to the owner of the structure within two (2) working days of receiving notification that the issue has been corrected as to whether the corrective action taken is acceptable and the matter resolved or that the plan and timeline to correct the issue is acceptable or not acceptable as presented. The owner shall preserve the right to contest the notice of violation for the seven (7) days following original receipt of the notice of violation, for any additional period granted by the *Code Official* and for seven (7) days thereafter.

## **SECTION 4. HEARINGS**

**A. Initiation of Hearing.** A hearing may be initiated by:

- 1) The owner of a structure who has been issued a Notice of Violation. A hearing must be requested, in writing, to the *Code Official* within seven (7) calendar days of the date of receipt of publication of the Notice of Violation. The Request for a Hearing may be hand delivered or mailed via first class mail; or
- 2) A *Code Official* if within seven (7) calendar days of receipt of the notice or publication of the notice, the owner of the structure has not corrected the problem, arranged for demolition, requested a hearing, presented an alternate, approved plan to correct the problem/ requested and received approval for additional time or an approved plan is not completed in an acceptable manner within the timeframe approved.

**B. Hearing Panel.** The County Administrator shall appoint a hearing officer who is a department head for the Boone County Fiscal Court but is neither the person who issued or approved the notice of violation under review nor is a subordinate of such

person and two (2) additional members which together shall serve as the Hearing Board. One of the additional members shall be randomly selected from the Building Code Appeals Board and one of the additional members shall be randomly selected from the Parking and 911 Dwelling Unit Appeals Board. *Notice* of the hearing date, time and place shall be sent no later than seven (7) calendar days prior to the hearing date via personal service to the owner by hand delivery or by certified mail to the last known address on record for payment of the ad valorem taxes or by certified mail to owner's agent by appointment or law. If the whereabouts of such person is unknown and cannot be ascertained after an exercise of reasonable diligence, then an affidavit to that effect may be made and service shall then be by posting in a conspicuous place upon the involved structure and by publication pursuant to KRS Chapter 424, hereafter "publication or publication of notice."

**C. Hearing Requirements.** The hearing shall be chaired by the hearing officer appointed by the county administrator.

The *Code Official* has the right to:

- 1) Be present at the hearing.
- 2) Present evidence and all or any information pertinent to the hearing.
- 3) Be informed if the owner or parties in interest intend to be represented by legal counsel or by another party.
- 4) Have the original petitioner and/or other involved persons present.
- 5) Ask questions of anyone testifying at the hearing.
- 6) Have legal representation present.

The owner or parties in interest have the right to:

- 1) Be present at the hearing
- 2) Examine any documents related to the issuance of the notice of violation twenty-four (24) hours prior to the hearing, upon request.
- 3) Present at the hearing any or all pertinent information.
- 4) Request that the *Code Official* be present at the hearing to answer questions pertinent to the case.
- 5) Ask questions of anyone testifying at the hearing.
- 6) Be represented by legal counsel at their own expense provided the Hearing Board is informed of such representation at least two (2) days before the hearing.

#### **D. Hearing Procedures:**

1. The hearing shall concern a determination of whether the structure is unsafe or unfit for human habitation, occupancy or use as described in Section 2. (A) *Determination of Unsafe or Unfit Structures*.
2. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceeding except as provided hereinafter.
3. The Hearing Board's determination shall be based on findings of fact.
4. The determination shall be by a preponderance of the evidence presented at the hearing.
5. All evidence presented at the hearing shall be through witnesses who are first duly sworn to tell the truth.
6. All documentary evidence presented in said hearing shall be authenticated through such sworn witness who has firsthand knowledge of same, through the producer of such documents, or through certification of such documents by such agency, secretary, or keeper of said records from which said documentary evidence was produced.
7. The Hearing Board may:
  - a) Determine the structure is not unsafe/unfit for human habitation as defined in this section, thus no further action is warranted and dismiss the noticed violation; or
  - b) Determine the structure is unsafe/unfit for human habitation as defined in this section and that within seven (7) days, the owner correct the problem as outlined by the *Code Official*. The structure shall be immediately closed and secured until the problems are corrected; or
  - c) Determine the structure is unsafe/unfit for human habitation as defined in this section and order the structure to be demolished.
8. The owner of the subject property shall receive notice of the results of the hearing. The Hearing Officer who conducts the hearing shall issue a written decision which shall be sent to the owner within five (5) calendar days following the decision by hand delivery to the owner or by certified mail to the last known address on record for payment of the ad valorem taxes or by certified mail to owner's agent by appointment or law. If the whereabouts of such person is unknown and cannot be ascertained after an exercise of reasonable diligence, then an affidavit to that effect may be made and service shall then be by posting in a conspicuous place upon the involved structure and by publication pursuant to KRS Chapter 424, hereafter "publication or publication of notice." The decision shall contain the findings of the Hearing Officer and the reasons for the decision.

#### **SECTION 5. PLACARDING/POSTING**

If a structure is determined to be unsafe/unfit by a Hearing Board, the *Code Official* shall post a placard of condemnation on the premises and order the structure, or applicable section of the structure, closed up. If the owner or owner's authorized agent fails to

close up the structure within twenty-four (24) hours as required in the Board order, the *Code Official* shall cause the structure to be closed and secured through Boone County or by contract or arrangement by private persons or corporations.

