



TN MUNICIPAL JUDGES CONFERENCE WINTER 2023

WELCOME!

Howdy!

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As Seen Across Tennessee

Since I started with MTAS, I have visited 193 cities at least once.

I have made 361 city visits during my three years so far.

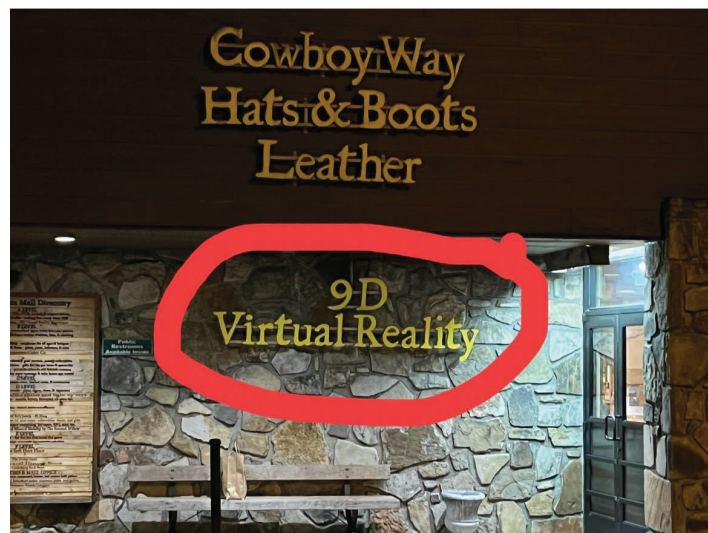
I've seen some pretty amazing things that I've highlighted in my Foundations and Updates Class

However, these deserve their own honorable mentions.



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Gatlinburg – Somehow discovered 6 additional scientific dimensions



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Linden - Signs are Just Advisory



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Graysville – Septic Industry Setting the Bar



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Waverly –Oil Changes for the Health Conscious



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Dyer – I'm afraid to ask.



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Johnson City – Fries with a side of Inspiration



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Gatlinburg – Cancel my plans, I'm going here.



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Lastly – Johnson City – we all need this shirt



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Legislative Updates – 3 (maybe) big things



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New - Municipal Court Expungements

New section to Municipal Court Reform Act - TCA 16-18-302(a)(3)

302(a)(3)(A) - A municipal court has jurisdiction over the expunction of a conviction for a violation of a municipal ordinance from a person's public record in the municipal court upon the person's petition requesting removal of a public record of a violation of a municipal ordinance.

Effective July 1, 2023



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Municipal Court Expungements

302(a)(3)(B) The court may grant the petition if:

(i) The petition satisfactorily demonstrates to the court that the petitioner merits such relief;

(ii) At the time of the filing of the petition, **at least one hundred eighty (180) days have elapsed since the completion of the penalty imposed for the ordinance violation; and**

(iii) **The person has fulfilled all requirements of the judgment imposed by the court for the conviction, including payment of all fines, court costs, and other assessments.**



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Municipal Court Expungements

302(a)(3)(C) and (D)

(C) As used in this subdivision (a)(3), "public record" has the same meaning as in § 40-32-101(b).

(D) The municipal court clerk may charge a fee for the expunction of public records pursuant to this subdivision (a)(3). **The fee for expunction of a public record in municipal court must be set by municipal law or ordinance.**



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Municipal Court Expungements

302(a)(3)(E) A municipal court's jurisdiction under this subdivision (a)(3):

- (i) Is limited to the records in that municipal court; and
- (ii) **Does not include records of the department of safety relating to driver records or the driver improvement program established in § 55- 50-505.**



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Major Note! – Does not apply to traffic cases!



Proposed new TCA 16-18-302(a)(3)(E) only applies to municipal code violations....



But **does not apply** to motor vehicle violations that your report to the Department of Safety for convictions or traffic school.



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So what types of offense are covered?

Practically, anything not traffic. Therefore, we may not see much demand.

Expungements may include convictions for:

- Open containers of alcohol on public property (i.e. college kids, soldiers)
- Building a building without a permit
- Failing to comply with plumbing, electrical, fire codes
- Overgrown vegetation / Slum Clearance Act violations
- Junk cars



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Sample Ordinance, Petition and Order



There is no standard form created by the State.



Sample Ordinance, Petition and Order in the attachments.



Feel free to customize.



