

**RESOLUTION ADOPTING REGULATIONS GOVERNING THE  
HEALTH AND SAFETY STANDARDS OF RESIDENTIAL  
AND NON-RESIDENTIAL PROPERTIES**

**WHEREAS**, the purpose of this resolution is to provide regulatory standards for health and safety conditions of residential and nonresidential properties within the confines of Fayette County; and

**WHEREAS**, Tennessee Code Annotated, Section 5-1-115, authorizes counties to make any rules and regulations necessary for the prevention of dangerous conditions resulting from overgrown vegetation; accumulation of debris, trash, litter and garbage; or the presence of a vacant dilapidated building or structure; and

**WHEREAS**, there is a need in Fayette County for the regulation of residential and non-residential property for the health, safety, convenience and welfare of residents of the County; and

**WHEREAS**, the regulations set out herein are intended to address this need.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Fayette County, Tennessee, meeting in regular session on the 28<sup>th</sup> day of April, 2009, in Somerville, Tennessee, that the following regulations be adopted:

**Regulations Governing the Health and Safety  
Standards of Residential and Non-Residential Properties**

**SECTION I - Appointment of Enforcement Officer and Hearing Board**

- (a) These regulations shall be enforced by the Fayette County Building Commissioner (or his or her designee) who shall also be known as the Fayette County Codes Enforcement Officer (hereinafter referred to as "Enforcement Officer").
  
- (b) The Fayette County Health and Safety Standards Board (hereinafter referred to as "Hearing Board") shall consist of five (5) members to be appointed by the County Mayor subject to confirmation by the County Legislative Body. All members of the Hearing Board shall be appointed for four-year terms. This shall be the same board as approved by the Fayette County Commission on November 27, 2007 in the "Resolution Adopting Regulations Governing the Collection and Storage of Garbage, Litter Refuse and Rubbish."

Any compensation or authorization for reimbursement of expenses for the members of the Hearing Board shall be established by the County Legislative Body. Any vacancy, which occurs on the Hearing Board, shall be filled by the County Mayor subject to

confirmation by the County Legislative Body for the remainder of the term of the vacant position.

In addition to its responsibilities in hearing grievances pursuant to Section VI of these regulations, the Hearing Board shall also be charged with the responsibility of recruiting or coordinating efforts of community organizations, neighbors, religious institutions, and other agencies to provide assistance to persons who are not financially or physically able to comply on their own with the requirements of these regulations.

## **SECTION II - Property Standards**

(a) Definitions:

As used in these regulations, the following terms are defined below. Any term not defined by this regulation shall be interpreted as having the meaning established by the 11<sup>th</sup> Edition of the Merriam-Webster's Collegiate Dictionary.

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 TCA 1-3-105(2)(A), means:
  - (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
  - (ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and
  - (iii) 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 health and 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 established in

the records of the register of deeds and assessor of property.

5. "Neglect and overgrowth of vegetation" means a condition where trees, vines, grass, underbrush or other vegetation has been allowed to grow in such a manner as to endanger the health, safety or welfare of occupants of the property or other persons of the county or encourage the infestation of rats, insects or other harmful animals.
6. "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 these regulations for any owner of property to create, maintain or permit to be maintained on property the obvious neglect and overgrowth of vegetation or 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 these regulations for any owner of property to create, maintain or permit to be maintained on property a vacant dilapidated building or structure that endangers the health, safety, or welfare of other persons.
3. It shall be a violation of these regulations for any owner of property to create, maintain or permit to be maintained on property any combination of the preceding elements so as to endanger the health, safety, or welfare of other persons.
4. It shall be a violation of these regulations for any owner of property to permit or allow to grow in height in excess of twelve (12) inches any weeds, brush, grass or other vegetation which is not edible or planted for some useful or ornamental purpose upon the land owned, occupied or leased by such person. This requirement shall only be enforced in a platted subdivision of more than three (3) lots in a R-2, R-3, or RPED district according to the Fayette County Zoning Resolution.
5. It shall be a violation of these regulations for any owner of property to allow any violation identified in 1 through 3 above to continue in, on or around any building, structure or property affected by this regulation.
6. Each day that one or more of the conditions described above exists or continues to exist shall constitute a separate violation of these regulations except to the extent that enforcement of the regulations are stayed pending a hearing as described in Section VI, below.