- A. **Placarding.** The placarding/posting shall be attached on the main entrance to the structure, or as near thereto as possible if unable to be attached to the main entrance, and shall state as follows: "CONDEMNED. This structure is unsafe and not fit for human habitation, occupancy or use. The use or occupancy of this structure for human habitation is prohibited and unlawful."
- B. **Placard removal.** The *Code Official* shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. No person may deface or remove a condemnation placard without the approval of the *Code Official*. Any person who intentionally defaces or removes a placard may be cited by a *Code Official* or law enforcement officer. *Penalty 150.99 of the Boone County Code of Ordinances.*

## **SECTION 6. ENFORCEMENT OF BOARD ORDER**

- A. If, within seven (7) calendar days, the owner of a structure fails to correct the problem or present a plan for correcting the problem or demolish the structure as required in the Hearing Board order, the *Code Official* shall issue a citation. *Penalty Section 150.99.* Each day shall constitute a separate offense.
- B. If after 30 days, the owner of a structure fails to correct the problem or present a plan for correcting a violation as required in a Hearing Board order or the hearing decision is not appealed in District Court, the *Code Official* shall notify the County Administrator who shall determine whether corrective action shall be achieved either utilizing Boone County staff or by contract or arrangement with private persons or corporations. Boone County shall possess a lien on the relevant real property for all assessed civil fines and for all associated charges, legal fees and costs of repair or demolition.
- C. If after 30 days, the owner of a structure fails to demolish a structure as required in the Hearing Board order or the hearing decision is not appealed in District Court, the *Code Official* shall notify the County Administrator who shall place the matter before the Boone County Fiscal Court for consideration. Upon resolution of the Fiscal Court to uphold the Board Order for demolition, Final Notice shall be made to owner of the property. If within Fourteen (14) days, the structure has not been demolished or the action of the Boone County Fiscal Court has not been properly appealed to the Boone County District Court, the County Administrator shall determine whether

demolition shall be achieved either utilizing Boone County staff or by contract or arrangement with private persons or corporations. Boone County shall possess a lien on the relevant real property for all assessed civil fines and for all associated charges and costs of repair or demolition.

- D. **Salvage materials.** When any structure has been ordered demolished and removed and the demolition is performed or contracted by the County, Boone County shall have the right to sell the salvage materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, to the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

## SECTION 7. IMMINENT DANGER

- A. When a *Code Official* determines that there exists an *imminent danger* involving one or more of the following conditions:
- a) Failure or collapse of a building or structure that poses a danger to life safety; or
  - b) Any structure or part of a structure has or is in the process of falling; or
  - c) There exists a condition creating an *imminent danger* to the occupants of or those in the proximity of any structure.

The *Code Official* is authorized to condemn the structure, or the part of the structure deemed to contain an imminent danger, and require the occupants to vacate the premises forthwith and/or remediate the cause of the imminent danger. Until the *imminent danger* no longer exists, the *Code Official* shall placard the structure as required in subsection five (5) of this section and shall be authorized to secure the premises to the public and/or remove the threat of *imminent danger* when possible. It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

- B. A formal Notice of Violation shall be sent to the owner of the structure within forty-eight (48) hours of condemnation and shall be delivered either personally by hand delivery or by certified mail to the last known address on record for payment of the ad valorem taxes or by certified mail to owner's agent by appointment or law. If the whereabouts of such person is unknown and cannot be ascertained after an exercise of reasonable diligence, then an affidavit to that effect may be made and service shall then be by posting in a conspicuous place upon the involved structure and by publication pursuant to KRS Chapter 424, hereafter "publication or publication of notice." Within seven (7) days of delivery or publication, the owner

shall: a) correct the problems consistent with the notice of violation; b) demolish the structure; c) contest the determination of an unfit or unsafe structure pursuant to subsection four (4); or d) receive approval by the *Code Official* of a plan and timeline to remediate the imminent danger and correct the problem.

If the owner of the structure, within seven (7) days of the date of receipt or publication of notice, has not: (a) corrected the problem; (b) arranged for demolition; (c) contested the notice of violation; or (d) presented and received approval of a plan and timeline to remediate the imminent danger and correct the problem, the *Code Official* shall initiate a hearing, pursuant to subsection four (4) of this section. No occupant shall inhabit the structure until the *Code Official* deems the imminent danger resolved, the hearing board orders the condemnation determination by the *Code Official* dismissed or by order of the district court.

- C. Upon order following a board hearing pursuant to subsection four (4) of this section, the County may enforce the Board order as outlined in subsection five (5) of this section.
- D. Boone County shall possess a lien on the relevant real property for all assessed civil fines and for all associated charges and costs for repair or demolition resulting from non-compliance with a board order determining the structure unsafe/unfit for human habitation. When any structure has been ordered demolished and removed and the demolition is performed or contracted by the County, Boone County shall have the right to sell the salvage materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, to the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

### **SECTION THREE**

If any section or part of any section or any provision of this Ordinance shall be declared invalid by a Court of appropriate jurisdiction, for any reason, such declaration shall not invalidate, or adversely affect, the remainder of this Ordinance. All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

### **SECTION FOUR**

This ordinance shall be in effect and in full force from and after its passage, publication

and recording, according to law.

**§ 150.99 PENALTY.**

Any person, firm or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction in any court of competent jurisdiction, shall be fined not less than \$25 nor more than \$250, or imprisoned for not more than 90 days or both so fined and imprisoned in the discretion of the court, for each offense; and each day that the person, firm or corporation violates this or any provision thereof, may be deemed a separate offense.