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<https://www.mtas.tennessee.edu/courts>

MTAS RESOURCES

- Memo about Fines and Fees to send to the Dept. of Safety
- Parking Information and Research 2022 (PDF)
- Rules of the Road Ordinance 2023 – long form (DOCX)
- Rules of the Road Ordinance 2023 – short form (PDF)
- ➔ • Sample Municipal Court Expungement Ordinance, Petition, and Order ←
- Child Restraints Fines and Costs Flowsheet, 2021 (PDF)
- Sample Payment Plan – Specific Payment per Month (DOCX)
- Seatbelt Fines and Costs for Adults – Flowsheet, 2021 (PDF)
- Sample Payment Plan – Extension of Time to Pay (DOCX)
- Just for Fun – City Court Clerks favorite restaurants list 2022 (PDF)
- FAQs for new court clerks (PDF)
- Payment Plan Flowsheet – License Suspension and Department of Safety (PDF)



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New \$200 residential speeding law



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TCA 55-8-152(d)(1)(D)

(D) A municipality may adopt an ordinance by majority vote of the municipal governing body to establish a special speed limit upon a public road, street, or highway within its jurisdiction that is adjacent to or within one-fourth ($\frac{1}{4}$) mile of a zone classified by the municipality for residential use. Notwithstanding another law to the contrary, a violation of the special speed limit established pursuant to this subdivision (d)(1)(D) is a Class C misdemeanor, **punishable by fine only of two hundred dollars (\$200).**



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But wait a minute...\$200?

Legislators wanted a harsher penalty for speeding in neighborhoods.

Steps:

1. Cities must pass an ordinance establishing special zone.
2. Police officers can write tickets for this new offense, but...
3. It must go to general sessions court.

Because it says, “fine only of \$200” municipal courts cannot hear it because it removes ability to assess a lower \$50 fine.



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New Rule – “Zoom Court” available

Supreme Court Rule 55 –

“Use of Technology for Court Proceedings.”

Adopted June 8, 2023.

“The use of teleconferencing, video conferencing or other technology to conduct court proceedings or other court business remotely is permissible at the discretion of the trial or appellate court.”



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Codes Abatement and Slum Clearance - Revisited

Winter 2023



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25

So your city finally wants to
clean up some problem
areas?

Great! Now what?



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Why do we want to clean up properties?



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Reasons to Clean Up Properties

No one wants to live next to a dirty, unkempt property

Health and sanitation risk

Attract vermin and unwanted animals

Mosquitos

Lowers property values

Deters people from wanting to move to the area



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Who can enforce abatement issues?

The city designates by ordinance or resolution the municipal officers to enforce the areas of:

- Sanitation
- Litter control
- Animal control



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TCA 7-63-201 – Ordinance violations

Notwithstanding § 7-63-101, any municipal, metropolitan or city government **may designate by ordinance or resolution certain municipal enforcement officers in the areas of sanitation, litter control, and animal control** who may not arrest or issue citations in lieu of arrests pursuant to part 1 of this chapter, but who, upon witnessing a violation of any ordinance, law or regulation of that municipal, metropolitan or city government, may issue an ordinance summons, leaving a copy with the offender, showing the offense charged and the time and place when such offender is to appear in court.



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Example of Terrible Sanitation, Litter, and Animal Control:



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Pick your path City Court or Abatement Statutes



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Pick your path City Court



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MTAS Sample Code – Title 13, Chapter 1.

If your city uses the
MTAS sample code
(and most do),
Chances are you've
already adopted this
language

TITLE 13

PROPERTY MAINTENANCE REGULATIONS¹

CHAPTER

1. MISCELLANEOUS.
2. SLUM CLEARANCE.
3. JUNKYARDS.
4. JUNKED MOTOR VEHICLES.

CHAPTER 1

MISCELLANEOUS

SECTION

- 13-101. Smoke, soot, cinders, etc.
- 13-102. Stagnant water.
- 13-103. Weeds and grass.
- 13-104. Overgrown and dirty lots.
- 13-105. Dead animals.
- 13-106. Health and sanitation nuisances.
- 13-107. Violations and penalty.



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City Court only – cite the violation

MTAS Sample Title 13, Chapter 1, Section 13-103

Grass too tall – 12 inches

- 13-103. Weeds and grass. Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any person to fail to comply with an order by the recorder to cut such vegetation when it has reached a height of over one foot (1').



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Each Day New Violation – MTAS Sample

Section 13-107. Violations and penalty. Violations of this chapter shall subject the offender to a penalty under the general penalty provision of this code. **Each day a violation is allowed to continue shall constitute a separate offense.**



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Each Day New Violation – MTAS Sample

Section 13-107. Violations and penalty. Violations of this chapter shall subject the offender to a penalty under the general penalty provision of this code. **Each day a violation is allowed to continue shall constitute a separate offense.**

Therefore, each day the property is not cleaned up is a separate violation subject to the maximum \$50 per day fine.



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\$50 fine per day case law

Two separate cases have upheld a municipal court's assessment of \$50 per day for each day's violation.

