

## TITLE 13

### PROPERTY MAINTENANCE REGULATIONS<sup>1</sup>

#### CHAPTER

1. MISCELLANEOUS.
2. JUNKYARDS.
3. STRUCTURES UNFIT FOR OCCUPATION OR USE.
4. OPEN STORAGE OF REFUSE, JUNK, ABANDONED MOTOR VEHICLES AND RUBBISH.

#### CHAPTER 1

#### MISCELLANEOUS

#### SECTION

- 13-101. Health officer.
- 13-102. Smoke, soot, cinders, etc.
- 13-103. Stagnant water.
- 13-104. Dead animals.
- 13-105. Health and sanitation nuisances.
- 13-106. Littering around or damaging garbage bins.
- 13-107. Weeds, etc.--height limits; failure to cut or destroy.
- 13-108. Weeds, etc.--notice to cut or destroy.
- 13-109. Weeds, etc.--cutting or destruction by city.

**13-101. Health officer.** The "health officer" shall be such municipal, county, or state officer as the board of mayor and aldermen shall appoint or designate to administer and enforce health and sanitation regulations within the municipality. (1982 Code, § 8-101)

**13-102. Smoke, soot, cinders, etc.** It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort, and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business. (1982 Code, § 8-105)

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<sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-105.

Toilet facilities in beer places: § 8-211.

**13-103. Stagnant water.** It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as to effectively prevent the breeding of mosquitoes. (1982 Code, § 8-106)

**13-104. Dead animals.** Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify the health officer and dispose of such animal in such manner as the health officer shall direct. (1982 Code, § 8-107)

**13-105. Health and sanitation nuisances.** It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity. (1982 Code, § 8-108)

**13-106. Littering around or damaging garbage bins.** It shall be unlawful for any person to scatter litter around or to damage any city garbage bin. Litter means the throwing or piling of any useless or rejected matter on public or private property with intent to leave the same. Damage means the denting, burning, or in any way defacing a garbage bin. (1982 Code, § 8-104)

**13-107. Weeds, etc.--height limits; failure to cut or destroy.**

(1) It shall be unlawful for any person owning, leasing, occupying, or having control of property in the city, regardless of whether such property is vacant or contains any form of structure, to permit or suffer the growth upon such property of weeds, grass, brush, or other rank or noxious vegetation to a height greater than twelve (12) inches, when such growth is within two hundred (200) feet of occupied residential or commercial property, or is within two hundred (200) feet of any street, thoroughfare, or highway within the city. The failure of any person to cut and/or destroy such weeds, grass, brush, and other rank or noxious vegetation shall constitute a misdemeanor.

(2) It shall be unlawful for any person mentioned in subsection (1) to permit poison ivy or other plants which, due to pollination, are injurious or a menace to health to grow where they may cause injury or discomfort to any person within the city, regardless of the height, and such plants are hereby declared to be a public nuisance. The failure to destroy such poison ivy or other plants shall constitute a misdemeanor. (1982 Code, § 8-111)

**13-108. Weeds, etc.--notice to cut or destroy.** If the provisions of § 13-107 are not complied with, the recorder shall give notice of such condition,

in writing, to the owner, owner's agent, or occupant of the lot or parcel of land involved, which notice shall require the cutting, removal, and/or destruction of such weeds, grass, brush, or other vegetation within fifteen (15) days of the date of such notice. Notice under this section shall not be a condition precedent to a prosecution for violation of § 13-107. (1982 Code, § 8-112)

**13-109. Weeds, etc.—cutting or destruction by city.** If the person given notice as provided for in § 13-108 fails to cut, remove, and/or destroy such weeds, grass, brush, or other vegetation within the time prescribed in such notice, the recorder shall notify the superintendent of the street department to cut, remove, and/or destroy such vegetation, or have the same done, and the cost thereof, plus fifteen per cent (15%) for inspection and other incidental costs in connection therewith, shall be paid by the owner of the lot or parcel of land involved, and the costs shall be billed to such owner. If the bill is not fully paid within one hundred twenty (120) days after the mailing thereof, a ten per cent (10%) penalty shall be added, and the amount of such bill, plus penalty, shall be placed on the tax roll of the city as a lien upon the property and collected in the same manner as other city taxes are collected.

