

TITLE 13

PROPERTY MAINTENANCE REGULATIONS<sup>1</sup>

CHAPTER

1. MISCELLANEOUS.
2. SLUM CLEARANCE.
3. JUNKYARDS.
4. ABANDONED OR JUNK VEHICLES.

CHAPTER 1

MISCELLANEOUS

SECTION

- 13-101. Weeds.
- 13-102. Smoke, soot, cinders, etc.
- 13-103. Stagnant water.
- 13-104. Dead animals.
- 13-105. Health and sanitation nuisances.
- 13-106. Nuisances.

13-101. Weeds. 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 city clerk or chief of police to cut such vegetation when it has reached the height of over ten (10) inches. (1983 Code, § 8-401)

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. (1983 Code, § 8-404)

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 effectively to prevent the breeding of mosquitoes. (1983 Code, § 8-405)

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<sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Toilet facilities in beer places: § 8-213(12).

Wastewater treatment: title 18, chapter 2.

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. (1983 Code, § 8-406)

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. (1983 Code, § 8-407)

13-106. Nuisances. (1) Nuisance declared. It is declared to be a nuisance 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 garbage, trash, litter, or debris, including but not limited to abandoned, wrecked and/or dismantled inoperable vehicles or equipment, 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. Such nuisance may be abated and the cost of the abatement shall be assessed against the owner of the property as stipulated and in the manner prescribed in this section.

(2) Designation of public officer or department. The board of commissioners 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 commissioners to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at a minimum, contain the following additional information:

(a) A brief statement that the owner is in violation of municipal code § 13-106 of the City of Winchester, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

(b) The person, office, address, and telephone number of the department or person giving the notice;

(c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

(d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

(4) Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated by the board of commissioners to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. The cost shall be a lien upon the property in favor of the city.

(5) Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination and order to the board of commissioners. The appeal shall be filed with the city recorder within ten (10) days following the receipt of the notice issued pursuant to Section 3 above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.

(6) Judicial review. Any person aggrieved by an order or act of board of commissioners under this section may seek judicial review of the order or act. The time period established in subsection (3) above shall be stayed during the pendency of judicial review.

(7) Supplemental nature of this section. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, other municipal ordinances or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of garbage, trash, litter, or debris, including but not limited to abandoned, wrecked and/or dismantled inoperable vehicles or equipment, or any combination of the preceding elements.

## CHAPTER 2

SLUM CLEARANCE<sup>1</sup>

## SECTION

- 13-201. Findings of city council.
- 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.

13-201. Findings of city council. Pursuant to Tennessee Code Annotated § 13-21-101 et seq., the city council finds that there exists in the city structures which are unfit for human occupation 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 unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city.

13-202. Definitions. (1) "Municipality" shall mean the City of Winchester, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

(2) "Governing body" shall mean the city council 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 the building inspector.

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

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 13, chapter 21.

(6) "Parties in interest" shall mean all individuals, associations, corporations and others who have interests of record in a dwelling 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.

13-203. "Public officer" designated; powers. There is hereby designated and appointed a "public officer," to be the city clerk of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the building inspector.

13-204. 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.

13-205. 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 finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order: (a) 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, during 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 for human occupancy or use; or (b) 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.

13-206. 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."

13-207. 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.

13-208. 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 Franklin County, be a lien on the property in favor of the municipality, 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 placed upon the tax rolls of the City of Winchester as a lien and shall be added to property tax bills to be collected 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 Franklin 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 provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the City of Winchester to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-209. 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 Winchester, 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 uncleanliness.

13-210. 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 Franklin County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-211. Enjoining enforcement of orders. 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.

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.

13-212. 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 may designate.

13-213. Powers conferred are supplemental. This chapter shall not be construed to abrogate or impair the powers 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.



## CHAPTER 3

JUNKYARDS

## SECTION

## 13-301. Junkyards.

13-301. 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. (1983 Code, § 8-409)

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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 4

ABANDONED OR JUNK VEHICLES

SECTION

13-401. Definitions.

13-402. Abandoned motor vehicles declared a public nuisance.

13-403. Removal of abandoned motor vehicles required.

13-404. Notification and authority.

13-405. Violations.

13-406. Vehicle disposal.

13-407. Return of vehicle to owner.

13-408. Valuable property.

13-401. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "Person." Any person, firm, organization, partnership, association corporation or company of any kind.

(2) "Vehicle." Any machine propelled by other than human power designed to travel along the ground by use of wheels, treads, runners, or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, truck/trailer, motorcycle, tractor, recreation vehicle, golf carts, vehicle parts, boat, jet ski, or motor home.

(3) "Property." Any real property within the City of Winchester which is not a street or highway.

