

TITLE 12

BUILDING, UTILITY, ETC. CODES

CHAPTER

1. BUILDING CODE, ETC.
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3. THE STANDARD CODE FOR THE ELIMINATION OR REPAIR OF UNSAFE BUILDINGS.
4. SWIMMING POOL AND SPA CODE.
5. ENERGY CONSERVATION CODE.
6. ELECTRICAL CODE.
7. ADMINISTRATIVE HEARING OFFICER.

CHAPTER 1

BUILDING CODE, ETC.¹

SECTION

12-101. Current codes adopted.

12-101. Current codes adopted. (1) The city hereby adopts the 2015 version of the International Codes Council Codes relating to building, mechanical, plumbing, gas, and one- and two-family dwellings to date, with the following exceptions:

(a) Deleting section R313.2 of the *International Residential Code* requiring automatic sprinkler systems in one (1) and two (2) family dwellings.

(b) Deleting section R322 of the *International Residential Code* relative to Flood Resistant Construction and replacing it with the requirement established by the Municipal Floodplain Zoning Ordinance and the Federal Emergency Management Agency (FEMA) Flood Evaluation Requirements.

(c) Deleting section E3902.16 and E3902.17 of the *International Residential Code* relative to arc fault circuit interrupters and replacing with "arc fault interrupter are required in bedrooms only and must meet the requirements of the National Electrical Code (NEC)".

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: titles 18 and 19.

(d) Adding the following text to section 105.5 of the *International Building Code* and section R105.5 of the *International Residential Code*: "Any work which has not had an inspection within 180 days of the issuance of a permit or has not had any subsequent inspections within 180 days from the previous inspection shall be deemed that the work has been suspended and the permit shall become invalid."

(e) Deleting Chapter 11 of the *International Building Code* relative to accessibility in its entirety and replaced with the requirements of the Americans with Disabilities Act (ADA).

(2) Where there is a conflict between the *International Residential Code* Chapters 34 through 43 related to electrical installation and the *National Electrical Code* (NEC), the NEC shall supersede any requirements of the residential code.

(3) The city will require building contractors, electricians, plumbers and mechanical contractors to be licensed by the State of Tennessee, Hamilton County, and/or the City of Chattanooga to perform related work as permitted by the city. Building, electrical, plumbing and mechanical permits will require purchase by a licensed contractor.

(4) Any property owner desiring to perform work on his or her own property, which may require such a license, may obtain a limited building permit upon such condition established by the city building inspector and shall not make more than one (1) application for the construction of a single-family residence within a period of twenty-four (24) months. A permit for the plumbing, electrical and mechanical work in a single-family residence, outbuilding or garage must be obtained by a licensed contractor.

(5) Structures not requiring design by a registered architect or engineer:

(a) Business, "factory-industrial," "hazardous," "mercantile," "residential" and "storage" occupancies which are less than five thousand (5,000) square feet in total gross area.

(b) One (1) family and two (2) family dwellings and domestic outbuildings.

(c) Farm buildings not designed or intended for human occupancy.

Nothing in this section shall prevent the city from requiring the services of a registered architect, engineer or landscape architect for any project.

(6) Any person, firm, corporation or agent who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, or who shall erect, construct, alter, install, demolish or move any structure, electrical, gas, mechanical or plumbing system, or has erected, constructed, altered, repaired, moved or demolished a building, structure, electrical, gas, mechanical or plumbing system, in violation of a detailed statement or drawing submitted and permitted thereunder, shall be guilty of a misdemeanor. Each such person shall be considered guilty of a separate offense for each and every

day or portion thereof during which any violation of any of the provisions of this code is committed or continued, and upon conviction of any such violation such person shall be punished within the limits as provided by state laws. (Ord. #2017-2018-7, April 2018)

CHAPTER 2

PROPERTY MAINTENANCE CODE

SECTION

- 12-201. Property maintenance code adopted.
- 12-202. Modifications.
- 12-203. Available in recorder's office.
- 12-204. Violations and penalty.

