

Regulations Set Forth in Resolution 9-9-92 (as amended by Resolution 5-05-17):

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF HENRY COUNTY, TENNESSEE TO REGULATE THE COLLECTION AND STORAGE OF GARBAGE, LITTER, REFUSE, AND RUBBISH

REGULATION 1. DEFINITIONS.

As used in this Resolution and the Regulations contained therein, the following words have the following meanings:

- A. Garbage means food waste, animal waste (other than that used for a commercial or agricultural purpose), dead or decomposing animal matter, and dead or decomposing vegetable matter (other than that used for a commercial or agricultural purpose), and any dead or decaying or decomposing matter whether or not it originally constituted human or animal food.
- B. Litter means particles or items of trash, rubbish, wastepaper, or garbage that is lying or scattered about.
- C. Rubbish means useless, rejected, or abandoned waste, waste matter, trash, and junk.
- D. Junk means rubbish and wasted or discarded items and includes, but is not limited to, junk motor vehicles. The term shall not include items held for sale in a business establishment which holds a valid Tennessee business license.
- E. Junk Motor Vehicle means any automobile, motor vehicle, or farm tractor or other self-propelled farm implement, or the metal scraps and remains of the foregoing items, which are incapable of being operated and which it would not be economically practical to make operative and which are not fully placed or located within and fully surrounded by a substantial and durable building. The term shall not include: (1) items on the premises of the establishments constituting automobile graveyards within the meaning of Tennessee Code Annotated, Section 54-20-201, et seq., or establishments having facilities for processing scrap metal; (2) vehicles otherwise falling within this definition which are temporarily upon the premises for less than 90 days; (3) vehicles located more than 300 feet from a public road and 100 feet from a property line; and (4) vehicles concealed or stored in a manner satisfactory to the Code Compliance Officer so as to render them obscured or unnoticeable from adjoining property or a public road.
- F. Refuse means all items constituting garbage, litter, and rubbish.

REGULATION 2.

The County Executive shall designate an existing county officer or employee or shall employ a person to enforce the provisions of these Regulations. The person designated or employed by the County Executive to enforce these Regulations shall be compensated for these duties in an amount to be determined by the County Executive within the amount of funds appropriated for such purpose from the county general funds.

REGULATION 3.

No owner, occupant, or resident of any real property shall permit or allow garbage, litter, rubbish, or refuse to accumulate upon such real property to the extent that it endangers the health, safety, or welfare of the inhabitants of Henry County.

REGULATION 4.

The owner, occupant, or resident of any real property where refuse accumulates or has accumulated or is likely to accumulate in violation of these Regulations shall take appropriate measure to gather up or otherwise collect the refuse.

REGULATION 5.

Collection of the refuse in accordance with these Regulations shall be accomplished in a manner and at a time so that it does not further endanger the inhabitants of the county. Collection of such refuse shall be accomplished so that it does not spill over, blow over, or in any way transfer to neighboring property without appropriate and lawful measure being taken to re-collect it.

REGULATION 6.

Collection of refuse in accordance with these Regulations shall include the transfer of the refuse to an appropriate and lawful dump site, whether public or private, or to an appropriate place for lawful disposal, in a manner and at a time that does not further endanger the inhabitants of the county.

REGULATION 7.

During or after the collection of refuse in accordance with these Regulations, if it becomes necessary to store the refuse while it awaits transfer or further collection, the refuse shall be stored in a lawful manner consistent with the nature of the refuse that does not further endanger the inhabitants of the county. Garbage and litter shall be stored in closed containers of a sturdy and durable nature so that leakage and spillage is avoided. Solid rubbish shall be stored in a safe manner so that it does not pose a danger to persons or animals. Any refuse requiring storage shall be stored in a manner so that it does not attract or cause an infestation of rats, other rodents, or other animals that pose a danger to persons or domestic animals.

REGULATION 8.