Appellate and Supreme Court both viewed these as “remedial fines”

- Town of Nolensville v. King, 151 S.W.3d 427 (2004) (Supreme Court)
- City of Johnson City v. Paduch, 224 S.W.3d 686 (2006) (Court of Appeals)



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City Court Path - Results

Defendant found guilty

Assessed fine, court costs, and litigation taxes

Defendant may or may not clean up the property

Defendant may be cited again and return to court...but...



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City Court Path - Results



Ultimately a city judge does not have the power to order a clean up crew to enter onto the property or compel the owner to fix the property.



City Judge can only assess money fines under the Municipal Court Reform Act.



Hypothetically, if a person pays each citation in full, but never cleans the property, the person is still complying with the court's rulings.



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Pros and Cons to City Court Path

Pro

- Simple citation, easy to start
- Some comply on their own
- If remedied prior to court, many judges will dismiss the case.
- Goal: cleaned up property, less about the fine money

Cons

- May not comply.
- Judge may rule in favor of the defendant, making further abatement actions more difficult.
- Municipal Courts cannot take additional steps to enforce remedy other than fines.



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Pick your path Abatement Statutes



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Abatement Path – Major Note

When you take this path, you do not involve city courts at all.

These are state laws adopted into your municipal code.

This path doesn't involve municipal fines at all.

Any money assessed is to compensate the city for money spent on clean up, not fines to punish the property owner.



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State Law for Overgrown Lots

TCA 6-54-113 – Landowners; Health and Sanitation conditions; Notice to Remedy; Collection of Costs

Statute gives cities power to force property owners to clean up overgrown and trashy lots and give the cities the legal ability to mow and clean such lots if the owners refuse.

Oddly enough, an ordinance is not explicitly required for actions under this law, but it is recommended in order to provide ample notice to property owners.



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TCA 6-54-113 – Key language

The statute authorizes a municipality to take action when it determines a property owner has:

Created, maintained or permitted to be maintained on such property the growth of **trees, vines, grass, underbrush and/or the accumulation of debris, trash, litter, or garbage**, or any combination of the preceding elements, so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

TCA 6-54-113(b)



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Adopting TCA 6-54-113 into your Code

MTAS Sample Code already adopts this section.

Title 13, Chapter 1, Section 13-104 – **so you may already have this**

13-104. Overgrown and dirty lots. (1) Prohibition. Pursuant to the authority granted to municipalities under *Tennessee Code Annotated*, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

(2) Designation of public officer or department. The board of mayor and aldermen shall designate an appropriate department or person to enforce the provisions of this section.

(3) Notice to property owner. It shall be the duty of the department or person designated by the board of mayor and aldermen to enforce this section



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Updated MTAS Sample Ordinance

MTAS has an updated draft ordinance available adopting TCA 6-54-113

May be prudent to update the ordinance anyway



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City specific items

TCA 6-54-113 covers the processes and procedures of clean up and assessment of costs, but it does not detail **exactly** what constitutes a violation.

For example, nowhere in the statute does it say a maximum height of grass.



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City specific items

TCA 6-54-113 covers the processes and procedures of clean up and assessment of costs, but it does not detail *exactly* what constitutes a violation.

For example, nowhere in the statute does it say a maximum height of grass.

City ordinances need to specify what height a violation under this statute will occur.

The city code section must designate an official or a department for enforcement. Some are referred to as “health officer” or “public officer.”



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Alrighty! Let's clean up some lots!



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Beginning the Abatement Process

The designated department or official receives a call or observes a violation for abatement.

The official determines that conditions exist on the property which are prohibited by the ordinance.

Prepares notice to send to property owner.



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Why cite the property owner?



Question: If apartment or rental property, why not cite the tenant?



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Why cite the property owner?



Question: If apartment or rental property, why not cite the tenant?



Answer: (1) Property owners are ultimately responsible for their tenant's actions and (2) the statute says so.



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Notice of Violation Requirements

- **Mail:** TCA 6-54-113(b) states the notice to property owner “shall be given by U.S. Mail addressed to the last know address of the owner or record.” (do this first).
- **Publication:** If notification fails by US Mail or no valid last know address exists for the owner of record, the municipality may publish the notice in a newspaper of general circulation in the county where the property sits for no less than two (2) consecutive issues **or** personally deliver the notice to the owner of record. (city's choice to do newspaper or try to personally serve)