12-201. Property maintenance code adopted. Pursuant to authority granted by the *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of securing the public safety, health, and general welfare through structural strength, stability, sanitation, adequate light, and ventilation in dwellings, apartment houses, rooming houses, and buildings, structures, or premises used as such, the *International Property Maintenance Code*,¹ 2015 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the residential code. (2007 Code, § 12-201, modified)

12-202. Modifications. Wherever the *International Property Maintenance Code* refers to the "building official," it shall mean the person appointed or designated by the city manager to administer and enforce the provisions of the *International Property Maintenance Code*. Wherever the "department of law" is referred to, it shall mean the city attorney. Wherever the "chief appointing authority" is referred to, it shall mean the city manager. Section 106 of the *International Property Maintenance Code* is deleted. (2007 Code, § 12-202)

12-203. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the *International Property Maintenance Code* has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (2007 Code, § 12-203)

12-204. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the *International Property Maintenance Code* as herein adopted by reference and modified. (2007 Code, § 12-204)

¹Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213-1206.

CHAPTER 3

THE STANDARD CODE FOR THE ELIMINATION OR REPAIR OF UNSAFE BUILDINGS

SECTION

- 12-301. Definitions.
- 12-302. Code remedial.
- 12-303. Scope.
- 12-304. Alterations, repairs or rehabilitation work.
- 12-305. Maintenance.
- 12-306. Enforcement officer.
- 12-307. Powers and duties of the building official.
- 12-308. Liability.
- 12-309. Defects making dwelling unfit for human habitation and dangerous buildings.
- 12-310. When unfit dwellings and dangerous buildings are to be repaired or demolished.
- 12-311. Abatement of nuisances; inspector's duties.
- 12-312. Abatement of nuisances; board's duties.
- 12-313. Emergency abatement of nuisances.
- 12-314. Notices and orders to out-of-town owners, etc.
- 12-315. Failure to receive notices and effect.
- 12-316. Remedies provided herein are cumulative.
- 12-317. Violations and penalty.

12-301. Definitions. The following definitions and terms shall apply in the interpretation and enforcement of this chapter.

(1) "Building" means any structure or part thereof not a dwelling as above defined.

(2) "Building official" means the officer or other designated authority charged with the administration and enforcement of this code, or his duly authorized representative.

(3) "Dwelling" means any building or structure or part thereof used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(4) "Owner" means the holder of a fee simple title and every trustee or mortgagee of record.

(5) "Parties in interest" means all individuals, associations and corporations who have an interest of record in a dwelling or building or who are in possession thereof.

(6) "Public record" means deeds, deeds of trust, and other instruments of record in the registrar's office of Hamilton County, Tennessee.

(7) "Structural alterations" means any change, except for repair or replacement, in the supporting members of a building such as bearing walls, columns, beams, or girders. (2007 Code, § 12-301)

12-302. Code remedial. This code is hereby declared to be remedial and shall be constructed to secure the beneficial interests and purposes thereof--which are public safety, health and general welfare--through structural strength, stability, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures or premises. (2007 Code, § 12-302)

12-303. Scope. The provisions of code shall apply to all unsafe buildings or structures, as herein defined, and shall apply equally to new and existing conditions. (2007 Code, § 12-303)

12-304. Alterations, repairs or rehabilitation work. (1) Alterations, repairs or rehabilitation work may be made to any existing building without requiring the building to comply with all the requirements of the *International Building Code*; provided that the alteration, repair or rehabilitation work conforms to the requirements of the *International Building Code* adopted in chapter 1 of this title.

(2) Alterations, repairs or rehabilitation work shall not cause an existing building to become unsafe as defined in § 12-309.

(3) If the occupancy classification of an existing building is changed, the building shall be made to conform to the intent of the *International Building Code*, adopted in chapter 1 of this title, for the occupancy classification as established by the building official. (2007 Code, § 12-304)

12-305. Maintenance. All buildings or structures, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by the *International Building Code*, adopted in chapter 1 of this title, in a building when erected, altered or repaired, shall be maintained in good working order. (2007 Code, § 12-305)

12-306. Enforcement officer. The provisions of this code shall be enforced by the building official, codes officer, or any other employee appointed or designated by the city manager. (2007 Code, § 12-306)

12-307. Powers and duties of the building official. (1) The building official, codes officer or any employee so designated by the city manager may enter any building, structure or premises at all reasonable times to make an inspection or enforce any of the provisions of this code.

