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TRIMBLE COUNTY FISCAL COURT
TRIMBLE COUNTY, KENTUCKY

ORDINANCE NO. 830.13

AN ORDINANCE RELATING TO THE LIMITATION OF CONDITIONS UNDER WHICH NUISANCES SUITS MAY BE BROUGHT AGAINST AGRICULTURAL OPERATIONS AND THE CREATION OF AN AGRICULTURAL GRIEVANCE COMMITTEE

WHEREAS, it is the policy of Trimble County to conserve, protect and encourage the development and improvement of its agriculture land for the production of food and other agricultural products, and

WHEREAS, agriculture continues to be important to the economy of Trimble County providing over millions of dollars in revenue for the County, and

WHEREAS, agricultural activity and residential housing developments may not always be compatible due to the nature of some agricultural operations which can create noise, odor, dust, and other conditions which may render residential use of property difficulty and

WHEREAS, when non –agricultural land uses extend into agricultural areas, agricultural operations can become the subject of nuisance suits. As a result, some agricultural operations are forced to cease operations and many other are discouraged from making investments in farm improvements. It is the purpose of this ordinance to reduce the loss to Trimble County of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further the purpose of this ordinance to provide the residents of Trimble County notification of Trimble County’s recognition and support of its agricultural base and to commit to a good neighbor policy by advising the citizens of Trimble County that residential uses of property adjacent to or near agricultural operations may be affected by such operations. Such affects may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural operations; and

WHEREAS, it is in the best interest of the economic development of Trimble County to protect those persons, including, but not limited to, real estate brokers and agents, from nuisance suits when they sell or broker properties that may be near agricultural operations; **at the moment, THEREFORE, BE IT ORDAINED** by the Fiscal Court of Trimble County of Commonwealth of Kentucky, as follows:

- A. For the purpose of this Ordinance the following words and phrases shall have the meaning ascribed to them in this section:

1. "Agricultural Land" shall mean all real property within the boundaries of Trimble County currently used for agricultural operations.
2. "Agricultural Operation" shall mean and include, but not be limited to, the cultivation and tillage of the soil, dairying, production, cultivation, growing, harvesting or processing of any agricultural commodity, the raising of livestock, fish or poultry, or such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

B. Nuisance

It is the intention of this ordinance to protect the right to farm for those persons and companies presently engaged in agricultural and silvicultural operations in Trimble County, Kentucky. It is not the intention of this ordinance to promote or protect commercial industrial farm operations that may choose to locate in Trimble County, Kentucky after the enactment of this ordinance.

No agricultural or silvicultural operation or any of its appurtenances as exist at the time of the enactment of this ordinance shall be or become a nuisance or trespass, private or public, or be in violation of any ordinance, or be subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began. The provisions of this subsection shall not apply whenever a nuisance, trespass or violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.

Provided however, that if a farm that exists at the time of enactment of this ordinance is purchased, taken over, acquired or otherwise comes under the control of an entity that is engaged in large commercial industrial farm operations, it shall be deemed to have changed in condition so as not to be protected by this ordinance. Of the persons or owners of any agricultural or silvicultural operation that exists at the time of the enactment of this ordinance make substantial changes in the operation of said property and such changes are so substantial as to adversely affect the rights of adjoining property owners to enjoy their property, such changes shall take the property which has been so changed outside the protection of this ordinance and the same shall be governed by common law or statutory law provisions regarding private nuisance or public nuisance.

The provisions of this Ordinance shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream of any person, firm, or corporation.

This Ordinance shall not be construed to modify or abridge Kentucky Revised Statute 413.072, or any other applicable provision of state law on nuisance.

This Ordinance is only to be utilized in the interpretation and enforcement of the provisions of KRS 413.072.

C. Information Statement

If any real property near agricultural operations is transferred by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements then the owner shall deliver an information statement containing the language set out in Appendix "A" attached to the purchase of the interest in the property at or before the time a commitment to acquire the property is made.