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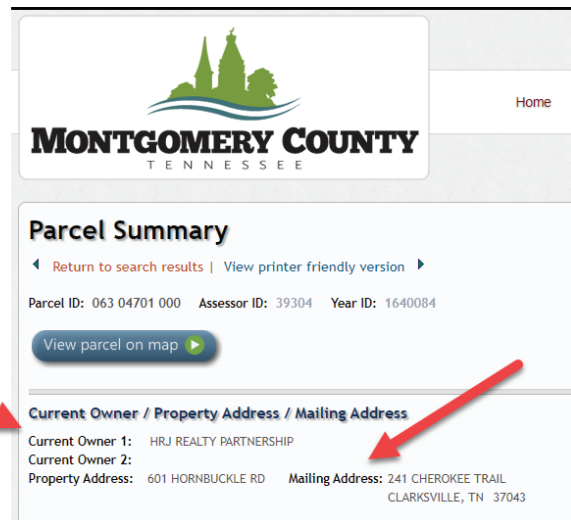
How do I know who is the property owner?

- Many properties are commercial (like stores) or rentals where the owner may be a corporation (large apartment complexes).
- How do I find the owner or address?
- Search your county's Assessor of Property records by address, plat number, etc.
- The Assessor of Property should have the owner's address on file.



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Example: The gas station where I
buy my snacks.



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Quick Note

If the property is rental property, and the person who is causing the trash, debris, and unsanitary conditions is the tenant...

You cannot serve the tenant.

You must serve the property owner.

If a property owner says, “Just tell my tenant to pick up the mess,” that is not going to be legally enforceable.



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Notice of Violation - Continued

If notice is served by newspaper publication, notice is effective on the date of the second publication.

If notice is served by personal service, notice is effective immediately upon delivery.

Notice shall state property owner is entitled to a hearing.



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Notice – Required Elements TCA 6-54-113(b)(1)-(4)

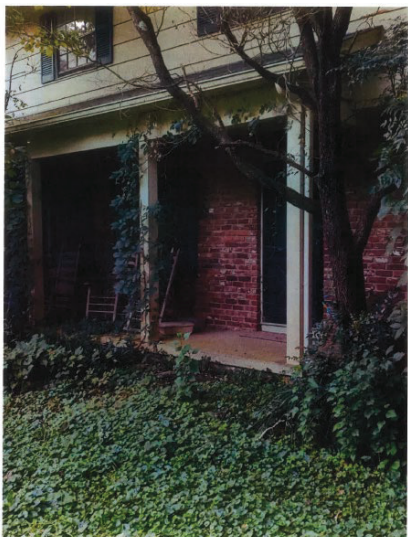
Notice shall include (but not limited to) the following:

1. The condition complained of and consequences for failing to remedy the condition (*including time period in which action must be taken and a statement that the city will take action if the owner does not, and will collect the costs for clean up from owner*).
2. Name of the office, address, and telephone number of the department or person giving notice.
3. Estimate of cost for cleaning up the problem (in conformity with standards of cost in community) including levying liens if not paid.
4. Place for the property owner to return the notice and request a hearing.



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Helpful Hint #1 - Include Pictures



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Helpful Hint #2 – Property Records

Include Property Assessor's Record if possible

Not required by the statute but makes it clear that the notice is to the registered property owner and due diligence is performed.

1/31/2020 Montgomery County Web Page | Property Search

Parcel Summary [Print Summary](#)

Parcel ID: 030P 0 00300 000 Assessor ID: 404075 Year ID: 1387322

Current Owner / Property Address / Mailing Address

Current Owner 1: EXCHANGERIGHT NET LEASED PORTFOLIO 26 DST
 Current Owner 2:
 Property Address: 1100 ASH RIDGE DR Mailing Address: 1055 E COLORADO BLVD STE 310
 PASADENA, CA 91106

Current Total Property Appraisal

Appraisal Year: 2020 Land Use: COMMERCIAL

Total Building Value: \$635,200.00 Total Miscellaneous Improvements Value: \$95,800.00 Total Improvement Value: \$732,000.00
 Total Land Value: \$379,000.00

Total Appraised Value: \$992,100.00 Assessment Ratio: 40% Total Assessed Value: \$396,840.00



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Helpful Hint #3 – Keep Notes on File

- Tracks timeline of events.
- For use by your own staff.
- Not required to include in the notice letter.
- Could be useful if a hearing is held.