Any action by the city or its agents under this section shall not relieve any person from prosecution for violating § 13-107. (1982 Code, § 8-113)

**CHAPTER 2****JUNKYARDS****SECTION**

13-201. Junkyards.

**13-201. Junkyards.**<sup>1</sup> All junkyards within the corporate limits shall be operated and maintained subject to the following regulations:

(1) All junk stored or kept in such yards shall be so kept that it will not catch and hold water in which mosquitoes may breed and so that it will not constitute a place, or places in which rats, mice, or other vermin may be harbored, reared, or propagated.

(2) All such junkyards shall be enclosed within close fitting plank or metal solid fences touching the ground on the bottom and being not less than six (6) feet in height, such fence to be built so that it will be impossible for stray cats and/or stray dogs to have access to such junkyards.

(3) Such yards shall be so maintained as to be in a sanitary condition and so as not to be a menace to the public health or safety. (1982 Code, § 8-109)

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<sup>1</sup>State law reference

The provisions of this section were taken substantially from the Bristol ordinance upheld by the Tennessee Court of Appeals as being a reasonable and valid exercise of the police power in the case of Hagaman v. Slaughter, 49 Tenn. App. 338, 354 S.W.2d 818 (1961).

## CHAPTER 3

### STRUCTURES UNFIT FOR OCCUPATION OR USE

#### SECTION

- 13-301. Findings of board.
- 13-302. Definitions.
- 13-303. "Public officer" designated; powers.
- 13-304. Initiation of proceedings; hearings.
- 13-305. Orders to owners of unfit structures.
- 13-306. When public officer may repair, etc.
- 13-307. When public officer may remove or demolish.
- 13-308. Lien for expenses; sale of salvaged materials; other powers not limited.
- 13-309. Basis for a finding of unfitness.
- 13-310. Service of complaints or orders.
- 13-311. Enjoining enforcement of order.
- 13-312. Additional powers of public officer.
- 13-313. Powers conferred are supplemental.

**13-301. Findings of board.** Pursuant to Tennessee Code Annotated, § 13-21-101, et seq., the board of mayor and aldermen finds that there exists in the city structures which are 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 dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city. (1982 Code, § 11-1301)

**13-302. Definitions.** (1) "Municipality" shall mean the City of McMinnville, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

(2) "Governing body" shall mean the board of mayor and aldermen charged with governing the city.

(3) "Public officer" shall mean the officer or officers who are authorized by this chapter to exercise the powers prescribed herein and pursuant to Tennessee Code Annotated, § 13-21-101, et seq.

(4) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city or state relating to health, fire, building regulations, or other activities concerning structures in the city.

(5) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.

(6) "Parties in interest" shall mean all individuals, associations, corporations and others who have interests of record in a structure and any who are in possession thereof.

(7) "Structures" shall mean any building or structure, or part thereof, used for human occupation and intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1982 Code, § 11-1302)

**13-303. "Public officer" designated; powers.** There is hereby designated and appointed a "public officer," to be the codes enforcement official of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the codes enforcement official. (1982 Code, § 11-1303)

**13-304. Initiation of proceedings; hearings.** Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the city charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint, and the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer. (1982 Code, § 11-1304)

**13-305. Orders to owners of unfit structures.** If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupancy or use, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order: (1) if the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent [50%] of the reasonable value), requiring the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupancy or use or to vacate and close the structure as a place for human occupancy or use; or (2) if the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent [50%] of the value of the premises),

requiring the owner within the time specified in the order, to remove or demolish such structure. (1982 Code, § 11-1305)

**13-306. When public officer may repair, etc.** If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupancy or use; the use or occupation of this building for human occupancy or use is prohibited and unlawful." (1982 Code, § 11-1306)