### **SECTION III - Owner Responsibilities**

It is the obligation of the owner(s) of property to maintain such property to as not to endanger the health, safety, or welfare of county residents and/or so as not to violate the

terms of these Regulations. If said property fails to comply with the above-stated regulations, the property owner(s) is ultimately responsible and liable regardless of whether such condition was caused by a tenant, leaseholder or other person.

#### **SECTION IV - Inspection Procedures**

Whenever a petition is filed with the Enforcement Officer by at least three (3) owners or occupants of property that lies within one hundred (100) yards of the boundary of the property in question alleging that violation(s) of any of these regulations exist; or whenever the Enforcement Officer can visibly observe a violation from a public road, the Enforcement Officer shall, after making a preliminary investigation which discloses a basis for such violation, issue and cause to be served upon the owner of record of such properties a notice, in accordance with the provisions of Section V, stating the violations and requesting the condition to be remedied immediately.

#### **SECTION V - Notice of Violation**

- (a) The Enforcement Officer shall notify the owner of the property of the violation(s) 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 state that the owner of the property is entitled to a hearing. The notice of violation shall be written in plain language and shall also include, but not be limited, to the following elements:
1. A summary of the requirements of these regulations and a brief statement of the violations noted by the Enforcement Officer including the date the violations were noted;
  2. A brief statement of the authority granted to counties under T.C.A. § 5-1-115 and an explanation of the consequences and penalty of failing to remedy the violations of the regulations;
  3. The person, office, address and telephone number of the department or person giving notice;
  4. Instructions regarding what actions should be taken to remedy the violation together with a cost estimate for such which shall be in conformity with the standards of cost in the community; and
  5. An indication of the time frame during which the alleged violator must remedy the violation or request a hearing with information regarding the place wherein the notified party may return a copy of the notice of violation indicating the desire for a hearing or waiver of hearing and agreement to remedy the violation.
- (b) If the whereabouts of the owner(s) of record is unknown and the same cannot be ascertained by the Enforcement Officer in the exercise of due diligence or if for any

reason notice by Certified Mail, Return Receipt Request, cannot be obtained, the Enforcement Officer, after making an affidavit to that effect, may then serve notice of violation upon such person(s) by publishing the same once each week for two (2) consecutive weeks in one (1) newspaper of local circulation and on the county's website. A copy of such notice of violation shall be posted in a conspicuous place on the premises affected by the notice or order. A copy of such notice of violation shall also be filed for record in the county register's office and such filing of the notice of violation or order shall have the same force and effects as other lis pendens notices provided by law.

## **SECTION VI - Compliance and Appeals**

- (a) Upon receipt of the notice of violation as provided hereinabove, the property owner shall proceed forthwith to take appropriate measures to comply with these regulations or to request a hearing before the Hearing Board established in Section 1 of these regulations. Pursuant to T.C.A § 5-1-115 a request for hearing shall be made within ten (10) days following receipt of said notice of violation. If the property owner does not request a hearing, he or she shall take appropriate action to remedy the violation within ten (10) days of receipt of the notice of violation unless the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewerage or other materials in which case 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 Board shall, within a reasonable time following the receipt of the request for hearing, hold a hearing on the issue of the appropriateness of the requirements imposed on the property owner and the issue of cost of remedying the condition. The time period established herein for remedying violations shall be stayed pending review by the Hearing Board. Failure to make the request for a hearing within the time limit allowed by this regulation shall, without exception, constitute a waiver of right to a hearing and judicial review.
- (c) The hearing shall be conducted as an initial hearing with the burden of proof resting on the Enforcement Officer to demonstrate, by a preponderance of the evidence that the alleged violation exists. Immediately following the hearing, the Hearing Board may:
  - 1) Dismiss the notice of violation and such notice shall become ineffective;
  - 2) May confirm the notice of violation;
  - 3) May modify the notice of violation; or
  - 4) Grant a continuance at the request of either party if the Hearing Board considers the continuance appropriate.

