

RESOLUTION ADOPTING PROVISIONS FOR THE
HEALTH AND SAFETY OF PRIVATELY-OWNED REAL PROPERTY

WHEREAS, Tennessee Code Annotated Section 5-1-115 empowers counties to protect the health, safety and welfare of citizens by the enactment of provisions to correct the accumulation of debris, trash, litter and garbage, or the occurrence of overgrown vegetation, or the infestation of harmful animals, or the occurrence of a vacant dilapidated building or structure, on privately-owned real property; and

WHEREAS, it is deemed that such provisions are needed in unincorporated Fayette County; and

WHEREAS, on the 28th day of April, 2009, such provisions were adopted by the Board of County Commissioners of Fayette County, Tennessee, as "Regulations Governing The Health and Safety Standards of Residential and Non-Residential Properties"; and

WHEREAS, these regulations are unclear in certain respects and difficult of administration;

NOW THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Fayette County, Tennessee, meeting in regular session on this 25th day of August, 2015, in Somerville, Tennessee, that the existing "Regulations Governing The Health and Safety Standards of Residential and Non-Residential Properties," adopted the 28th day of April, 2009, be repealed entirely and replaced with the following "Provisions For The Health and Safety Of Privately-Owned Real Property":

PROVISIONS FOR THE HEALTH AND SAFETY OF PRIVATELY-OWNED REAL PROPERTY

Section 1 – Enforcement and Review

- (a) Enforcement of these provisions shall be the duty of the Fayette County Building Commissioner and such personnel under his supervision as he may designate.
- (b) Appeal of the Building Commissioner's enforcement actions shall be reviewed by a Hearing Officer, who shall be selected by lot drawn by the appellant from among the members of the Fayette County Board of Zoning Appeals. If there is more than one appeal to be decided at a hearing the Hearing Officer for all the appeals shall be the appeals board member selected by the appellant whose appeal is the first submitted. For sitting as Hearing Officer an appeals board member shall receive the same compensation as for an appeals board meeting.

Section 2 – Property Standards

- (a) Definitions. Except as specifically defined herein all words used in these provisions shall have their customary dictionary definition where not inconsistent with the context of their use. Words used in the present tense shall include the future. The singular number shall include the plural and plural the singular.
 - (1) "Accumulation of debris, trash, litter, or garbage" means a state in which a significant quantity of solid waste products, decomposing matter, or personal property that has been discarded, damaged or which has little or no economic value or practical use is located on the property such that one or more of the following conditions results: the

accumulation contributes to the infestation of the property by insects, rodents or other vermin; the accumulation creates an attractive nuisance or other danger to children; the debris, trash, litter or garbage spreads to adjacent properties by natural action of wind or water; the accumulation produces offensive odors that affect reasonable enjoyment of adjacent properties; the accumulation creates a risk to the health and safety of occupants of the property or other residents of the county; or the accumulation noticeably depresses the value of adjacent properties.

- (2) "Agriculture," as defined in Tennessee Code Annotated Section 1-3-105(2)(A), means one or more of the following: the land, buildings and machinery used in the commercial production of farm products and nursery stock; the activity carried on in connection with the commercial production of farm products and nursery stock; recreational and educational activities on land used for the commercial production of farm products and nursery stock.
- (3) "Dilapidated building or structure" means a structure that is unfit for human occupation or use due to conditions in or around such structure that are dangerous or injurious to the health or safety of the occupants of such structure, the occupants of neighboring structures or to the health or safety of other residents of the county, assuming ordinary sensibilities of a reasonable person; such conditions may include but are not limited to: defects within the structure increasing the hazard of fire, accidents or other calamities; disrepair; structural defects; and unsanitary conditions.
- (4) "Owner" means the owner of record of the real property as identified in the records of the register of deeds or assessor of property,
- (5) "Structure" means a building or construct intended for human occupation or use for residential, commercial, industrial, or storage purposes; the term includes, but is not limited to, houses, garages, commercial and industrial buildings, shops, storage buildings, and sheds; the term does not include structures built solely for occupation by animals.

(b) Regulations.

