

RESOLUTION NO. 5-05-17

A RESOLUTION OF THE HENRY COUNTY, TENNESSEE, BOARD OF COMMISSIONERS TO AMEND RESOLUTION NO. 9-9-92 PERTAINING TO REGULATION OF COLLECTION AND STORAGE OF GARBAGE, LITTER, REFUSE, AND RUBBISH

WHEREAS, the Henry County Board of Commissioners adopted Resolution 9-9-92 on or about September 21, 1992, to Regulate the Collection and Storage of Garbage, Litter, Refuse, and Rubbish in accordance with TENN. CODE ANN. § 5-1-115; and

WHEREAS, TENN. CODE ANN. § 5-1-115(d) provides that the county governing body or the appropriate department, or both, may make any rules and regulations necessary for the administration and enforcement of TENN. CODE ANN. § 5-1-115; and

WHEREAS, TENN. CODE ANN. § 5-1-115 has been subsequently amended from time to time, and it is appropriate to update such rules and regulations; and

WHEREAS, TENN. CODE ANN. § 39-14-508 provides that County legislative bodies may, by resolution, impose regulations for litter control, including the placing, dropping, throwing, collection and storage of garbage, litter, refuse and rubbish on public or private property; and

WHEREAS, TENN. CODE ANN. § 5-1-121 provides that Counties, by resolution of their respective legislative bodies, may establish a monetary penalty not to exceed five hundred dollars (\$500) for each violation of a rule or regulation that the county legislative body is authorized to adopt.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Henry County, Tennessee, assembled in regular session on this the 15th day of May, 2017, a majority or more of the membership concurring that Resolution 9-9-92 is amended as follows:

1. All aspects of Resolution 9-9-92 remain in full force and effect except as amended by this Resolution.
2. Regulation 8 is amended by deleting subsection A. and replacing it with the following:
 - A. A reference to and brief statement of Resolution 9-9-92, this Resolution, and TENN. CODE ANN. § 5-1-115, which shall contain the consequences of failing to remedy the noted condition.
3. Regulation 8 is further amended by appending the following paragraphs:

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.

4. Regulation 9 is amended by replacing the phrase "a personal service of the notice or following the mailing of the notice, as the case may be" with the following:

"personal service of the notice or following the mailing or posting of the notice, as the case may be".
5. Regulation 9 is further amended by deleting subsections A. and B. and inserting in place the following subsections A–D:
 - 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.
6. Regulation 11 is deleted in its entirety and replaced with the following:

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.

7. New Regulation 15 is added:

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.

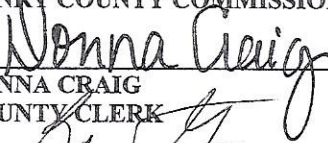
The civil imposed required by this Regulation is not punitive in whole or in part. Rather, the civil penalty imposed by this Regulation serve remedial purposes in that they are intended to reimburse the expenses incurred by the County in enforcing these Regulations and to ensure compliance with these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

BE IT FURTHER RESOLVED that, after passage, the County Clerk shall cause this Resolution to be published in a newspaper of general circulation in this County, and that this resolution shall become effective seven (7) days after such publication, the public welfare requiring it.

BE IT FINALLY RESOLVED that a true copy of this Resolution be spread upon the Commission record of this date.

PASSED 5-15-17


BRENT GREER, CHAIRMAN
HENRY COUNTY COMMISSION


DONNA CRAIG
COUNTY CLERK

APPROVED 5-15-17


BRENT GREER
HENRY COUNTY MAYOR