**13-307. When public officer may remove or demolish.** If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished. (1982 Code, § 11-1307)

**13-308. Lien for expenses; sale of salvaged materials; other powers not limited.** The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall, upon the filing of the notice with the office of the register of deeds of Warren County, be a lien on the property in favor of the city, second only to liens of the state, county and municipality for taxes, any lien of the municipality 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. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes. If the structure is removed or demolished by the public officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the Chancery Court of Warren County by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the City of McMinnville to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise. (1982 Code, § 11-1308)

**13-309. Basis for a finding of unfitness.** The public officer defined herein shall have the power and may determine that a structure is unfit for human occupation and use, if he finds that conditions exist in such structure

which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other residents of the City of McMinnville; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation; light; or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness. (1982 Code, § 11-1309)

**13-310. Service of complaints or orders.** Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the city. In addition, a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the Register's Office of Warren County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law. (1982 Code, § 11-1310)

**13-311. Enjoining enforcement of order.** Any person affected by an order issued by the public officer served pursuant to this chapter may file a suit in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such suit in the court. Hearings shall be had by the court on such suits within 20 days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings, the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court.

The remedy provided herein shall be the exclusive remedy and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer. (1982 Code, § 11-1311)

**13-312. Additional powers of public officer.** The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:



- (1) To investigate conditions of the structures in the city in order to determine which structures therein are unfit for human occupation or use;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and
- (5) To delegate any of his functions and powers under this chapter to such officers and agents as he or she may designate. (1982 Code, § 11-1312)

**13-313. Powers conferred are supplemental.** This chapter shall not be construed to abrogate or impair the powers of the courts or any department of the city with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws. (1982 Code, § 11-1313)

## CHAPTER 4

### OPEN STORAGE OF REFUSE, JUNK, ABANDONED MOTOR VEHICLES AND RUBBISH

#### SECTION

- 13-401. Prohibition.
- 13-402. Definitions.
- 13-403. Exceptions.
- 13-404. Notice to remove.
- 13-405. Consent of notice.
- 13-406. Failure to comply with notice.
- 13-407. Penalties.
- 13-408. Procedure for enforcement of chapter.

**13-401. Prohibition.** It shall be unlawful for the owner and/or occupant of any residential or commercial building, structure, or property within the city limits of the City of McMinnville to utilize or permit the utilization of the premises of such property for the open display, storage, stacking, piling or scattering of any refuse, junk, abandoned motor vehicles or rubbish. It shall be the duty or responsibility of every such property owner and/or occupant to keep the premises clean and remove all refuse, junk, abandoned motor vehicles or rubbish from the premises. (Ord. #1292, June 1998)

**13-402. Definitions.** (1) An abandoned motor vehicle is one which does not have lawfully affixed thereto any unexpired license plate or plates and is in the state of disrepair, wrecked, dismantled, partially dismantled, discarded and is incapable of being moved under its own power.

(2) Motor vehicle is any vehicle which is designed to be self-propelled and to travel along the ground, and shall include but not be limited to automobiles, buses, motor bikes, motorcycles, motor scooters, all terrain vehicles (ATV's), trucks, tractors, go-carts, golf carts, campers and trailers.

(3) Refuse, junk and rubbish shall include, but not be limited to, abandoned motor vehicles or parts thereof, machinery or parts thereof, appliances or parts thereof, glass, building materials, building rubbish, old rope, rags, paper, bottles, iron or other base metals, all articles discarded or no longer used as a manufactured article composed of any one or more of the materials mentioned herein, or any residential or commercial refuse, byproduct, waste or remains. (Ord. #1292, June 1998)

**13-403. Exceptions.** This chapter shall not apply to the display of new or used vehicles by a car dealership or to the temporary storage of vehicles being repaired by a body shop or repair garage. This chapter shall not apply to any motor vehicle retained by the owner for antique collection purposes and licensed

by the State of Tennessee as such a vehicle. This chapter shall also not apply to the orderly stacking of lumber and materials at lumber yards or building supply businesses or to the temporary storage of building supplies on the site of commercial or residential building projects. No exceptions shall invite plundering, or endanger the health or safety of others, or create a fire hazard, or materially depreciate the value of the real property of others. (Ord. #1292, June 1998)