- (1) It shall be a violation of this resolution for any owner of property to create, maintain or permit to be maintained on property the accumulation of debris, trash, litter, or garbage so as to endanger the health, safety or welfare of other persons.
- (2) It shall be a violation of this resolution for any owner of property to create, maintain or permit to be maintained on property a vacant dilapidated structure that endangers the health, safety or welfare of other persons.
- (3) Where two (2) occupied structures are located within 500 feet of one another, it shall be a violation of this resolution for any owner of property within 500 feet of either structure to permit grass to grow to an excessive height within 500 feet of either structure; grass not at least twelve (12) inches high shall not be considered to be of "excessive height."

Section 3 - Owner Responsibilities

It is the obligation of any owner of property to maintain such property so as not to endanger the health, safety or welfare of others and to comply with the terms of these regulations. If a tract does not comply with the above-stated regulations, the property owner is responsible and liable regardless whether such condition was caused by a tenant, leaseholder or other person.

Section 4 – Identification and Priority of Violations

- (a) Whenever the Building Commissioner can observe a violation from a county road, or whenever a petition is filed with the Building Commissioner by at least three (3) owners or

tenants of occupied structures lying within 500 feet of the boundary of the property in question alleging that a violation of any of these regulations exist and the Building Commissioner has confirmed such violation, the Building Commissioner may undertake enforcement action.

- (b) In his enforcement of these regulations the building commissioner shall prioritize by the following criteria: 1 – hazards and dangerous nuisances on abandoned property, such as uncovered swimming pools and appliances without doors removed; 2 – repeat offenders; 3 – occurrences in violation of these regulations in subdivisions of at least five (5) lots that do not have covenants prohibiting the occurrence; 4 – occurrences in violation of these regulations in subdivisions of at least five (5) lots that do have covenants prohibiting the occurrence; 5 – none of the above.

Section 5 – Notice of Violation

- (a) The Building Commissioner shall provide notice of violation of these regulations by personal service upon the owner or by United States Certified Mail, Return Receipt Requested, addressed to the last known address of the owner(s) of record. The notice of violation shall be written in plain language and shall include, but not be limited to, the following elements:
- (1) A summary of the requirements of these regulations and a brief statement of the violation including the date the violation was noted;
 - (2) A statement of Tennessee Code Annotated Section 5-1-115 and an explanation of the consequences and penalty of failing to remedy the violation;
 - (3) A statement of the person, office, address, and telephone number of the authority giving notice;
 - (4) A statement of deadline and the actions necessary to remedy the violation together with a cost estimate for the work, which shall be in conformity with the standards of cost in the community; and
 - (5) A statement of where the property owner may return a copy of the notice of violation indicating the desire for a hearing.
- (b) If the whereabouts of the owner is unknown and cannot be determined by the Building Commissioner in the exercise of due diligence or if for any reason notice by Certified Mail, Return Receipt Requested, cannot be obtained, the Building Commissioner, after making affidavit to that effect, may then serve constructive notice of violation upon the owner by an appropriate publication for two (2) consecutive weeks in one (1) newspaper of local circulation. A copy of such published notice of violation shall be posted in a conspicuous place on the subject property, and a copy of the affidavit and published notice of violation also shall be filed for record in the county register's office and such filing shall have the same force and effect as other lis pendens notices provided by law.

Section 6 – Compliance and Appeals

- (a) Upon receipt of the notice of violation, the property owner within ten (10) days shall either remedy the violation or request a hearing before the authority established in Section 1 of these regulations, provided that if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, steam, liquids, sewerage, gas, or other materials the owner shall have twenty (20) days to remedy the violation, excluding Saturdays, Sundays and legal holidays.
- (b) If the property owner timely requests a hearing as provided herein, the Hearing Officer shall,

within a reasonable time, hold a hearing on the issue of the appropriateness and/or cost of the measures required to remedy the condition. The time period specified herein to remedy a violation shall be stayed pending review by the Hearing Officer. Failure to timely request a hearing shall, without exception, constitute a waiver of the right to a hearing.

The hearing shall be conducted as an initial hearing with the burden of proof being with the Building Commissioner, who must demonstrate that the violation exists by a preponderance of the evidence. At the conclusion of the hearing, the Hearing Officer may: 1) dismiss the notice of violation and such notice shall become ineffective; 2) affirm the notice of violation; 3) modify the notice of violation; or 4) grant a continuance at the request of either party if the Hearing Officer considers the continuance appropriate.

- (c) Any person aggrieved by an act of the Hearing Officer under these regulations may seek judicial review under Tennessee Code Annotated, Title 27, Chapter 8, Part 1.