(2) When entering a building, structure, or premises that is occupied, the building official shall first identify himself, present proper credentials and request entry. If the building, structure, or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge of the building and demand entry. If entry is refused, the building official or authorized representative shall have recourse to every remedy provided by the law to secure entry.

(3) No person, owner or occupant of any building or premises shall fail, after proper credentials are displayed, to permit entry into any building or onto any property by the building official or his authorized agent for the purpose of inspections pursuant to this code. Any person violating this section shall be prosecuted within the limits of the law. (2007 Code, § 12-307)

12-308. Liability. Any officer or employee charged with the enforcement of this code, acting for the city manager in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any officer or employee because of such act performed by him in the enforcement of any provisions of this code shall be defended by the legal department of the board of commissioners until the final termination of the proceedings. (2007 Code, § 12-308)

12-309. Defects making dwellings unfit for human habitation and dangerous buildings. All dwellings or buildings which have any or all of the following defects shall be deemed to be unfit for human habitation or dangerous buildings:

(1) Those whose interior walls or other vertical members list, lean or buckle to such an extent that a plum line passing through the center of gravity falls outside the middle third of its base.

(2) Those which, exclusive of the foundation, show thirty-three percent (33%) or more of damage or deterioration of the support member or members, or fifty percent (50%) of damage or deterioration of the non-supporting enclosing or outside walls or covering.

(3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

(4) Those which have been damaged by fire, wind or other causes so as to become dangerous to life, safety, morals, or the general health and welfare of the occupants of the people of the city.

(5) Whenever any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic.

(6) Whenever for any reason a building, structure or portion thereof is manifestly unsafe or unsanitary for the purpose it is being used.

(7) Whenever any building, structure or portion thereof, as a result of decay, deterioration or dilapidation, is likely to fully or partially collapse.

(8) Whenever any building, structure, or portion thereof is in such a condition as to constitute a public nuisance.

(9) Whenever any exterior appendages or portion of a building or structure is not securely fastened, attached or anchored that they may fall and injure members of the public or property.

(10) Those dwellings or buildings existing in violation of any provision of this chapter or any other ordinances of this city at the time such provisions become effective. (2007 Code, § 12-309)

12-310. When unfit dwellings and dangerous buildings are to be repaired or demolished. All dwellings unfit for human habitation and all dangerous buildings within the terms of § 12-309 are hereby declared to be public nuisances, and shall be repaired or demolished as hereinbefore and hereinafter provided. The following criteria shall be used by the building inspector in ordering repair or demolition:

(1) If the dwelling or dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this chapter or other ordinances of this city, it shall be ordered repaired.

(2) In any case where a dwelling unfit for human habitation or a dangerous building is fifty percent (50%) damaged or decayed or deteriorated from its original value or structure, it shall be demolished, and in all cases where a dwelling or a building cannot be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be demolished. In all cases where a dwelling or a dangerous building is a fire hazard existing or erected in violation of the provisions of this chapter or any ordinance of this city or any statute of the State of Tennessee, it shall be demolished. (2007 Code, § 12-310)

12-311. Abatement of nuisances; inspector's duties. (1) The building inspector shall inspect any dwelling, building, wall or structure about which complaints are filed by any person to the effect that it is or may be existing in violation of this chapter.

(2) He shall inspect any dwelling, building, wall or structure reported by the fire or police department or the department of health as probably existing in violation of the provisions of this chapter.

(3) He shall notify (in writing) the owners, occupants, lessees, mortgagees, agents, and all other persons having any interest, as shown by the public records, in any dwelling or building found to be unfit for human habitation or a dangerous building within the standards set forth in this chapter, that:

(a) The owner must repair or demolish said dwelling or building in accordance with the terms of this notice and this chapter;

(b) The occupant or lessee must vacate such dwelling or building or must have it repaired in accordance with the notice and this chapter in order to remain in possession; and

(c) The mortgagee, agent or other persons having an interest in said dwelling or building as shown by the public records may, at his own risk, repair or demolish said dwelling or building or have such work or act done. However, any person notified under this subsection to repair or demolish any dwelling or building shall be given such reasonable time, not exceeding sixty (60) days, as may be necessary to do, or have done, the work or act required by the notice provided herein.