**13-404. Notice to remove.** Whenever a violation of this chapter shall come to the attention of the Fire Marshall for the City of McMinnville, or his/her designee, he/she shall serve a notice in writing to remove the violation upon the occupant and owner of the property where the violation exists. It shall constitute sufficient notice when a copy of same is posted in a conspicuous place upon the property alleged to be in violation of this chapter and duplicate copies are sent by registered mail to the occupant and owner of the property at his/their last known address. (Ord. #1292, June 1998)

**13-405. Consent of notice.** The notice shall fully describe the alleged violation of this chapter and shall allow the occupant and/or owner of the property thirty (30) days to remove the violation from the premises prior to any further action by the fire marshall. (Ord. #1292, June 1998)

**13-406. Failure to comply with notice.** Any person failing to comply with the notice to remove within thirty (30) days shall be cited into the Municipal Court for the City of McMinnville at its next regular convening. (Ord. #1292, June 1998)

**13-407. Penalties.** Violation of this chapter shall, upon conviction, result in imposition of a fine up to \$500.00 for each offense, plus the imposition of costs. Each separate day such violation is continued after the conviction shall constitute a separate offense. After a conviction for violation of this chapter becomes final, the City of McMinnville may, at its discretion, choose to enter upon the offending premises and remove the refuse, junk, abandoned motor vehicles or rubbish. In that event, the occupant and/or owner shall be jointly liable to the City of McMinnville for all reasonable costs associated with the removal of the refuse, junk, abandoned motor vehicles or rubbish. (Ord. #1292, June 1998)

**13-408. Procedure for enforcement of chapter.** (1) Notice shall be sent by the fire marshall or his/her designee to the owner and occupant of the premises.

(2) If the violation persists beyond the 10 day limit announced in the notice, then citations to city court should be issued and served on the owner and occupant.

(3) A hearing will then be held in city court to determine whether a violation of the ordinance exists.

(4) If a violation is found, then the court, pursuant to T.C.A. § 6-54-308, can penalize the violator up to \$500.00, plus costs. This is a continuing offense and the penalty can be increased per day for as long as the violation continues. The violator has 10 days to appeal.

(5) After the 10 day time period for appeal has passed, pursuant to T.C.A. § 6-54-303, in all municipal courts where the judge has entered a judgment for fines and costs, and the same remain unpaid for (30) days thereafter, the court is authorized by and through its clerk to issue execution. The city court clerk should be trained to issue execution. Execution may be had on the bank accounts of the violators. This option will probably not be effective after the first withdrawal however, and does not ensure that the property will be cleaned. The clerk can also issue garnishment of the violators' wages and levy of execution on the violators' personal and real property.

(6) After the judgment is final, the city can enter the premises and clean the place. The owner and/or occupant can be charged with the clean up costs. This will require a second citation to city court to determine the reasonableness of the costs and obtain a judgment for those costs. This will also involve the risk of civil action against the city if the violator claims that the refuse, junk, abandoned motor vehicles and rubbish were his personal treasures and not junk at all. Careful oversight and documentation should be kept if this option is pursued.

(7) After the judgment is final, if the city does not wish to undertake the clean up and attempt to recover the costs, the violator may be held in contempt for failing to abide by the order of the municipal court. Pursuant to T.C.A. § 29-9-103, the fine for contempt of a municipal court is \$10.00. The municipal court has the power not only to fine, but also to jail violators for contempt. According to T.C.A. § 29-9-104, if the contempt consists in an omission to perform an act which it is yet in the power of the person to perform, he may be imprisoned until he performs it. This option would require an agreement with the county for housing of inmates jailed by the municipal court. (Ord. #1292, June 1998)