City of Clarksville
Building & Codes Department
Status Report Form

Location: 1100 Ash Ridge Dr Pictures: CEO LH Date: 1-31-20

House / Business / Lot: ☒ Vacant ☒ Occupied (Owner / Renter See Notes) ☐ Tall Grass ☐ Lot Size

☒ Trash ☐ Tires ☐ Tree Limbs ☐ Appliance(s) ☐ Down Tree(s) ☐ Auto Parts ☐ Furniture

☒ Debris ☐ Building Rubbish ☐ Other

☐ Gate (Lock Y / N) ☒ Unsecured (Y / N) ☐ Window(s) ☐ Door(s) ☐ Graffiti (attach graffiti form)

☒ NO Animal On Site ☐ Animal Control Called Y / N Officer On-Site

Letter Prepared By: LH Date Mailed: 1-31-20

Mailed (Postage Checked) By: LH Date Received: 1-31-20

Hearing Requested: Y / N Date Of Hearing:

Recheck Before Work Order Int. Date Corrected Yes / No

House / Business / Lot: ☒ Vacant ☒ Occupied (Owner / Renter See Notes) ☐ Tall Grass (Above 3 ft / Below 3 ft)

☐ Trash ☐ Tires ☐ Tree Limbs ☐ Appliance(s) ☐ Down Tree(s) ☐ Auto Parts ☐ Furniture

☐ Debris ☐ Building Rubbish ☐ Cable Yards ☐ Other

☐ Gate (Lock Y / N) ☐ Unsecured (Y / N) ☐ Window(s) ☐ Door(s) ☐ Graffiti (attach graffiti form)

☐ Animal On Site ☐ Animal Control Called Y / N Officer On-Site

☒ Date Confirmed Tax Card Info To Include Mailing Address (Tax Assessor) If Different Than New Letter Sent

YOU DOCUMENT ALL ENCOUNTERS WITH OWNER / OCCUPANT & ALL ON-SITE INSPECTIONS

NOTES: 1-31-20 Mailed Nov - Business. Did Courtesy Contact w/ Manager of Store 2-5-20 Rec'd CALL FOR KNOWLEDGE. Called back Left message explaining violation, and to call back if need be 2-18-20 Given to BK for Review he pictures some of trash picked up, but some of trash still there.



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Now the clock starts

- After the property owner receives notice, it has **10 days** to remedy the condition. *(So if owner wants a hearing, it should request one within 10 days of receipt of the notice letter).*
- If not, the city may take action to clean up the lot.
- Note: If the property owner is a truck driver or otherwise employed in the transportation industry, the notice required is now 20 days, excluding Saturdays, Sundays, and legal holidays, before action may be taken by the city.
- Action Taken = City sends staff or hires a crew to clean up the property and then collect the expenses.



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City remedies the property

The city uses its own Codes Enforcement Department or hires a contractor to do the clean up.

- TCA 6-54-113(c)(1)(A) and (B) allow the city to assess costs “in conformity with reasonable standards and the cost thereof assessed against the owner of the property.”
- How do you determine what is “reasonable standards?”
- Depends on location, hourly rates for the area, etc.



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How to collect these costs

Best practice =
just ask for it
and say
“Please.”



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How to collect these costs

Best practice =
just ask for it
and say
“Please.”

If they refuse,
just tell them
“Bless Your
Heart.”



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But if that doesn't work



Option 1 – File a collections lawsuit



City can file suit in state court to collect the costs as a debt owed just like any other creditor.



Multiple property owners may be joined in one collection suit.



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Option 2 – File a lien with Register of Deeds



Definition of Lien - a charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law

Basically, you cannot sell this property until you pay me the debts.



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Option 2 – Liens

- The City writes up the notice of lien.
- City files the lien with the County Register of Deeds.
- City is allowed to collect the lien by the same methods allowed to collect property taxes.
- This is subject to the same interest and penalties as delinquent taxes.
- **Major Note: Consider new language in TCA 6-54-113(c)(3), effective April 28, 2023**



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Owner – Occupied property - \$500 minimum



TCA 6-54-113(c)(1)(B) says for owner-occupied properties (i.e. homes where the owner lives in them and they're not rentals), no lien may be filed until the debt owed equals or exceeds \$500.



A copy of the lien filed should be sent to the tax collector, with a request that the amount be added to the tax bill for the property.



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Adding liens to tax bill

If your city has city property taxes, this should be easy. Just take the filed lien and add it to the top of the regular property tax bill internally.

Example: Property Owner Paul has a city property tax of \$1,000. He has four weed bills totaling \$600.

- While the property assessment is unchanged and stays \$1,000, he now owes \$1,600 by the property tax deadline.
- If Paul only pays the \$1,000 and not the full \$1,600, his property may be at risk of being sold at the next delinquent tax sale.
 - (Different counties do that different ways)



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If your city does not have a property tax

There are a few cities that do not have city property taxes, so it is not as easy to add this to the property tax bill.

Work with your County Trustee's Office to add this filed lien onto the county property taxes to be paid in full

Advantage of filing lien on property taxes = should be paid at the end of the year, or after a completed delinquent tax sale, which could take years.