(4) "Shall." The word "shall" is always mandatory and not merely directory.

(5) "Antique." Any vehicle over 25 years old. (as added by Ord. #800, Jan. 2003)

13-402. Abandoned motor vehicles declared a public nuisance. In enacting this chapter, the Council of the City of Winchester finds and declares that the accumulation and storage of abandoned, wrecked, junked, partially dismantled or inoperative motor vehicles on public or private property in the City of Winchester are in the nature of rubbish and unsightly debris, violates, in many instances, the zoning regulations of the city and constitutes a nuisance detrimental to the health, safety, and welfare of the community in that, such conditions tend to interfere with the enjoyment of and reduce the value of public and private property and create fire hazards and other safety and health hazards to the citizens of the City of Winchester. (as added by Ord. #800, Jan. 2003)

13-403. Removal of abandoned motor vehicles required. The accumulation and storage of one or more such motor vehicles in violation of the

provisions of this chapter shall constitute rubbish and unsightly debris and a nuisance detrimental to the health, safety, and general welfare of the inhabitants of the City of Winchester, and it shall be the duty of the registered owner of such motor vehicle and it shall also be the duty of the person in charge or control of the property upon which such motor vehicle is located whether owner, tenant, occupant, lessee, or otherwise, to remove the same to a place of lawful storage or to have the vehicle housed within a building where it will not be visible from the street. If a building is not available, said vehicle shall be limited to one per residential property owner and said vehicle will be parked on a gravel, paved, or concrete surface on fully inflated tires with all windows, doors, and lids intact and locked for safety purposes. Said vehicle shall not be leaking any fluids. Commercial property owners, excluding licensed junkyards, with multiple abandoned, wrecked, inoperable vehicles shall keep said vehicles in a secured storage area with a gravel or paved surface out of public view. (as added by Ord. #800, Jan. 2003)

13-404. Notification and authority. Whenever any such public nuisance exists on occupied or unoccupied commercial or residential, private or public, property within the City of Winchester, the owner or owners of said property shall be notified by the chief of the department of inspection/codes enforcement or his authorized agent to abate or remove the same. Such order shall:

- (1) Be in writing;
- (2) Specify the public nuisance and its location;
- (3) Specify the corrective measures required; and
- (4) Provide for compliance within ten (10) days from the date of notification.

The notification shall be served upon the owner or owners of said premises by serving them personally or by sending said notice by certified mail, return receipt requested, to their address as shown on the current tax rolls of the City of Winchester. If the owner or owners of the premises fail or refuse to comply with the order of the chief of the department of inspection/codes enforcement or his duly authorized agent within a ten (10) day period after notification thereof, as provided herein, such failure or refusal shall be deemed a violation of the provisions of this chapter and said owner or owners shall be subject to the penalties herein provided. If the owner or owners of the premises fail or refuse to comply with the order of the chief of the department of inspection/codes enforcement or his duly authorized agent within a ten (10) day period after notification thereof, as provided herein, the chief of the department of inspection/codes enforcement or his authorized agent may enter upon said property, take possession of such junk vehicle or vehicles, remove the same from said property, dispose of same, and cause such unlawful condition to be remedied. Upon completion of such removal and disposition, the reasonable costs thereof, and other incidental costs in connection therewith, shall be paid by the owner or owners of said property to the City of Winchester and said costs

shall be billed to the owner or owners of said property. If the bill is not fully paid within sixty (60) days after the mailing of said bill a 10% penalty shall be added, and said costs and penalties shall be placed on the tax roll of the City of Winchester as a lien upon the property and collected in the same manner as other city taxes are collected. (as added by Ord. #800, Jan. 2003)

13-405. Violations. Any person violating or interfering with the enforcement of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined under the general penalty clause for this municipal code. (as added by Ord. #800, Jan. 2003)

13-406. Vehicle disposal. If, after 15 days from the date of removal, the vehicle has not been claimed by its owner, the holder of the vehicle may dispose of such vehicle as provided by state law. (as added by Ord. #800, Jan. 2003)

13-407. Return of vehicle to owner. If return of vehicle is demanded by its owner during the time that it is being held, it will be returned where and as it sits after payment of all applicable fines, tow charges, and storage charges that apply to the vehicle. (as added by Ord. #800, Jan. 2003)

13-408. Valuable property. Any valuable property found in any abandoned vehicle removed subject to this code shall be stored by the City of Winchester until claimed by the owner of said property. If property is not claimed, said property shall be sold at public auction as determined by the city administrator with the proceeds of such auction accruing to the General Operating Fund of the City of Winchester. (as added by Ord. #800, Jan. 2003)