If the person designated or employed by the County Executive to enforce these Regulations determines that a violation of these Regulations exists, the person shall provide notice to the owner of the property upon which the condition creating the violation is located to remedy the condition immediately. The notice shall be by personal service on the owner or by mailing by United States mail (certified, return receipt requested) to the owner of record at the last known address. The notice shall be in writing and in plain language and shall also include but not be limited to the following items:

- A. A reference to and brief statement of Resolution 9-9-92, [Resolution 5-05-17], and TENN. CODE ANN. § 5-1-115, which shall contain the consequences of failing to remedy the noted condition.
- B. the person, office, address, and telephone number of the department or person giving notice.
- C. a cost estimate for remedying the noted condition which shall be in conformity with the standards of cost in the community.
- D. a brief statement informing the recipient of the notice that the property owner may request a hearing within ten (10) days of the date of the receipt of the notice.

- E. the place where the recipient of the notice can return a copy of the notice indicating a request for a hearing.

Notice shall also be provided to the occupant (if any) in the same manner as the owner. Notice (by personal service or mail) received by any owner of record shall be deemed notice received by all owners of record. Notice (by personal service or mail) received by any occupant shall be deemed notice received by all occupants.

The notice shall be deemed to have been received by the owner of record if mailed to such owner's current address according to the records of the County Property Assessor, regardless of whether such mail is returned to sender. The notice shall be deemed received by any party if either (a) mail to such party's last known address is returned to sender marked unclaimed or refused or (b) the USPS return receipt is returned (regardless of who signed the receipt and regardless of whether the receipt was signed). If neither personal service nor service by mail can be accomplished, the notice shall be posted in a conspicuous location on the premises.

Notice by personal service is deemed received upon the date of service. Notice by certified mail is deemed received as of the delivery date noted on the return receipt or USPS electronic tracking system; if the delivery date cannot be determined in either of those manners, then certified mail is deemed received as of 5 days after the notice was mailed. Notice by posting shall be deemed received by all parties as of the date it was posted.

REGULATION 9.

If a violation of these Regulations is not remedied within twenty (20) days following a personal service of the notice or following the mailing or posting of the notice, as the case may be, or if a hearing is held as provided in these Regulations, within twenty (20) days following a determination adverse to the owner after any hearing, the County Executive or his designee or employee shall remedy the condition causing violation by one of the following methods:

- A. The County Mayor may contract for a private party to remedy the condition;
- B. The Superintendent of the Highway Department may remedy the condition, in which case (upon request) the Highway Department shall be reimbursed for associated expenses from the County's general fund;
- C. The Sheriff may remedy the condition, in which case (upon request) the Sheriff's Office shall be reimbursed for its cost for associated expenses from the County's general fund; or
- D. The County Mayor may employ the County Attorney to file a lawsuit in General Sessions Court pursuant to TENN. CODE ANN. § 5-1-123 to compel the owner and/or occupant to remedy the condition, in which case (if the County prevails) the County shall be entitled to an award of its reasonable attorney's fees and associated expenses from the owner and/or occupant.

REGULATION 10.

The cost of all remedies effected by the County Executive or his designee or employee shall be defrayed from general fund appropriations for this purpose, but the general fund shall be reimbursed by the property owner in accordance with these Regulations. If the county remedies a condition causing a violation, the County Executive's designee or employee shall send a statement by certified mail (return receipt requested), to the property owner itemizing the cost of remedying

the condition causing the violation. If such owner fails to reimburse the county general fund for the cost of the remedy within sixty (60) days of receiving the statement of cost, such statement shall constitute a lien upon the land. Such statements shall constitute a lien upon real property as of the date notice is filed in accordance with Tennessee Code Annotated, Section 5-1-115. The lien provided herein shall be entered in the records of the register of deeds of this county. Such lien shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien upon the property until it is fully satisfied.

REGULATION 11. Hearing Procedures.

If the owner or occupant does not timely request a hearing, then that shall without exception constitute a waiver of the right to a hearing and the determination of the violation is conclusive any may not be challenged in any forum.

If the owner or occupant timely requests a hearing, a hearing shall be held within 30 days of the receipt of such request by a Health and Safety Standards Board (hereinafter referred to as “Hearing Board”) consisting of one County Commissioner from each district appointed by the County Mayor subject to confirmation by the Board of Commissioners. Terms shall be for four years, however the initial appointments shall be made on staggered terms determined by the County Mayor in an effort to achieve subsequent staggered four-year terms. There will be no compensation or reimbursement of expenses for the members of the Hearing Board. Any vacancy which occurs on the Hearing Board shall be filled by the County Mayor subject to confirmation by the Board of Commissioners for the remainder of the term of the vacant position.