(4) Failure of any owner, occupant, lessee, mortgagee, agent, or other person having an interest in said dwelling or building, to receive a copy of the inspector's notice if mailed, or failure of the city or the inspector to notify any owner, occupant, lessee, mortgagee, agent or other person having an interest in said dwelling or building, shall not relieve the remaining persons who are actually notified in accordance with this subsection of their responsibilities hereunder.

(5) The building inspector shall set forth in the notice provided for in subsection (3) hereof, a description of the dwelling or building deemed unsafe, a statement of the particulars which make the dwelling unfit for human habitation or the building a dangerous building, and an order requiring the same to be put in such condition as to comply with the terms of this chapter within such length of time, to begin within sixty (60) days and completion not to exceed one hundred twenty (120) days.

(6) The building inspector shall report to the city manager any noncompliance with the notice provided for in this section. The manager shall in turn report his findings and recommendations to the board.

(7) The building inspector shall appear at all hearings conducted by the board and testify as to the condition of the dwellings unfit for human habitation and the dangerous buildings.

(8) The building inspector shall place a notice on all dwellings unfit for human habitation and on all dangerous buildings as follows:

DANGER

This building is deemed unsafe
for human occupancy
under § 12-309 of the Building Code of the
City of Soddy-Daisy

It is unlawful for any person to occupy
or reside in this building

City of Soddy-Daisy

Any unauthorized person removing this notice
Will be prosecuted

(2007 Code, § 12-311)

12-312. Abatement of nuisances; board's duties. (1) Upon receipt of a report of the city manager as provided for in § 12-311, the board shall give written notice to the owner, occupant, mortgagee, lessee, agent, and any other person having an interest in said dwelling or building, as shown by the public records, to appear before the board on the date specified in the notice to show cause why the dwelling or building reported to be unfit for human habitation or a dangerous building should not be repaired or demolished in accordance with the statement of particulars set forth in the inspector's notice provided for in § 12-313.

(2) The board shall hold a hearing and hear such testimony as the inspector and the owner, occupant, mortgagee, lessee, or any other person having an interest in said building as shown by the public records, shall offer relative to the dwelling being unfit for human habitation or a dangerous building.

(3) The board shall make written findings of fact from the testimony offered, as to whether or not the dwelling is unfit for human habitation or the building in question is a dangerous building within the terms and provisions of this chapter.

(4) The board shall issue an order, based upon its findings of fact, commanding the owner, occupant, mortgagee, lessee, agent, and all other persons having an interest in said dwelling or building, as shown by public records, to repair or demolish any dwelling found to be a dangerous building within the terms and provisions of this chapter. Any person so notified shall have the privilege of either repairing the dwelling or building or demolishing it at his own risk to prevent the acquiring of a lien against the land upon which said dwelling or building stands by the city as provided in subsection (5) hereof.

(5) If the owner, occupant, mortgagee, lessee, or agent fails to comply with the order provided for in subsection (4) hereof within ten (10) days, the board shall cause such dwelling or building to be repaired or demolished as the facts may warrant, under the criteria hereinbefore provided. Furthermore, the board shall, with the assistance of the city attorney cause the cost of such repair or demolition to be charged against the land on which the building existed as a municipal lien shall be superior to all liens except liens for state, county and municipal taxes and municipal special assessments, to be recovered in a suit at law against the owner.

(6) The board shall report to the city attorney the names of all persons not complying with the order provided for in subsection (4) of this section. (2007 Code, § 12-312)

12-313. Emergency abatement of nuisances. In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless a dwelling unfit for human habitation or a dangerous building, as defined herein, is immediately repaired or demolished, the inspector shall report such facts to the board, and the board shall cause the immediate repair or demolition of such dwelling or building. The cost of such emergency repair or emergency demolition of such dwelling or building shall be a lien to be collected in the same manner as provided in this chapter. (2007 Code, § 12-313)

12-314. Notices and orders to out-of-town owners, etc. In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the city, all notice or orders provided for herein shall be sent by registered mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in said dwelling or building, as shown by the public records, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the dwelling or building to which it relates. (2007 Code, § 12-314)

12-315. Failure to receive notices and effect. The fact that any person entitled to notice hereunder did not receive any such notice shall not affect the validity of the proceedings taken herein under so long as the procedures for giving notice herein provided have been followed. (2007 Code, § 12-315)