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New law – TCA 6-54-113(c)(3)

(3) *As an alternative to the remedies provided in subdivision (c)(1)(A)*, if the owner of record of real property, ...fails or refuses to remedy the condition after receiving the notice ... the municipality may bill the owner the costs to remedy or remove the condition, in the same manner as municipal real property taxes and add the amount on the real property tax notice sent to the owner. If this remedy is used by a municipality, the amount billed to the property owner **shall not constitute a lien** on any affected property or accrue penalties or interest for late payment. **Any municipality that adds such costs to the real property tax notices shall bear all expenses related to system modifications necessary to add the costs to the notices.**



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New law – TCA 6-54-113(c)(3)

(3) *As an alternative to the remedies provided in subdivision (c)(1)(A)*, if the owner of record of real property, ...fails or refuses to remedy the condition after receiving the notice ... the municipality may bill the owner the costs to remedy or remove the condition, in the same manner as municipal real property taxes and add the amount on the real property tax notice sent to the owner. If this remedy is used by a municipality, the amount billed to the property owner **shall not constitute a lien** on any affected property or accrue penalties or interest for late payment. **Any municipality that adds such costs to the real property tax notices shall bear all expenses related to system modifications necessary to add the costs to the notices.**



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Let's break this down – TCA 6-54-113(c)(3)

City spends own money to remedy/remove the condition

City adds this costs to the property tax bill

Not a lien

No extra penalties or interest for late payments



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Here's the kicker...

“Any municipality that adds such costs to the real property tax notices shall bear all expenses related to system modifications necessary to add the costs to the notices.”

What does this mean?



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TCA 6-54-113(c)(3) – not a lien



City Property Taxes In-House – Probably very little to no expenses. Just have your finance team add the amount to the tax bill. No county involvement.



County/State does the city's property taxes – County may try to make the city pay for whatever upgrades or system they buy to do this collection.



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Next Step - Hearing Requests



TCA 6-54-113(d)(1) – the city shall provide a hearing upon request of the person aggrieved by the city's determination of property violation.



Request for hearing shall be made within 10 days following the receipt of notice.



Failure to make a request shall be a waiver of the right to a hearing.



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Helpful Hint - Include in the Notice Letter either a box to check or a separate form to mail in requesting a hearing.

Hearing Request	
Violation : <u>Farragut Municipal Code, CHAPTER 14, ARTICLE 4., Sec. 14-136</u>	
Location of Violation: <u>12015 Midhurst Drive, Farragut, TN 37934</u>	
Initial Inspection Dates: <u>07/27/2020</u>	
If you would like to request a hearing regarding the violation cited, please fill out the information below. Make sure that you write legibly. You will be contacted by Town Staff regarding your hearing date and time.	
Print Name: _____	
First	Last
Mailing Address: _____	
Street	City / State / Zip Code
Phone Number: _____	
Signature: _____	Date: _____



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Judicial Review – TCA 6-54-113(d)(2)

Any person aggrieved by an order of the board, agency, or commission may seek a judicial review of the order or act.

The time period established during subsection (c) [the 10 and 20 day rule] shall be stayed during the pendency of a hearing.



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Pick your path Abatement Statutes



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Slum Clearance Act

TCA 13-21-101 et. seq



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Slum Clearance Act – TCA 13-21-101 et. seq.

- The Slum Clearance Act authorizes action to address “property unfit for human occupation, or use due to **dilapidation, defects** increasing the **hazards** of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such structures **unsafe** or **unsanitary**, or **dangerous** or detrimental to the health, safety or morals.”



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Quick Note - Administrative Actions – Not Judicial



Slum Clearance Act abatement cases are considered administrative actions, not judicial actions.



Therefore these do not involve \$50 fines, city judges, or citations into city courts.



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Two Examples of Slum Properties



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One More Example – Slum Property



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Step 1 – Adopt SCA as an Ordinance

The city is required to pass an ordinance that essentially adopts the Slum Clearance Act that cross reference or mirrors the State statute.

The MTAS sample code already includes this ordinance in *Title 13, Chapter 2, Sections 201 through 214*.

Your city may already have adopted this ordinance.

If not, MTAS has an updated sample ordinance available



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MTAS Sample – Slum Clearance Act

CHAPTER 2

SLUM CLEARANCE¹

SECTION

- 13-201. Findings of board.
- 13-202. Definitions.
- 13-203. "Public officer" designated; powers.
- 13-204. Initiation of proceedings; hearings.
- 13-205. Orders to owners of unfit structures.
- 13-206. When public officer may repair, etc.
- 13-207. When public officer may remove or demolish.
- 13-208. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-209. Basis for a finding of unfitness.
- 13-210. Service of complaints or orders.
- 13-211. Enjoining enforcement of orders.
- 13-212. Additional powers of public officer.
- 13-213. Powers conferred are supplemental.
- 13-214. Structures unfit for human habitation deemed unlawful.