The hearing shall be administrative in nature and prosecuted by the County Attorney on behalf of the County. The Hearing Board shall determine, by a preponderance of the evidence, (a) whether a violation exists (or existed), and if so: (b) what steps are necessary to remedy the conditions and (c) and what monetary civil penalty is appropriate under the circumstances.

An aggrieved party may seek judicial review of the Hearing Board’s decision by initiating proceedings in the County’s General Sessions Court pursuant to Tenn. Code Ann. §§ 5-1-115 and 5-1-123 within 10 days following issuance of the Hearing Board’s decision. Judicial review shall be limited to the review of the record of the Hearing Board’s hearing. In the event an owner or occupant seeks judicial review and the County prevails, the County shall be entitled to an award of its reasonable attorney’s fees and associated expenses from such owner and/or occupant.

REGULATION 12.

No provision of these Regulations shall be construed as applying to any business being operated pursuant to Tennessee Code Annotated, Section 68-31-101, et seq.

REGULATION 13.

Any proceedings other than those listed herein also shall conform to the provisions of Tennessee Code Annotated Section 5-1-115.

REGULATION 14.

Copies of this regulations, as amended periodically, shall be available to the public at the Offices of County Executive, Sheriff, Road Supervisor, and Code Compliance officer.

REGULATION 15.

Pursuant to Tenn. Code Ann. § 5-1-121, an owner (and, if applicable, occupant) who has violated these regulations shall be assessed a civil penalty of \$500.00 for each violation that is not remedied within 5 days of such person's receipt of written notice of the violation. The continued existence of conditions constituting a violation which are not remedied for additional five-day periods shall constitute a separate violation, and an additional \$500.00 penalty shall apply for each five-day period. The maximum of all penalties for violations arising out of the same condition is \$3,000.00 per owner/occupant.

By way of example, if the owner/occupant receives written notice of the violation on Day 1 and fails to completely remedy the conditions by Day 6, then the continued existence of the conditions constitutes a separate violation and a \$500.00 civil penalty shall be assessed; if the owner/occupant fails to remedy the violation by Day 11, the continued existence of the conditions constitutes a separate violation and an additional \$500.00 civil penalty shall be assessed (at which time the total penalties for both violations will be \$1,000.00). If the conditions have not been completely remedied, separate violations will occur on Days 16, 21, 26, and Day 31 (at which time the total penalties for all violations will equal \$3,000.00.).

When the conditions constituting a violation have been remedied or when the maximum collective penalties have accrued, the officer in charge of enforcing these regulations shall notify the owner/occupant in writing of the total of all accrued civil penalty (or penalties) due and owing, payment instructions, and the right to request a hearing. Service of this notice and determination of the receipt date shall be in the same manner as for the initial notice of violation.

The owner/occupant may request a hearing as provided herein as to the assessment and/or amount of the civil penalty (or penalties) by written request delivered to the code enforcement officer within 10 days of receipt of the notice; if a hearing is not timely requested, the assessment and amount of the civil penalty (or penalties) shall be incontestable in any forum. The Hearing Procedures stated above apply to a hearing regarding the assessment or amount of the civil penalty (or penalties).

Penalties must be paid in full within 60 days of receipt of notice; otherwise, a copy of the notice may be recorded with the Register of Deeds, whereupon a lien will attach to the real estate in the same manner as Resolution 10 above. Alternatively, or in addition, the County Mayor may employ the County Attorney to file a lawsuit in General Sessions Court pursuant to Tenn. Code Ann. § 5-1-123 to collect the civil penalty (or penalties), in which case (if the County prevails) the County shall be entitled to an award of its reasonable attorney's fees and associated expenses from the owner and/or occupant.

The civil imposed required by this Regulation is not punitive in whole or in part. Rather, the civil penalty imposed by this Regulation serve remedial purposes in that they are intended to reimburse the expenses incurred by the County in enforcing these Regulations and to ensure compliance with these Regulations.