12-316. Remedies provided herein are cumulative. Nothing in this chapter shall be construed to impair or limit, in any way, the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise. The measure and procedures herein provided do not supersede, and this chapter does not repeal, any other measures or procedures which are provided by the ordinances of the city for the elimination, repair or correction of the conditions referred to in this chapter, but the measures and procedures herein provided for shall be in addition to the other powers and authority of the city or its inspector. (2007 Code, § 12-316)

12-317. Violations and penalty. Any person, firm, corporation or agent who shall violate any provision of this code, or fail to comply therewith, or with any of the requirements thereof shall be guilty of a misdemeanor and shall be punished according to the general penalty provisions of this code of ordinances. (2007 Code, § 12-317)

CHAPTER 4

SWIMMING POOL AND SPA CODE

SECTION

- 12-401. Swimming pool code adopted.
 12-402. Modifications.
 12-403. Available in recorder's office.
 12-404. Violations and penalty.

12-401. Swimming pool code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-516, and for the purpose of regulating the minimum requirements for the design, construction, alteration, repair and maintenance of swimming pools, spas, hot tubs and aquatic facilities, the *International Swimming Pool and Spa Code*,¹ 2015 edition, or any subsequent edition, as prepared by the International Code Council, is hereby adopted and incorporated by reference as part of this code except as otherwise specifically stated in the chapter and is hereinafter referred to as the swimming pool code.

12-401. Modifications. The following sections are hereby revised to read as follows:

12-403. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the swimming pool code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-404. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the swimming pool and spa code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

¹Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213-1206.

CHAPTER 5

ENERGY CONSERVATION CODE

SECTION

- 12-501. Energy conservation code adopted.
- 12-502. Modifications.
- 12-503. Available in recorder's office.
- 12-504. Violations and penalty.

12-501. Energy conservation code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the design of energy-efficient building envelopes and the installation of energy-efficient mechanical, lighting and power systems to establish energy-efficient buildings using prescriptive and performance-related provisions which will make possible the use of new materials and innovative techniques that conserve energy, the *International Energy Conservation Code*,¹ 2015 edition, as prepared and maintained by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the energy code. (2007 Code, § 12-501, modified)

12-502. Modifications. Whenever the energy code refers to the duties of a certain official named therein, that designated official of the City of Soddy-Daisy who has duties corresponding to those of the named official in the energy code shall be deemed to be the responsible official insofar as enforcing the provisions of the energy code are concerned. (2007 Code, § 12-502)

12-503. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the energy code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (2007 Code, § 12-503)

12-504. Violations and penalty. It shall be a civil offense for any person to violate or fail to comply with any provision of the *International Energy Conservation Code* as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty of up to fifty dollars (\$50.00) for each offense. Each day a violation is allowed to continue shall constitute a separate offense. (2007 Code, § 12-504)

¹Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213-1206.

CHAPTER 6

ELECTRICAL CODE

SECTION

- 12-601. Electrical code adopted.
- 12-602. Available in recorder's office.
- 12-603. Electrical contractors to be licensed.
- 12-604. Permits required.
- 12-605. Violations and penalty.

12-601. Electrical code adopted. (1) The city hereby adopts the 2014 *National Electrical Code*¹ to date.

(2) Amending article 210.12(A)(B) of the 2014 NEC by deleting the requirements for arc fault interrupters in dwelling unit kitchens, family rooms, living rooms, parlors, libraries, dens, sunrooms, closets, hallways, laundry areas, or similar rooms. Replaced with arc type circuit interrupters, combination type shall be required in all bedrooms and in all other rooms shall be optional. (Ord. #2017-2018-8, April 2018)

12-602. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the electrical code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-603. Electrical contractors to be licensed. The city will require that electrical contractors be licensed by the State of Tennessee, Hamilton County, and/or the City of Chattanooga to perform related work as permitted by the city. (Ord. #2017-2018-8, April 2018)

12-604. Permits required. Electrical permits will require purchase by a licensed contractor. (Ord. #2017-2018-8, April 2018)

12-605. Violations and penalty. Any person, firm, corporation or agents who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, or who shall alter, repair or install, any electrical system, shall be guilty of a misdemeanor. Each such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed or continued, and upon conviction of any such violation such person shall be

¹Copies of this code are available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

punished within the limits as provided by state law. (Ord. #2017-2018-8, April 2018)