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Definitions – TCA 13-21-101

There are several definitions, but “Owner” and “Public Officer” are key.

Owner – means the holder of the title in fee simple and every mortgagee of record;

Public Officer – means any officer or officers of a municipality or the executive director or other chief executive officer of any commission or authority established by such municipality or jointly with an other municipality who is authorized by ordinance adopted hereunder to exercise the power prescribed by such ordinances and by this part.

“Public Officer” is whoever your city code authorizes to enforce these abatement issues. I.e., Codes Enforcement Officer is most common, but it can be others if the code says so.



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Beginning the Process – Structure unfit



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Step 2 - Initiating Action by Two Methods

- Method #1 – Petition signed by at least 5 residents is filed with the “public officer” (i.e. Building Inspector, Codes Enforcement Department, etc.), charging that the ***structure is unfit for human occupation or use***; (community initiated) or
- Method #2 – When it appears to a “public officer” who may be the building inspector, fire chief, or any officer of the city, that the ***structure is unfit for occupation or use***. (Self Initiated)

See TCA 13-21-103(2)



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“Unfit for Human Occupation or Use”

TCA 13-21-102(a) – Describes the standards for unfitness as:

“unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such structures unsafe or unsanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality...”



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Step 3 –Preliminary Investigation by Inspector

- The Building Inspector conducts a preliminary investigation to determine whether the structure is “unfit for human occupation or use.”
- Be specific about what violations are noticed and include specific references to the building and fire code sections
 - “Violation of City Code Title 13, Chapter 1, Sections 13-201, 13-204, 13-209”
 - “Violation of Fire Code or Electrical Code making it unfit for human occupation...”
- Take lots of pictures.



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Step 4 – Notice to Property Owner

- If building inspector finds code violations that make the structure unfit, the inspector issues a complaint to the owner of property, stating the violations observed and containing a notice that a hearing be held.
- Hearing is held before the building inspector (or the inspector’s “designated agent”) not less than 10 days or more than 30 days from the date the complaint is served.
- Simply put, hearing occurs between 10-30 days after notice given.



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Sidenote about Hearing notice

TCA 13-21-103(2) requires the Building Official provide a hearing to the violator.

Many cities include a “Hearing Request” form in the original complaint notice that the violator can mail back to the city to let them work out a time to schedule one.

Hearing Request	
Violation : <u>Farragut Municipal Code, CHAPTER 14, ARTICLE 4., Sec. 14-136</u>	
Location of Violation: <u>12015 Midhurst Drive, Farragut, TN 37934</u>	
Initial Inspection Dates: <u>07/27/2020</u>	
If you would like to request a hearing regarding the violation cited, please fill out the information below. Make sure that you write legibly. You will be contacted by Town Staff regarding your hearing date and time.	
Print Name: _____	
First	Last
Mailing Address: _____	
Street	City / State / Zip Code
Phone Number: _____	
Signature: _____	Date: _____



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Sidenote about “Designated Agent”

In larger cities, a Codes Enforcement Officer typically writes the notice of violation, but the hearing is conducted by the Codes Department Director or Deputy Director.

However, the law allows the same building inspector to issue the notice and also conduct the hearing.

Many smaller cities however only have one codes officer, and that officer does not want to write the violation notice and also conduct the hearing.

Some cities believe if the same person writes the notice and conducts the hearing, it loses impartiality.



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“Designated Agent”

In those instances, a city can find a designated agent of the “building official.”

So the codes officer writes the ticket, but the city retains the services of an engineer, contractor, builder, etc. who is willing to serve as the hearing officer.

Maintains a stronger appearance of impartiality.



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Step 4 – Notice Requirements TCA 13-21-105

Service of the Complaint Notice

- Option 1: Serve the property owner in person (preferred, if possible)
- Option 2: Service by registered mail (sometimes difficult to get person to sign, but fine to use to notify mortgage company if needed).
- Option 3: If whereabouts of owner are unknown (after a reasonable search) the complaint should be published in the city newspaper once a week for two consecutive weeks.
 - If no city newspaper, then a newspaper published in the county.
 - Newspaper option only if Option 1 and 2 do not work.



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Step 4 – Notice Requirements TCA 13-21-105

Notice of Complaint Continued:

Post the complaint in a “conspicuous place on premises affected by the complaint or order.”

Lastly, file a copy of the complaint with the Register of Deed’s office in the county where the property is located.



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Register of Deed’s office



Question: Why does the statute require you to file this complaint notice with the Register of Deeds office?



Answer:



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Register of Deed's office



Question: Why does the statute require you to file this complaint notice with the Register of Deeds office?



