

ORDINANCE NO. 018-269

AN ORDINANCE REQUIRING A FENCE AROUND DUMPSTERS WITHIN THE CITY OF SHEPHERDSVILLE.

BE IT ORDAINED by the City of Shepherdsville, Bullitt County, Kentucky:

SECTION ONE:

Ordinance 018-264 enacted on July 9, 2018, relating to Erecting a Fence around Garbage Dumpsters is hereby repealed in its entirety.

SECTION TWO: DEFINITIONS

- a) The term garbage when used herein means every refuse accumulation of animal, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of, meat, fish, fruit, or vegetables.
- b) The term rubbish when used herein means waste material and refuse of every character collected or accumulated within the City, except garbage, and shall include, but is not limited to, grass, leaves, sticks, tree branches, stone, concrete, boards, glass, used furniture or household appliances, cans, paper, cardboard, and packing material.

SECTION THREE: DISPOSAL

No person shall dispose of or dump garbage or rubbish upon the streets of the City of Shepherdsville or upon any public or private premises other than those duly designated for such purpose unless by special permission of the City Council.

SECTION FOUR: CONTAINERS

No person shall fail to place garbage and rubbish in plastic garbage bags to assist in the reduction of odors and unwanted pests before such garbage and rubbish is placed in containers of the type and size as may be necessary to ensure that such garbage and/or rubbish cannot be blown by the wind so as to be scattered or cause clouds of dust or particles. No person shall permit the escape of soot, ashes, or other solid products or results of combustion so as to allow such to be wind-blown or scattered.

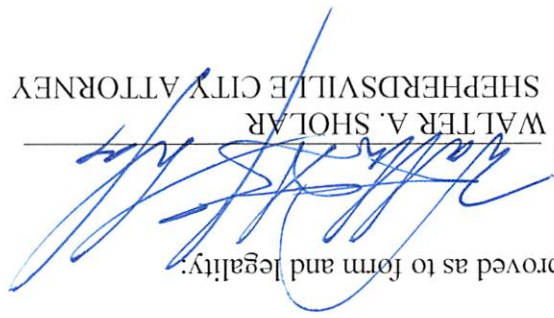
SECTION FIVE: DUMPSTERS

No person or business that on a weekly basis disposes of garbage and/or rubbish in quantities of greater than four 96-gallon carts shall fail to use a dumpster of appropriate size.

SECTION SIX: FENCES

No person shall fail to enclose a dumpster within a fence which completely obstructs it from public view except when a gate in the fence is open during normal dumping into or collection from the dumpster. Such fence must be:

1. An evergreen hedge with a chain link fence not less than six (6) feet in height; or
2. A fence of non-deteriorating material not less than six (6) feet; or
3. A masonry wall not less than six (6) feet in height.
4. A treated wood privacy fence not less than six (6) feet that is well maintained on the property.

Approved as to form and legality:

By: WALTER A. SHOLAR
SHEPHERDVILLE CITY ATTORNEY



WALTER A. SHOLAR
ATTORNEY AT LAW

September 27, 2018

Tammy Richmond, City Clerk
City of Shepherdsville
P.O. Box 400
Shepherdsville, KY 40165

**RE: Proposed Dumpster Enclosure Ordinance 018-269,
Review as to Legality and Form;
Your Email of 9/26/18 12:31 p.m.**

Dear Tammy:

You asked in your above-referenced email whether both former dumpster fence ordinances (018-264 and 996-385) should be included as being repealed in the proposed Ordinance 018-269. You also provided a proposed Ord. 018-269 that includes both of those earlier ordinances being repealed by Ord. 018-269.

It is not necessary for Ord. 018-269 to mention 996-385 if the 1996 ordinance was repealed by Ord. 018-264. Repealing an ordinance does not restore an ordinance that was repealed previously by the ordinance now being repealed. On the other hand, though it is unnecessary, specifically mentioning Ord. 996-385 even though it was already repealed does not legally harm the new ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter A. Sholar', written over a horizontal line.

WALTER A. SHOLAR

cc: Mayor Hockenbury

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WALTER A. SHOLAR
ATTORNEY AT LAW

September 20, 2018

Tammy Richmond, City Clerk
City of Shepherdsville
P.O. Box 400
Shepherdsville, KY 40165

RE: **Dumpster Enclosure Ordinance,
Review as to Legality and Form**

Dear Tammy:

The Ordinance requiring a fence around dumpsters within the City of Shepherdsville that was sent to me on September 19, 2018 looks okay to me as prepared.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Walter A. Sholar', written in black ink.

WALTER A. SHOLAR

cc: Mayor Hockenbury



WALTER A. SHOLAR
ATTORNEY AT LAW

September 10, 2018

Tammy Richmond, City Clerk
City of Shepherdsville
P.O. Box 400
Shepherdsville, KY 40165

**RE: Dumpster Enclosure Ordinance,
Review as to Legality and Form**

Dear Clerk Richmond,

Thank you for speaking with Tim White of my office today. Tim informs me that he discussed with you the draft potential proposed ordinance repealing Ordinance 018-264, meant to change the requirement that all dumpsters be enclosed to only apply when those dumpsters are on property adjoining property zoned residential. There are legal concerns with the wording of the potential proposed ordinance as drafted, and Tim agreed that this office would send you a letter detailing those concerns. This is that letter.