Signing of this information statement by the owner shall be evidence of the statement by the acquirer in interest. Signing an acknowledgment of receipt of the statement by the acquirer in interest is not required but if signed shall be conclusive proof of the delivery of the statement and compliance with this section by the owner.

D. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

E. Precedence

This ordinance shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith and to the extent they do conflict with this ordinance, they are hereby repealed with respect to the conflict and no more.

F. Resolution of Disputes

(a) If any person who resides near an agricultural operation believes that an agricultural operation has caused or is causing a nuisance from agricultural operations, including, but not limited to, noises, odors, fumes, dust, the operation of machinery of any kind during any 24 hour period, the storage and disposal of manure, or the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides, or other similar activities so as to be maintaining or conducting the operation in a manner not substantially consistent with proper and accepted customs and standards then the person may submit the matter to a grievance committee as set forth below in an attempt to resolve the matter prior to the filing of any formal legal action.

(b) Any dispute arising under subsection (a.) may be submitted to a grievance committee whose decision shall be advisory only.

830.13

- (c) The committee shall be composed of five members. Those members shall be: The Trimble County Fiscal Court.
- (d) The parties shall cooperate in the exchange of pertinent information concerning the dispute.
- (e) The committee may investigate the facts of the dispute and shall hold a meeting as soon as possible, but within at least ten (10) days of the request, to consider the merits of the matter and within twenty (20) days of the meeting to make a written decision to the parties. At the time of meeting each party shall have an opportunity to present material relevant or pertinent facts.

First Reading

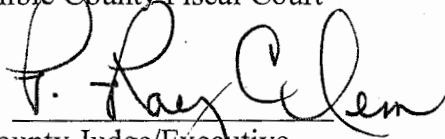
The entire Fiscal Court being present for a first reading of this document on April 15, 2002.

Second Reading

The entire Fiscal Court being present on motion of Richard Webster and being seconded by Stephen Stark, with five voting in favor, none voting against. This the 20th day of December 2002.

Trimble County Fiscal Court

By:


County Judge/Executive

Attest:

By:


Fiscal Court Clerk

REAL ESTATE INFORMATION STATEMENT

This information statement concerns the real property situated in the county of Trimble, State of Kentucky, described as _____. This statement is a notification of certain circumstances and conditions near to the above-described property in compliance with Ordinance No. _____ of the County of Trimble. It is not a warranty of any kind by the owner, or any agent of the owner representing any principal in this transaction, and is not a substitute for any inspections or warranties the principal may wish to obtain.

The owner notifies the acquirer of the Interest in the property of the following information with the knowledge that even though this is not a warranty, prospective acquirers in interests may rely on this information in deciding whether and on what terms to acquire an interest in the property. Owner hereby authorizes any agent representing any principal in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer of any interest in the property. The following are representations made by the owner as required by the county of Trimble and are not the representations of the agent, if any. This information is a notification and is not intended to be part of any contract between the buyer and owner.

The County of Trimble and applicable laws allow operation of properly conducted agricultural operations within the county. If the property you may be purchasing is located near agricultural lands or operations or included within an area used for agricultural purposes, you may be subject to inconveniences or discomfort arising from the operations. The discomfort or inconveniences may include, but are not limited to, noise, odors, fumes, dust, smoke, insects, operation of machinery during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation, which is in conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should accept these inconveniences or discomfort as a normal and necessary aspect of living in a county with strong rural character and active agricultural sector. Trimble County has established a grievance committee to assist in the resolution of any disputes, which might arise between residents of this county regarding agricultural operations.

Owner certifies that the information herein is true and correct to the best of owner's knowledge as of the date signed by the owner and that a true and accurate copy of this statement has been delivered to the prospective acquirer in interest, _____, on

_____, 2001; by _____

(state method of delivery)

Owner/Agent of Owner _____ Date _____

Acquirer in Interest _____ Date _____

State of Kentucky
County of Trimble

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ Day of _____, 20____ by _____ and _____.

My commission expires: _____, _____
Notary Public