CHAPTER 7

ADMINISTRATIVE HEARING OFFICER

SECTION

- 12-701. Municipal administrative hearing officer.
- 12-702. Communication by administrative hearing officer and parties.
- 12-703. Appearance by parties and/or counsel.
- 12-704. Pre-hearing conference and orders.
- 12-705. Appointment of administrative hearing officer/administrative law judge.
- 12-706. Training and continuing education.
- 12-707. Citations for violations; written notice.
- 12-708. Review of citation; levy of fines.
- 12-709. Party in default.
- 12-710. Petitions for intervention.
- 12-711. Regulating course of proceedings; hearing open to public.
- 12-712. Evidence and affidavits.
- 12-713. Rendering of final order.
- 12-714. Final order effective date.
- 12-715. Collection of fines, judgements and debts.
- 12-716. Judicial review of final order.
- 12-717. Appeal to court of appeals.

12-701. Municipal administrative hearing officer. (1) In accordance with *Tennessee Code Annotated*, title 6, chapter 54, §§ 1001, *et seq.*, there is hereby created the Soddy-Daisy Municipal Office of Administrative Hearing Officer to hear violations of any of the provisions codified in the Soddy-Daisy Municipal Code relating to building and property maintenance, including:

- (a) Building codes adopted by the City of Soddy-Daisy;
- (b) All residential codes adopted by the City of Soddy-Daisy;
- (c) All plumbing codes adopted by the City of Soddy-Daisy;
- (d) All electrical codes adopted by the City of Soddy-Daisy;
- (e) All gas codes adopted by the City of Soddy-Daisy;
- (f) All mechanical codes adopted by the City of Soddy-Daisy;
- (g) All energy codes adopted by the City of Soddy-Daisy;
- (h) All property maintenance codes adopted by the City of Soddy-Daisy; and
- (i) All ordinances regulating any subject matter commonly found in the above described codes.

The administrative hearing officer is not authorized to hear violation of codes adopted by the state fire marshal pursuant to *Tennessee Code Annotated*, § 68-120-101(a) enforced by deputy building inspector pursuant to *Tennessee Code Annotated*, § 68-120-101(f).

The utilization of the administrative hearing officer shall be at the discretion of the city manager and/or the city manager's designee and/or the chief building official of the City of Soddy-Daisy, and shall be an alternative to the enforcement included in the Soddy-Daisy Municipal Code.

(2) There is hereby created one (1) administrative hearing officer position to be appointed by the city commission pursuant to § 12-705 below.

(3) The amount of compensation for the administrative hearing officer shall be approved by the city commission.

(4) Clerical and administrative support for the office of administrative hearing officer shall be provided as determined by the city manager.

(5) The administrative hearing officer shall perform all of the duties and abide by all of the requirements provided in *Tennessee Code Annotated*, title 6, chapter 54, §§ 1001, *et seq.* (Ord. #2016-2017-17, March 2017)

12-702. Communication by administrative hearing officer and parties. (1) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(2) Notwithstanding subsection (1) above, an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(3) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(4) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) below.

(5) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person

from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication. (Ord. #2016-2017-17, March 2017)

12-703. Appearance by parties and/or counsel. (1) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative. (Ord. #2016-2017-17, March 2017)

12-704. Pre-hearing conference and orders. (1) (a) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

- (i) The simplification of issues;
- (ii) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (iii) The limitation of the number of witnesses; and
- (iv) Such other matters as may aid in the disposition of the action.

(b) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(2) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(3) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(4) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings. (Ord. #2016-2017-17, March 2017)

12-705. Appointment of administrative hearing officer/administrative law judge. (1) The administrative hearing officer shall be appointed by the city commission for a four (4) year term and serve at the pleasure of the city commission. Such administrative hearing officer may be reappointed.

- (2) An administrative hearing officer shall be one (1) of the following:
- (a) Licensed building inspector;
 - (b) Licensed plumbing inspector;
 - (c) Licensed electrical inspector;
 - (d) Licensed attorney;
 - (e) Licensed architect; or
 - (f) Licensed engineer.