Section One. Section One purports to repeal Ordinance 996-385, along with Ordinance 018-264. It cannot repeal Ord. 996-385 because Ord. 018-264 has already done that.

Section Six. Section Six is the same as Ord. 018-264's Section Six except that the following wording has been added to it:

With an appropriate means of access shall be constructed to completely enclose the dumpster from public view when the commercial and/or industrial area adjoins any residentially zoned area.

This wording could make the Ordinance legally vague and therefore subject to court interpretation the City does not intend. Better wording, based on my understanding of what members of the City Council indicated at its last meeting before this date, would be:

The requirements set out hereinabove in this Section Six shall not apply regarding any dumpster on real property that does not adjoin real property zoned Residential.

However, using such wording would raise its own issues. Would the City wish the requirements of Section Six to apply to any dumpster on real property zoned Residential that adjoined real property otherwise zoned? Or are the requirements to apply only when adjoining property is Residential (as the above wording would provide)?

Also, such a provision (either as drafted currently, or as suggested above) could lead a property owner who wishes to be exempted from the enclosure requirement to transfer a "buffer parcel". This is how that would work: Owner has a parcel of property with a dumpster on it that is unenclosed. Owner does not wish to enclose the dumpster, but the property adjoins Residential property. To get around the requirement, Owner could have a deed prepared conveying from themselves to themselves a portion of the property so that the portion upon which the dumpster is located adjoins their own newly created parcel. The newly created parcel would adjoin the neighboring Residential parcel, but the part where the dumpster is located would not—therefore, it would be exempt from the Section 6 requirements.

Creating a provision that would eliminate this possibility, if the Council does pursue exempting properties that do not adjoin Residential property, does not seem possible.

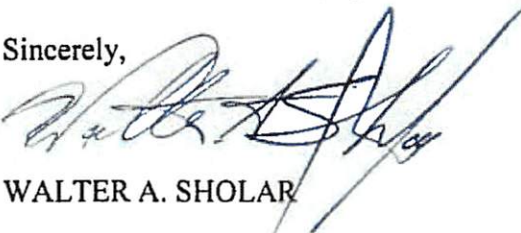
Section Eight. I have been given to understand that council members expressed interested in lowering the fines for violation of the ordinance to match those fines as previously set out in Ord. 996-385. It does not appear this has been done.

Section Nine. If the alternate language for Section Six is used, I would suggest the following bolded provision be added to the second sentence of Section Nine:

A person with a dumpster upon the effective date of this Ordinance which is not enclosed so as to meet the requirements of Section Six of this Ordinance **and which is not exempt from those requirements** shall be allowed up to six (6) months from the effective date of this Ordinance to comply with the requirements of Section Six.

Please contact me with any questions or instructions regarding this matter.

Sincerely,



WALTER A. SHOLAR

cc: Mayor Hockenbury

The requirement set out hereinabove in this Section shall not apply regarding any dumpster on real property that does not adjoin real property zoned Residential.

SECTION SEVEN: CIVIL OFFENSE

Violation of this Ordinance shall constitute a civil offense.

SECTION EIGHT: PENALTY

Any person violating any provision of this Ordinance shall incur a civil penalty if the citation is uncontested of Seventy-Five Dollars (\$75.00) for a first offense, One Hundred Fifty Dollars (\$150.00) for a second offense, and Three-Hundred Dollars (\$300.00) for a third or greater offense. A separate offense shall be deemed committed each day on which a violation occurs or continues.

If the citation is contested, the maximum civil penalty for a first offense is One Hundred Fifty Dollars (\$150.00), for a second offense Three-Hundred Dollars (\$300.00), and Six-Hundred Dollars (\$600.00) for a third or greater offense. A separate offense shall be deemed committed each day on which a violation occurs or continues.

SECTION NINE:

A person with a dumpster upon the effective date of this Ordinance which is not enclosed so as to meet the requirements of Section Six of this Ordinance **and which is not exempt from those requirements** shall be allowed up to six (6) months from the effective date of this Ordinance to comply with the requirements of Section Six.

SECTION TEN:

Any part of any ordinance in conflict with this Ordinance or any part of this Ordinance is repealed.

SECTION ELEVEN:

Should any section, clause, line, paragraph, or part of this Ordinance be held unconstitutional or invalid for any reason, the same shall not affect the remainder of this Ordinance.

Given first reading at a regular meeting of the City Council of the City of Shepherdsville, Bullitt County, Kentucky on the 24th day of September 2018. Given second reading and voted upon at a regular meeting of the City Council of the Shepherdsville, Bullitt Kentucky, on the 8th day of October 2018

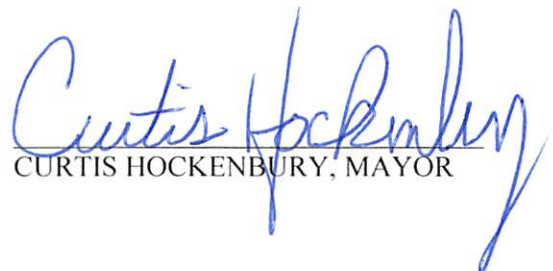
Votes For: 5;

Votes Against:0;

Abstentions: 1.

Donna Burke	x
Lisa Carter	
Stacey Cline	x
Bonnie Enlow	x
Mike Hibbard Sr.	x
Gloria Taft	x

x



CURTIS HOCKENBURY, MAYOR

ATTEST:



TAMMY RICHMOND, CITY CLERK