The affirmative vote of three Hearing Board Members shall constitute action by the

Hearing Board.

- (d) Any person aggrieved by an act of the Hearing Board under the provisions of this regulation may seek judicial review of same under Tennessee Code Annotated, Title 27, Chapter 8, Part 1.

## **SECTION VII - Remedies and Penalties**

- (a) If the owner fails to comply with the notice within ten (10) days of receipt of same, subject to stay pending review and any modifications made pursuant to review as provided for above, the Hearing Board may cause such property to be repaired, altered or improved or be vacated and closed, removed or demolished as necessary to remedy the condition. Subject to approval by the County Legislative Body, the Hearing Board may contract with a private entity to perform the work or request such work to be performed by a department or agency of the county. In contracting for such services from a private entity, the Hearing Board 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, 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) Owner(s), individually and/or jointly, of property found to be in violation of these Regulations shall be subject to a civil penalty of not more than fifty dollars (\$50.00) for each offense. Each and every day during which such violation exists or continues after notice has been provided to the property owner and the time for appeal or compliance has expired shall be deemed a separate offense.
- (c) Pursuant to T.C.A. §§ 5-1-121 and 5-1-123, such penalties may be assessed by the General Sessions Court of Fayette County in exercise of its powers to enforce these regulations. Action to pursue such penalties in the General Sessions Court shall be instituted at the request of the Enforcement Officer or Hearing Board by the County Attorney or other legal counsel designated by the County Legislative Body.

## **SECTION VIII - Exceptions**

- (a) The provision of Section VI(a) of this regulation permitting Fayette County to remedy

conditions pursuant to T.C.A. § 5-1-115(c) and place a lien for the costs of remedying the violation on the property shall not apply to any parcel of property upon which an owner-occupied residence is located. Enforcement of these regulations upon owner-occupied properties shall be accomplished solely by civil penalties assessed in General Sessions Court.

- (b) The county shall only undertake to remove motor vehicles in accordance with the provisions of T.C.A. §§ 55-16-101, *et seq.* and in accordance with the limitations of T.C.A. § 55-5-122.
- c) This regulation shall not apply to any business operated pursuant to the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated, Section 68-221-1101, *et seq.*
- d) This regulation shall not apply to any agricultural buildings nor to any agricultural enterprise.

## **SECTION IX - Rules and Record Keeping**

- a) In addition to these regulations, the Hearing Board may promulgate any additional rules and regulations necessary for the administration and enforcement of these regulations subject to approval by the County Legislative Body.
- b) The Enforcement Officer shall serve as the record keeper for the Hearing Board and shall maintain all minutes and records of the Hearing Board. The Enforcement Officer shall also keep a record of the following information regarding petitions, inspections and enforcement actions:
  - 1) all petitions filed with his or her office;
  - 2) the address of any property found to be in violation of this regulation;
  - 3) the mileage driven in performing investigations;
  - 4) a copy of all notices delivered to property owners found to be in violation of this regulation and any expenses associated therewith;
  - 5) all waivers of hearing and agreements to remedy violations;
  - 6) all requests for hearing received;
  - 7) orders and decisions issued by the Hearing Board; and
  - 8) copies of all requests for judicial review and final decision of the judicial review.

The Enforcement Officer shall submit an annual report summarizing this information to the County Legislative Body each year at the first meeting of the county legislative body

each calendar year.

#### **SECTION X - Effective Date**

After passage of this regulation, the county clerk shall cause this regulation to be published in a newspaper of general circulation within the county. This regulation shall be come effective sixty (60) days after its passage, the public welfare requiring it.

#### **SECTION XI - Severability and Conflict with Other Resolutions**

- (a) If any provision of this regulation or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional 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 regulation are declared to be severable.
- (b) All resolutions of the Board of County Commissioners of Fayette County, Tennessee, which are in conflict with this regulation, are hereby repealed.

This resolution was adopted by the Fayette County Legislative Body on the 28<sup>th</sup> day of April, 2009.