Answer: To prevent the property owner from selling the property with an unsafe structure to an unsuspecting buyer.



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Step 5 – Evaluating the Structure

After the hearing, if the building inspector determines that the building is unfit for human occupation or use, an order shall issue stating those findings and command one of two choices:



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Step 5 – Evaluating the Structure

After the hearing, if the building inspector determines that the building is unfit for human occupation or use, an order shall issue stating those findings and command one of two choices:

Repair: If repair can be made, the owner shall be ordered to repair the structure within a specified time or else vacate the structure and close it for purposes of human occupation; or



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Step 5 – Evaluating the Structure

After the hearing, if the building inspector determines that the building is unfit for human occupation or use, an order shall issue stating those findings and command one of two choices:

Repair: If repair can be made, the owner shall be ordered to repair the structure within a specified time or else vacate the structure and close it for purposes of human occupation; or

Demolish: If the structure cannot be repaired for a “reasonable amount” the owner shall be ordered to demolish or remove the structure within a specified time.



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What is a “reasonable amount” for repair?

TCA 13-21-103 does not say what that amount is, but rather explicitly says “the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purposes.”

MTAS Samples and most cities adopt the “50% of the structure’s value” rule.

Example: If structure has roof sagging and falling apart.

Property value = \$40,000 and new roof repair= \$30,000

This is greater than 50% of the value = demolish



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Determining Property’s Value



City can use the Assessor of Property’s value



City may also use a licensed real estate appraiser



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Determining Expenses Needed to Repair



Larger cities may have licensed in-house experts in their Building and Codes Departments.



Cities can also use a licensed contractor to place a value on the repairs required to bring the property up to code.



This person must be qualified to testify as to their opinion and valuation of the work.



Good risk management tool to show these values are not set by the building official.



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Step 6 - Order to Repair or Demolish



The order shall contain a findings of fact in support of the determination.



The order can contain a deadline date for completion of repair or demolition.



Cities have discretion to work with property owner and extend deadline dates if meaningful progress is made.



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Step 7 - Serving the Order

Once the order to repair or demolish is given, the City must serve the property owner this order in the same manner as service of the original notice.

- Personal service, or
- Registered Mail
- Post Order on the property
- File Order with Register of Deeds



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If the Owner Complies...



Great!

Problem Solved.

Let's go to Dairy Queen!



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If Owner fails to comply...

The city may repair or demolish the structure.

The building official may place a notice on the structure, stating:

“This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful.”

- TCA 13-21-103(4) and (5).



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Sidenote about the Posting Notice

TCA 13-21-103(4) and (5) says the building official “**may**” post the notice on the structure; however...

Ford v. New Greater Hyde Park Missionary Baptist Church of Memphis, No. W2006-02614-COA-R9CV, 2007 WL 4355490 (Tenn. Ct. App. Dec. 12, 2007) says,

“If structural problems are observed that pose a threat to the public of death or injury, the city **must post** the notice warning the public the structure is unsafe.”

Takeaway: Statute says “**may** post” but case law says “**must** post.”



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Step 8 – Repair or demolition

- City must be prepared to pay all the costs to repair or demolish at the beginning.
- Statute does not give any guidance to the steps a city should take to repair or demolish a structure.
- It's up to each city to determine its own internal process.
- Highly recommend you involve your city attorney in this process.
- Here are some examples of steps to take.



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Step 8 – Sample Repair or Demolition Checklist

- | | |
|--|---|
| 1. Property owner name and address | 9. Written Response from Owner |
| 2. Date Investigated | 10. Attorney Title Search |
| 3. Date Last Occupied | 11. Public Notice Dates in Newspaper |
| 4. Date Structure Posted | 12. Office Review |
| 5. Complaint served
(person/mail/publication) | 13. City Attorney Review |
| 6. Hearing Date and Time | 14. TDEC approval |
| 7. Hearing Certified Letter Mailed | 15. Utilities disconnect |
| 8. Record Hearing Notice with
Register of Deeds | 16. Record Repair/Demo Lien at
Register of Deeds |



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Track your processes and expenditures

- Document demolition or repair bids.
- File should show a title search to find any other liens or claims.
- File should have Assessor of Property records to show ownership.
- Document registered mail fees, recording fees, title search fees, newspaper fees.
- Show purchase orders to contractors to demolish the structure.
- Add city's administrative fees to help offset some of the staffs' expenses.



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Step 9 – Collect the Costs

Option 1: Sue the property owner like any other creditor

Option 2: File a lien with the Register of Deeds office

These liens are collected by the city tax collector or the county trustee at the same time property taxes are collected, and the same interest and penalties apply to the lien amounts as are applied to delinquent taxes.



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Questions?



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