(3) The city may also contract with the administrative procedures division, office of the Tennessee Secretary of State to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the requirements of *Tennessee Code Annotated*, § 6-54-1007(a) and (b). (Ord. #2016-2017-17, March 2017, modified)

12-706. Training and continuing education. (1) Each person appointed to serve as an administrative hearing officer shall, within the six (6) month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's Municipal Technical Advisory Service, referred to in this part as MTAS. MTAS shall issue a certificate of participation to each person whose attendance is satisfactory. The curricula for the initial training shall be developed by MTAS with input from the administrative procedures division, office of the Tennessee Secretary of State. MTAS shall offer this program of training no less than twice per calendar year.

(2) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. MTAS developed the continuing education curricula and offers that curricula for credit no less than twice per calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this part. No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(3) MTAS has the authority to set and enact appropriate fees for the requirements of this section. The city shall bear the cost of the fees for the administrative hearing officer serving the city.

(4) Costs pursuant to this section shall be offset by fees enacted. (Ord. #2016-2017-17, March 2017)

12-707. Citations for violations; written notice. (1) Upon the issuance of a citation for violation of a municipal ordinance referenced in the

city's administrative hearing ordinance, the issuing officer shall provide written notice of:

(a) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the issues involved and the ordinance violations alleged. Thereafter, upon timely, written application, a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(b) A short and plain description of the city's administrative hearing process including references to state and local statutory authority;

(c) Contact information for the city's administrative hearing office; and

(d) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(2) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.

(3) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(4) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance. (Ord. #2016-2017-17, March 2017)

12-708. Review of citation; levy of fines. (1) Upon receipt of a citation issued pursuant to § 12-707, an administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(a) For violations occurring upon residential property, a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation. For purposes of this section, "residential property" means a single-family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(b) For violations occurring upon non-residential property, a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation per day. For purposes

of this part, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(2) If a fine is levied pursuant to subsection (1) above, the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) nor greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(3) Upon the levy of a fine pursuant to subsection (a) below, the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(a) The fine and remedial period established pursuant to subsections (1) and (2) above;

(b) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(4) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (3) above.

(5) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (1) above shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled. (Ord. #2016-2017-17, March 2017)

12-709. Party in default. (1) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(2) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default. (Ord. #2016-2017-17, March 2017)

12-710. Petitions for intervention. (1) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(a) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(2) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(3) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties. (Ord. #2016-2017-17, March 2017)

12-711. Regulating course of proceedings; hearing open to public.

(1) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(3) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(4) The hearing shall be open to public observation pursuant to *Tennessee Code Annotated*, title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any. (Ord. #2016-2017-17, March 2017)

12-712. Evidence and affidavits. (1) In administrative hearings:

(a) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious.

(b) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (2) below. Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subsection (b), the affidavit shall not be admitted into evidence. "Delivery," for purposes of this section, means actual receipt.

(c) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice.

(d) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.

(e) (i) Official notice may be taken of:

(A) Any fact that could be judicially noticed in the courts of this state;

(B) The record of other proceedings before the agency; or

(C) Technical or scientific matters within the administrative hearing officer's specialized knowledge.

(ii) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(2) The notice referred to in subdivision (b) above shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____(here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding) _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____(here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponents attorney) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

(Ord. #2016-2017-17, March 2017)

12-713. Rendering of final order. (1) An administrative hearing officer shall render a final order in all cases brought before his or her body.

(2) A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(3) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(4) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(5) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(6) A final order rendered pursuant to subsection (1) above shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(7) The administrative hearing officer shall cause copies of the final order under subsection (1) above to be delivered to each party. (Ord. #2016-2017-17, March 2017)

12-714. Final order effective date. (1) All final orders shall state when the order is entered and effective.

(2) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order. (Ord. #2016-2017-17, March 2017)

12-715. Collection of fines, judgements and debts. The city may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt. (Ord. #2016-2017-17, March 2017)

12-716. Judicial review of final order. (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(2) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(3) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(4) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing

to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(6) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(7) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(8) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the administrative hearing officer;
- (c) Made upon unlawful procedure;
- (d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (e) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(9) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(10) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record. (Ord. #2016-2017-17, March 2017)

12-717. Appeal to court of appeals. (1) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the Court of Appeals of Tennessee.

(2) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to *Tennessee Code Annotated*, title 24 shall become a part of the record.

(3) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure. (Ord. #2016-2017-17, March 2017)