Section 7 – Remedies and Penalties

- (a) If the owner fails to either remedy the violation or request a hearing within ten (10) days after receiving the notice of violation, subject to stay pending review and any modifications by the Hearing Officer, the Building Commissioner may cause such property to be repaired, altered or improved or be vacated and closed, removed or demolished as necessary to remedy the condition. The Building Commissioner may contract with a private entity to perform the work or request such work be performed by a department or agency of the county. In contracting for such services from a private entity, the Building Commissioner shall comply with all applicable purchasing procedures of the county. The costs of such action shall be assessed against the owner of the property. Upon performance of the work, the actual cost of such repairs, alterations or improvements or vacating and closing or removal or demolition by the county or its agent shall, upon the filing of a notice with the office of the register of deeds, be a lien in favor of the county against the real property on which such cost was incurred, second only to liens of the state and county for taxes, any lien of the county for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing prior to the filing of such notice. The notice of lien shall identify the owner of record of the real property, contain the property address, describe the property sufficiently to identify it, and recite the amount of the obligation secured by the lien. These costs shall be collected by the county trustee at the same time and in the same manner as property taxes are collected.
- (b) In the instance of a repeat offense where a lien once has been filed against a particular parcel and owner and subsequently paid, it shall not thereafter be necessary to accomplish the constructive notice procedures of Section 5(b) above (i.e., newspaper publication and on-site posting) should it not be possible to document receipt of notice by certified mail. Instead, the Building Commissioner need only make affidavit of the unsuccessful effort to serve notice by Certified Mail, Return Receipt Requested, and file such affidavit in the county register's office with the same force and effect as other lis pendens notices provided by law.
- (c) Pursuant to Tennessee Code Annotated Section 5-1-121 any owner of property found to be in violation of these regulations shall be subject to a monetary penalty of \$200.00 for a first offense and \$500.00 dollars for each subsequent offense on the same property. In addition, the prosecuting authority may seek reimbursement of all documented enforcement costs, including, but not limited to, attorney's fees, mailings, travel, and \$25.00/hour staff time.

- (d) Pursuant to Tennessee Code Annotated Section 5-1-123 such penalty may be enforced by the General Sessions Court of Fayette County. Action to impose such penalties through the General Sessions Court may be prosecuted by the Building Commissioner or by the County Attorney or by the Chairman of the County Legislative Body.

Section 8 – Exceptions

- (a) The provisions of Section 7(a) above permitting Fayette County to remedy a violation of these regulations and place a lien for the costs thereof on the subject property shall not apply to any parcel upon which an owner-occupied residence is located. Enforcement of these regulations in the case of owner-occupied property shall be accomplished solely by civil penalty imposed in General Sessions Court.
- (b) The county shall remove motor vehicles only in accordance with the provisions of Tennessee Code Annotated 55-16-101 and in accordance with the limitations of Tennessee Code Annotated 55-5-122.
- (c) These regulations shall not apply to any business operated pursuant to the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated Section 68-211-101.
- (d) These regulations shall not apply to any agricultural building or agricultural enterprise.

Section 9 – Rules and Record Keeping

- (a) In addition to these regulations, the Building Commissioner may promulgate additional rules and procedures necessary for the administration of these regulations subject to approval by the County Legislative Body.
- (b) The Hearing Officer shall make a written record of his deliberations and decisions under Section 6(b) above and the Building Commissioner shall maintain it as a public record. The Building Commissioner also shall keep a public record of the following:
 - (1) all petitions filed with his office;
 - (2) the mileage driven in performing investigations;
 - (3) the address of any property cited for violation of these regulations;
 - (4) a copy of all notices to property owners cited for violation of these regulations and the expenses associated therewith;
 - (5) all requests for hearing received;
 - (6) all waivers of hearing and agreements to remedy violations;
 - (7) copies of all requests for judicial review and final decision of the judicial review.

Section 10 – Effective Date

This Resolution shall become effective the day following its adoption, the public welfare requiring it.

Section 11 – Severability and Conflict with Other Resolutions

- (a) If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end, the provisions of this Resolution are

declared to be severable.

- (b) All resolutions of the Board of County Commissioners of Fayette County, Tennessee, which are in conflict with this Resolution, if any, are hereby repealed.

This resolution adopted by the Fayette County Legislative Body on the 25th day of August, 2015.

Approved:



County Mayor



County Clerk

